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School Choice Wisconsin Action & Schools Sue Wisconsin Department of Public Instruction Over Unlawful Regulations

WILL holds DPI accountable for bureaucratic overreach, challenges unlawful rules which create barriers for students in the Parental Choice Program

The News: On behalf of School Choice Wisconsin Action, Inc. (SCWA), Catholic Memorial High School of Waukesha, Inc., and Roncalli Catholic Schools, Inc., the Wisconsin Institute for Law & Liberty (WILL) filed a [lawsuit](#) against the Wisconsin Department of Public Instruction (DPI) and Superintendent of Public Instruction, Jill Underly. The suit challenges several of DPI's rules which were not promulgated in compliance with statutory rulemaking procedures, and which exceed the DPI's authority as set forth in state law.

The lawsuit alleges that DPI implements and enforces an "application perfection" rule (also known as the perfection rule) for various school choice programs despite never promulgating the rule as required by state law. Instead, DPI uses informal bulletins to enact its chosen policies. This suit is filed in the Waukesha County Circuit Court.

The Quotes: WILL Associate Counsel, Cory Brewer, stated, "DPI is exceeding its authority under state law in how it administers the Parental Choice Program and must be held accountable. The program was designed to be an easy-to-use option for parents, and DPI's unilateral implementation of additional requirements constitutes unlawful bureaucratic overreach."

Chair of School Choice Wisconsin Action, Inc., Jamie Luehring, said, "DPI's unrealistic rules hurt not just schools, but parents. Applying to a Choice school should not be any harder for families than registering to send their kids to their local public schools."

Catholic Memorial High School of Waukesha, Inc. President, Donna Bembenek, said, "Parents, not DPI, should be trusted to make the best educational choice for their child. Creating unnecessary red tape does not serve anyone or help parents access the best school for their child."

Background: Wisconsin law provides for three separate school choice programs available to families depending on their location: the Milwaukee Parental Choice Program for those located in the City of Milwaukee, the Racine Parental Choice Program for those located in the Racine Unified School District, and the Wisconsin Parental Choice Program for those located throughout the rest of the state. DPI has created an unlawful perfection rule as part of the application and enrollment process for the various choice programs.

One aspect of the perfection rule is that DPI requires schools to obtain a document from parents that shows their residential address, and DPI itself has specified which residency documents are acceptable and which are not. This allows the government bureaucracy to unlawfully adopt additional rules on an *ad hoc* basis outside of the rulemaking process.

An additional part of the perfection rule is that DPI demands an absolute perfect match between the address and parental names on the application, as compared to the address and parental names on the residency document. DPI has published a document that specifies which aspects of addresses and names must match “perfectly” and which do not. For example, a student who resides at North Harrison Street in the Village of North Prairie would be allowed to write they live on “N. Harrison St.” but could not write their municipality as “N. Prairie.” Failure to abide by DPI’s arbitrary perfection policy results in the student being ineligible for the choice program unless the application is “corrected” according to DPI’s regulations.

DPI’s unlawful rules impose burdens upon schools, and create confusion for applicants who simply seek to register for school as they would if they were attending a public school. Schools and families participating in the Choice program are required to comply with regulations imposed upon them by informal bulletins or otherwise have applications denied.

The Clients: SCWA is a membership-based organization of schools who participate in various school choice programs under Wisconsin law. Catholic Memorial High School is a private high school which participates in the Wisconsin Parental Choice Program. Roncalli Catholic Schools is a private school with campuses for kindergarten through high school which participates in the Wisconsin Parental Choice Program.

The Lawsuit: The [lawsuit](#) challenges DPI’s authority to adopt and enforce an “application perfection” rule without going through proper rulemaking procedures. It further challenges DPI’s promulgation of rules which exceed the authority that the state legislature granted to it. This lawsuit seeks to have DPI’s actions declared unlawful and to bring its administration of the various choice programs back into compliance with state law.

Read More:

- [Complaint](#), November 30, 2022

- [Exhibit 1](#), November 30, 2022
- [Exhibit 2](#), November 30, 2022
- [Exhibit 3](#), November 30, 2022

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