

# Let's Begin By Understanding Where We Are

*A report on existing academic accountability for schools in  
the choice programs and public schools*



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December 1, 2014

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## Executive Summary

We often hear that schools participating in the Milwaukee Parental Choice Program (MPCP) are not held “accountable.” Contrary to this popular belief, however, these schools are subject to significant accountability measures and regulation. Based on the analysis in this essay and previous research, it is not possible to conclude that public schools are held more accountable than schools in the choice program or *vice versa*.

In this essay, we examine the existing academic performance measures applicable to private schools in the choice program. According to Wisconsin law, Wis. Stat. § 119.23 (7)(a), each private school participating in the choice program must meet at least one of the following standards:

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

The Wisconsin Department of Public Instruction (DPI) has interpreted this to mean that each private school in the choice program must choose one of the four standards to comply with by October of each school year. If it does not satisfy the chosen standard in June of that school year, the school will be dropped from the parental choice program for the following year.

These standards are at least as rigorous as anything applicable to the Milwaukee Public Schools (MPS). But unlike schools at MPS, schools in the choice program must meet their mark or be immediately dropped from the program – a consequence that will cause many schools to close.

We reach the following conclusions in this report:

1. Policymakers should take into consideration the current accountability scheme on schools in choice programs before imposing new regulations. If they decide to implement new regulations, they may want to remove the old ones.
2. The Department of Public Instruction interprets laws in ways that deviate from the statutory language, making it more demanding than originally intended by the Legislature.
3. State accountability laws on schools in the choice program are at least as rigorous – and probably enforced more aggressively – than anything imposed on public schools. In theory, the DPI could hold MPS schools accountable in the same way that it does to schools participating in the MPCP, but it does not. The failure to take similar accountability measures is not due to the superior performance from accountability measures.
4. This is not to say that current accountability measures are satisfactory or could not be improved. Any new accountability measures should be tailored with an appreciation for the value of diverse approaches and parental choice. There are a number of ways to measure school performance, and different families will place different weight on these measures.

## I. Introduction

With the elections over and another legislative session on the horizon, Wisconsin will see yet another debate about how to hold private schools in the choice program accountable. Policymakers have already been discussing how “to create a system that will hold all schools accountable.”<sup>1</sup>

If this is true and additional regulations are to be imposed on the choice program, then a thorough analysis of existing regulations must be conducted. In this essay, we examine existing academic performance measures applicable to private schools in Wisconsin’s school choice program.<sup>2</sup> They are at least as rigorous as anything applicable to the Milwaukee Public Schools. But unlike MPS schools, schools in the choice program must meet their mark or be immediately dropped from the program – a consequence that will cause many schools to close.

The coming legislative session will likely see a renewed push towards a common report card applicable to public schools and schools participating in the choice program. If that occurs, it may be that these existing academic performance measures will no longer be needed. In their 2015-2017 budget request, the Department of Public Instruction recommended that the state eliminate these academic performance measures. Depending on what may be proposed to replace them, this may make sense.

## II. Existing Accountability for Schools in the Parental Choice Programs

Contrary to popular belief, private schools in the choice program are regulated. In fact, according to a recent report, the Milwaukee Parental Choice Program is the *most regulated school choice program in the nation* (Catt, 2014). Fifty-five regulations have been enacted since the program’s inception, covering topics such as the certification and licensure of teachers, curriculum, testing, and reporting. Schools must submit to an independent audit and provide “comprehensive evidence of sound fiscal practices.”<sup>3</sup> They must “apply for and obtain accreditation from an approved agency within three years of participation in the MPCP.”<sup>4</sup> Among other requirements, they must employ teachers that meet the state’s requirements for teacher credentials, provide at least 1,050 hours of pupil instruction, and adopt state academic standards in math, reading, writing, geography, and history.

In addition, each private school participating in the choice program must meet at least one of the following standards:

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<sup>1</sup> Letter to Governor Scott Walker dated March 20, 2014. <http://media.jrn.com/documents/201403201752.pdf> [accessed: November 11, 2014]

<sup>2</sup> This includes the Milwaukee Parental Choice Program, Racine Parental Choice Program, and Wisconsin Parental Choice Program.

<sup>3</sup> School Choice Wisconsin, Accountability, <http://www.schoolchoicewi.org/research/issues/accountability/> [accessed: November 11, 2014]

<sup>4</sup> *Id.*

Standard #1. At least 70 percent of the pupils in the program advance one grade level each year.

Standard #2. The private school's average attendance rate for the pupils in the program is at least 90 percent.

Standard #3. At least 80 percent of the pupils in the program demonstrate significant academic progress.

Standard #4. At least 70 percent of the families of pupils in the program meet parent involvement criteria established by the private school.

Wis. Stat. § 119.23(7)(a).<sup>5</sup>

According to the DPI's guidelines for compliance with the standards, each private school in the choice program must choose one of the four standards to comply with by October 15 of the school year to which they will apply.<sup>6</sup> At that time, they must also submit to the DPI the criteria that will be used to determine whether the chosen standard has been met.<sup>7</sup>

At the end of the school year in June, DPI determines, based on the criteria, whether the school satisfied the chosen standard. If it does not, the school will be dropped from the parental choice program for the following year. If the tuition paid by students in the choice program are a material component of its revenues, the school will likely close.

Table 1 shows the selection of standards among MPCP schools for 2013-14. The majority of schools (66 percent) chose to satisfy Standard #2 (attendance).

**Table 1: Standards selection by MPCP schools in October 2013**

<b>Standard</b>	<b>Number</b>	<b>Percent</b>
1. At least 70% of the pupils in the program advance one grade level each year.	24	21.8%
2. The school's average attendance rate for pupils in the program is at least 90%.	73	66.4%
3. At least 80% of the pupils in the program demonstrate significant academic progress.	1	0.9%
4. At least 70% of the families of pupils in the program meet parent involvement criteria established by the school.	12	10.9%

Source: Information provided upon request from the Wisconsin Department of Public Instruction

<sup>5</sup> Wis. Stat. § 118.60(7)(a) applies the same four standards in the same manner to private schools participating in the Wisconsin Parental Choice Program and Racine Parental Choice Program.

<sup>6</sup> Wisconsin DPI (2014). Continuing Eligibility Reporting Requirements, Private School Choice Programs Informational Bulletin, Bulletin 02-04, Revised August 2014.

<sup>7</sup> Both the statutes and regulations are silent on whether DPI must agree to the submitted criteria. It is our understanding that, in practice, DPI does, from time to time, reject submitted criteria, regardless of its legal authority to do so.

## A. A Closer Look at the Four Standards that Private Schools Must Follow

1. *Standard #1: At least 70 percent of the pupils in the program advance one grade level each year.*

Last school year, 22 percent of schools in the MPCP chose to be measured by whether 70 percent of their students advanced one grade level each year. A DPI regulation explains that, for students in grades 9 through 12, advancing one grade level “means a successful completion of at least 4 credits or the equivalent as approved by the state superintendent during each school year.” PI 35.03(5)(b)1.

For K-8 students, the regulation offers schools participating in the MPCP a choice between two criteria that explains “advancing one grade level.” Those criteria are:

- a. Achievement of 70 percent of the instructional objectives specific to each grade level in reading, mathematics and language arts which are introduced during each semester of the current school year.<sup>8</sup>
- b. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of the standardized achievement test.<sup>9</sup>

*Id.*

If properly implemented, these standards will prevent “social promotion”<sup>10</sup> and hold students accountable for real advances in learning by causing students who do not achieve to not advance a grade level. In other words, a requirement for grade *advancement* will result in grade *retention* for students who cannot meet advancement criteria. But the danger of such a standard is that it may encourage social promotion, particularly if the more subjective first option is chosen.

Before assessing whether the requirement for advancement is a good idea, we need to decide whether retention – as opposed to social promotion – is desirable. Opponents of keeping a child in the same grade, *i.e.*, grade retention, argue that such policies harm student achievement because they become stigmatized and marginalized (House, 1998). On the other hand, supporters of grade retention argue that it reduces the number of students who “fall through the cracks” because common social promotion practices allow deficits in a child’s learning and preparation for more advanced work to go unaddressed (Riley, 1999). In the words of Nobel Laureate James

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<sup>8</sup> “Under this subparagraph, a private school shall do all of the following: establish written objectives and performance standards for reading, mathematics and language arts for each grade level in which pupils are enrolled in the Milwaukee parental choice program; document written criteria and methodology for evaluating pupil performance for each objective and document each pupil’s performance using the evaluation method specified in this subparagraph in a written record and maintain these records for 3 years.” PI 35.03(5)(b)1.

<sup>9</sup> “Under this subparagraph, a private school shall do all of the following: report, by October 15, to the state superintendent the tests to be administered and the dates on which they will be administered, and maintain each pupil’s answer sheets and score information for 3 years.” PI 35.03(5)(b)1.

<sup>10</sup> Social promotion refers to the advancement of students to the next grade level based on the assumption that it promotes self-esteem regardless of proficiency in subject material (Riley, 1999).

Heckman, “[e]arly learning begets later learning and early success breeds later success, just as early failure breeds later failure” (Heckman, 2000).

Recent research suggests benefits from grade retention policies. Greene and Winters (2006) examined Florida’s grade retention policy and found that students retained in 2003 gained more on math and reading than similar students who were promoted in the same year.<sup>11</sup> Jacob and Lefgren (2007) studied the effect of a grade retention policy in Chicago on high school drop-out and academic outcomes. Students retained in 6<sup>th</sup> grade were no more likely to drop out in high school than their peers who were promoted while retention in 8<sup>th</sup> grade reduced the probability of graduating high school by 14 percent. The observation that students receiving the intervention later experience lower graduation rates supports the notion that 6<sup>th</sup> grade students received more opportunities to catch up than those retained in the 8<sup>th</sup> grade.

This suggests that the value of “grade advancement” as an accountability measure depends on whether policies and practices are in place to ensure that advancement does not simply reflect social promotion, but an actual advance in knowledge. For K-8 schools participating in the choice program,<sup>12</sup> the DPI’s regulation (PI 35.03(5)(b)) is an attempt to do that.

For public schools, state law requires each school board to adopt a written policy specifying the criteria that will be used for advancing a student from fourth grade to fifth and from eighth grade to ninth. Wis. Stat. §118.33. The criteria must include the test score on the knowledge and concepts examination, pupil academic performance, recommendations of teachers based on academic performance, and any other academic criteria identified by the board. This requirement is arguably less exacting than PI 35.03(5)(d)1. In any event, DPI does not audit and defund public schools that do not meet grade advancement requirements.

The efficacy of grade advancement standards will only be as good as their implementation in any particular school. It is, however, a standard – with significant consequences – applicable to some schools participating in choice programs. It is not applied to public schools.

But, if the problem is that too many students are being advanced, it is hard to argue that MPS is somehow being held to a higher measure of accountability. MPS schools overall promoted 95% of their students to the next grade in 2012-13.<sup>13</sup> Based on DPI data, all MPS schools advance at least 70 percent of their students, and 133 schools advanced at least 90 percent of their students. Moreover, whatever one thinks of the DPI’s regulation (PI 35.03(5)(b)), there is no comparable state standard for determining what constitutes “real advancement” that is applicable to MPS and verified by DPI audit.

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<sup>11</sup> Retained students gained 0.11 to 0.13 standard deviations more in reading and 0.28 to 0.30 standard deviations more in on the Stanford-9 and FCAT exams than their promoted peers.

<sup>12</sup> The overwhelming majority of students are in K-8 (about 80 percent).  
[http://sms.dpi.wi.gov/sites/default/files/imce/sms/pdf/mpcp\\_facts\\_figures\\_2013-14.pdf](http://sms.dpi.wi.gov/sites/default/files/imce/sms/pdf/mpcp_facts_figures_2013-14.pdf)

<sup>13</sup> Promotion is defined by DPI as when an individual student “has made sufficient progress over the course of the school year to advance to a higher grade level,” [http://lbstat.dpi.wi.gov/lbstat\\_datapromo](http://lbstat.dpi.wi.gov/lbstat_datapromo).

2. *Standard #2: The private school's average attendance rate for the pupils in the program is at least 90 percent.*

Last year, seventy-three schools in the MPCP – or 66 percent of all such schools – chose to meet this standard of at least 90 percent attendance. The DPI instructions define “pupil attendance” to mean the “rate obtained by dividing the aggregate number of full-time equivalent days of actual pupils’ attendance by the aggregate number of full-time equivalent days on which school was held.”

It is true that simply coming to school does not guarantee learning. But failing to come to school makes it impossible for almost all students. *Contra* Woody Allen, it may not be that 80 percent of learning is showing up, but research suggests that improving attendance improves student learning and reduces dropout rates.

Goodman (2014) finds that absenteeism greatly reduces math and reading achievement. In particular, four additional days of absence would explain roughly 25 percent and 5 percent of the math and reading gaps, respectively, between poor and non-poor students. Other research corroborates these findings. For instance, Balfanz and Byrnes (2013) examined the impact of a chronic absenteeism policy in New York City and find that students who stopped being chronically absent were 20 percentage points more likely to remain in school three years later.

In any event, if the attendance standard for schools in the choice programs is “not enough,” we ought to be concerned about MPS where many schools do not meet even this basic requirement for student success.

For the roughly 66 percent of schools in the choice program who are bound by the attendance standard, this is no “after the fact” benediction. They must select it in October and, if they do not have 90 percent attendance in June, they are removed from the program.<sup>14</sup>

No such requirement is imposed by the state on MPS. If it were, many schools – about one third – in the district would have a very difficult time meeting this standard.

On the following page, Table 2 reports the share of MPS schools that met Standard #2. It also breaks down schools by school type and reports whether the standard was met based on subgroups of students (economically disadvantaged students, English Language Learner students, minority students, and students with disabilities). As a whole, over one-third of MPS schools (35 percent) failed to meet the MPCP attendance standard. While most (83 percent) elementary schools satisfied the standard, this pattern reverses for high schools, where 86 percent fail to meet the attendance criteria.

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<sup>14</sup> See pages 11-12 for our disagreement with how DPI is implementing state law.

**Table 2: Do MPS schools meet the MPCP attendance standard?**

	Not met		Met	
	number	pct	number	pct
<b>Overall</b>	<b>48</b>	<b>35.0%</b>	<b>89</b>	<b>65.0%</b>
School level				
Elementary School	16	16.7%	80	83.3%
Middle School	3	60.0%	2	40.0%
High School	18	85.7%	3	14.3%
Combined Elem/Secondary School	11	73.3%	4	26.7%
Student subgroups				
Economic disadvantage	52	38.5%	83	61.5%
ELL	6	18.2%	27	81.8%
Minority	49	39.2%	76	60.8%
Students with disabilities	62	54.4%	52	45.6%

Note: This table is based on 2012-13 attendance data; it includes schools that enroll at least 50 students of the member group and excludes charter schools

Source: Wisconsin Department of Instruction's WISEdash data,

[http://wise.dpi.wi.gov/wisedash\\_downloadfiles/type?field\\_wisedash\\_upload\\_type\\_value=Attendance&field\\_wisedash\\_data\\_view\\_value=All](http://wise.dpi.wi.gov/wisedash_downloadfiles/type?field_wisedash_upload_type_value=Attendance&field_wisedash_data_view_value=All) (accessed 9/12/2014).

All of the schools in the choice program bound to this standard met it.<sup>15</sup> Of course, the student make-up of MPCP and MPS schools might differ. Virtually all students from schools in the MPCP are economically disadvantaged and most are minorities.<sup>16</sup> We examined subgroups of students within MPS schools to see how they are doing among students most likely to be participating in the MPCP. If we apply the attendance standard to only economically disadvantaged students or minority students, then only about 60 percent of MPS schools would satisfy the criteria applied to most schools in the choice program. If we apply the standard to only students with disabilities enrolled in MPS schools, then less than half (46 percent) of MPS schools would satisfy the attendance standard.

Perhaps these schools would meet one of the other standards imposed upon private schools. Unfortunately, data is not publicly available to allow examination of the other three standards.<sup>17</sup>

<sup>15</sup> We do not have data for schools that have not chosen this standard.

<sup>16</sup> Based on free-reduced lunch (FRL) enrollment data from DPI, 85 percent of students in MPCP schools that participate in FRL programs are eligible for participation in these programs. These data reflect FRL enrollment information for all students in these schools and are not provided for only students enrolled in the MPCP.

<sup>17</sup> While DPI provides data on grade advancement publicly, the definition for grade advancement is set by the school or district and may not be comparable to the definition that private schools are held accountable to. Furthermore, while we know that all private schools choosing the attendance standard meet its requirement, there are no publicly available attendance data for private schools that do not choose this standard. Additionally, data on parental involvement are not available for public and private schools.

3. *Standard #3: At least 80 percent of the pupils in the program demonstrate significant academic progress.*

Last year, only one school chose to meet this standard of academic progress. The DPI defines “significant academic progress” as the following:

PI 35.02(21)(a) The pupil demonstrates improvement in reading and mathematics in comparison to his or her performance level in the previous school year.

PI 35.02(21)(b) The pupil demonstrates satisfactory performance on at least 50 percent of any new instructional concepts in reading and mathematics introduced during each of the current school year semesters, and the level of attainment is documented in a written record of performance at beginning, mid-point and ending of each semester.

Wis. Adm. Code PI 35.02(21).

Schools choosing this standard must propose criteria to gauge their academic progress and then submit it to DPI for approval.<sup>18</sup>

While this standard is arguably the most direct and meaningful, no such requirement is imposed on any MPS school and, as seen below, there is no evidence that student progress is any greater in MPS than in schools in the choice program.

Indeed, there are relatively little data on student progress, much less rigorous state enforcement of requirements that student performance improve. Annual reports of test scores do not tell us whether the performance of any particular student (or, for the most part, even any cohort of students) has improved. To answer questions about student improvement, one would need longitudinal data. For the most part, such data are not available. The School Demonstration Project at the University of Arkansas conducted a rigorous longitudinal evaluation of the MPCP where they matched MPCP students with similar students in MPS and tracked them over four years. Students in the MPCP experienced greater growth in reading and similar growth in math (Wolf, 2012). Although it may be that schools held to higher standards of student attainment will outperform schools held to lower standards, doing so has not been part of state regulation of either the MPCP or public schools.<sup>19</sup> It is simply not possible to conclude that one sector is being held “accountable” while the other is not.

4. *Standard #4. At least 70 percent of the families of pupils in the program meet parent involvement criteria established by the private school.*

Last year, 12 schools in the MPCP, or 10.6 percent, chose to submit evidence of at least 70 percent of students’ parents satisfying “parental involvement.”

This is not a meaningless standard. Increased involvement and encouragement from parents can increase interest in learning and keep children on task more than children who experience less

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<sup>18</sup> Private School Choice Program: Continuing Eligibility Report, Department of Public Instruction, [http://sms.dpi.wi.gov/files/sms/pdf/pcp\\_continuingeligibility.pdf](http://sms.dpi.wi.gov/files/sms/pdf/pcp_continuingeligibility.pdf)

<sup>19</sup> The No Child Left Behind Act (NCLB) was intended to impose such requirements, but it has not (Hess, 2014).

involvement by their parents. However, difficulties in defining parental involvement make it hard to draw general inferences from the existing research (Fan & Chen, 2001). Nevertheless, there is research finding significant positive relationships between parental involvement and student academic outcomes (Fan & Chen, 2001), and positive effects for, in particular, urban elementary school students (Jeynes, 2005) and urban secondary school students (Jeynes, 2007).

We are aware of no parental involvement standards imposed on any public schools.

## B. DPI Aggressively Interprets These Accountability Requirements

Whatever one might think of the adequacy of these standards, DPI interprets them in a way that makes them more demanding than as written in the statute. In several areas, its interpretation seems to deviate from the statutory language.

1. The law does not require schools to choose one of the four standards by October 15. The DPI instructions state: “A private school participating in the MPCP shall submit the continuing eligibility report using the [Online Application System (OAS)] to the Department of Public Instruction (DPI) by October 15 each school year indicating which of the four standards the school will meet in that current year.” The DPI guidelines also provide that “[b]y June 30, the school must submit a report to the department, using the OAS, that the *standard chosen* has been met for that school year.” Therefore, per the DPI instructions, schools must choose a standard by October 15 and are judged by that standard in June. This is problematic because a school could meet all three of the other standards and still be dropped from the program if it missed the one that it preselected.

However, that is not what the statute – or even DPI’s own regulations – mandates. The law says that schools must satisfy at least one standard. According to Wis. Stat. § 119.23(7)(a), “[e]ach private school participating in the program under this section *shall meet at least one* of the following standards . . . .” Similarly, the DPI regulations state that “[a] private school participating in the Milwaukee parental choice program shall submit a report to the department by June 30 each school year providing evidence that the school has in that school year *met one of the following criteria.*” PI 35.03(b). Nothing in the statute or regulations requires that schools “pre-select” a standard by October 15. Under the law, if the school meets any of the four optional standards, it passes.

PI 35.03(a) does provide that “[a] private school participating in the Milwaukee parental choice program shall submit a report to the department by October 15 each school year indicating *the criteria* to be used in meeting the continuing eligibility standards specified under s. 119.23 (7) (a), Stats. [i.e. the four standards]. The rule clearly distinguishes “criteria” – the metric for each standard – from the “standards” themselves. In other words, the only mandate is for MPCP schools to choose how it will satisfy the criteria, *e.g.* how it will define parental involvement.

Consequently, by the letter of the law, private schools in the choice program must: 1) choose the criteria by which it will demonstrate that it has met each of the four standards and 2) comply with at least one of the standards – and the chosen criteria to meet it – by June 30. Any requirements that go beyond that are legally questionable.

2. The Superintendent must use his discretion in deciding whether to cut off funding for schools that cannot meet one of the standards. The DPI tells private schools in the choice program that “[c]ontinued participation in the program *will* be terminated if the selected standard is not met.”<sup>20</sup> That, as noted above, is certainly a possible outcome.

Yet state law gives the Superintendent *discretionary* authority to remove schools from the MPCP. Wis. Stat. § 119.23(10)(a) provides that “the state superintendent *may* issue an order barring a private school from participating in the program under this section in the current school year if the state superintendent determines that the private school has . . . [f]ailed to meet at least one of the standards under sub. (7) (a) by the date specified by department rule.”

In other words, the Superintendent must exercise discretion in choosing to drop schools out of the choice program, and this discretionary decision must be based on facts, taken on a case-by-case basis. The discretionary decision can be reviewed by the courts for erroneous exercise of discretion. But, the DPI has adopted a flat rule, stating that schools will automatically be terminated from the program if they fail to reach their chosen standard. This opens up the DPI to potential due process challenges if a school were to get dropped from the program for failing to meet one of the standards.<sup>21</sup>

The use of “may” here is legally meaningful, and prohibits the Superintendent from treating removal from the choice program as a mandatory consequence of failing to meet a criterion. The word “may” in state law, as used in Wis. Stat. § 119.23(10)(a), gives the Superintendent discretion as to when to bar schools from the choice program for failing to meet one of the four standards. *See Verhaagh v. Labor & Indus. Review Comm'n*, 204 Wis. 2d 154, 160 (Ct. App. 1996) (“The use of the term “may” in the foregoing statute clearly submits the issue of default orders to the LIRC's discretion”); *Theodore Fleisner, Inc. v. DILHR*, 65 Wis.2d 317, 325-26 (1974)(“department using its discretionary authority over procedural matters in refusing to adjourn hearing to permit additional testimony”). After discretion is exercised by the agency, the party has the right to challenge it and courts will look at “whether the exercise of discretion was made based upon the relevant facts by applying a proper standard of law and represents a determination that a reasonable person could reach.”<sup>22</sup> *Verhaagh v. Labor & Indus. Review Comm'n*, 204 Wis. 2d 154, 160 (Ct. App. 1996).

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<sup>20</sup> Private School Choice Program: Continuing Eligibility Report, Department of Public Instruction, [http://sms.dpi.wi.gov/files/sms/pdf/pcp\\_continuingeligibility.pdf](http://sms.dpi.wi.gov/files/sms/pdf/pcp_continuingeligibility.pdf)

<sup>21</sup> A report by the School Choice Demonstration Project indicated that the MPCP experienced 44 school departures from 2007-08 to 2010-11 (McShane et al., 2012), though none due to failure to meet their chosen standard. In fact, DPI “has not terminated a school for failing to meet this requirement in years” (DPI, 2014, p. 126).

<sup>22</sup> The courts will likely give deference to the DPI’s decision and the burden to prove an “erroneous exercise of discretion” rests on the party challenging the decision. *Id.* at 160. But, an actual decision, based upon facts, must occur.

### III. Accountability of Public Schools to DPI

How do these standards compare to those that the state imposes on public schools? There are state requirements that, if not met, might result in the loss of state aid, but they are not the one-year “put up or go away” dictates imposed on schools in the choice program. State law imposes certain requirements on school districts that have been in need of improvement for *four years*. Wis. Stat. § 118.42(1). It also imposes certain obligations on schools located in a district that has been found to be in need of improvement for *five years* or is in the lowest performing five percent of all schools. Wis. Stat. § 118.42(2).

If the Superintendent “determines that a *school district* has been in need of improvement for 4 consecutive school years,” then the Superintendent has the power to force the school board of districts who have been in need of improvement for four years to implement certain policies such as a “standard, research-based curriculum,” “use pupil academic performance data,” “monitor the district’s finances,” or change administrative personnel, but only after consulting the school board and superintendent of that district, along with its employees’ unions. Wis. Stat. § 118.42(3)(a). Similarly, the Superintendent may force a school located in a district that has been failing for four years and which itself has been failing for five years or is in the bottom five percent to implement a new “instructional design” or “create a school improvement council”<sup>23</sup> to make recommendations on how to improve the school. Wis. Stat. § 118.42(3)(b).

School districts and schools are considered “in need of improvement” according to a plan submitted by the DPI to the US Department of Education under 20 USC 6311. *See* PI 43.03 (1). This power is discretionary. If the superintendent’s directives are not followed, then the district would lose state aid. Wis. Stat. § 121.006(2)(d).

Thus, in theory, the DPI could do the same thing to MPS that it does to schools participating in the choice program, albeit not as quickly. But it has not done so. DPI has not withheld state aid from MPS or, as far as we know, any other public school district. Nor has it shuttered any particular schools.<sup>24</sup> We are not suggesting that it should. But the failure to do so is not due to the superior performance on accountability measures.

The State Superintendent has never exercised its power to withhold federal funds, though it started initiating a process to do so under the No Child Left Behind (NCLB) Act. In February 2010, the State Superintendent initiated a process to withhold \$175 million in Title I funds from MPS because the district did not meet academic progress requirements for five consecutive years under NCLB and because it did not implement the state’s “Corrective Action Plan” in a satisfactory manner.<sup>25</sup> Just two months later, however, the Superintendent decided not to pursue this action.<sup>26</sup>

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<sup>23</sup> The Council would consist of the state superintendent or his or her designee, the school district or school board president or his or her designee, the school district administrator or his or her designee, the school principal or his or her designee, and representatives of each labor organization representing school district employees.

<sup>24</sup> To its credit, MPS has closed some of its underperforming schools.

<sup>25</sup> Erin Richards (2010). “State starts process to withhold millions in MPS funds,” *Milwaukee Journal Sentinel*, February 4, 2010. <http://www.jsonline.com/news/education/83580122.html>

## IV. Conclusion: How Do We Want Schools to be Accountable?

We often hear that schools participating in the choice program are not held accountable. As we have seen, this is not so. Schools that do not meet statutory requirements, such as the performance standards discussed in detail in this paper, are immediately removed from the choice program.

Most importantly, schools in choice programs are accountable to the families that they serve. If they fail to perform according to their expectations, then parents are free to withdraw their children and enroll in a different school. Schools that are unable to meet the needs of enough parents will lose revenue and close. Placing accountability in parents' hands is preferable because the needs and desires of children and their parents are unique and multi-faceted, and they all place their own subjective value on each of those facets.

A survey of parents with children in Georgia's private school scholarship program found that at least half the respondents made enrollment decisions based on environment, class size, college preparation, discipline, responsiveness of teachers and administrators, and safety<sup>27</sup> (Kelly and Scafidi, 2013). Much of this would not be reflected in test scores. Parents have better information than government and administration officials when it comes to knowing what their own children's needs for education are, and access to information likely plays a prominent role in their decisions. Eighty percent of respondents noted that a school's failure to provide desired information would impact their decision.

While parental accountability is imposed on public schools, economically disadvantaged families in particular as well as families in areas with few options have less influence than other parents on their neighborhood schools. As a result, the best accountability policies (which are also the simplest) are the ones that provide families with enough information and flexibility to identify the best education for their children and give them the financial ability to choose the best school – whether traditional public school, public charter school, or private school in the choice program.

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A copy of the State's Corrective Action Plan is found at <http://media.journalinteractive.com/documents/mps020510-2.pdf>.

<sup>26</sup> Erin Richards (2010). "State schools chief won't withhold MPS fund," *Milwaukee Journal Sentinel*, May 24, 2010. <http://www.jsonline.com/news/education/94782434.html>

<sup>27</sup> A recent study found that that juvenile arrests per student and police calls per student related to violent offense were much higher in MPS schools than MPCP and charter schools (School Choice Wisconsin, 2014).

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