

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 09-117
CHAPTER PI 8.01 (4)
WAIVER OF SCHOOL HOURS

Analysis by the Department of Public Instruction

Statutory authority: ss. 118.38 (2) (bm) and 227.11 (2) (a), Stats.

Statute interpreted: ss. 115.01 (10) (a) 2. and 3. and 118.38 (2) (bm), Stats.

Explanation of agency authority:

Section 118.38 (2) (bm), Stats., requires the department to promulgate rules establishing criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified under s. 121.02 (1) (f) 2., Stats., if school is closed by order of a local health officer, department of health services, or school district administrator under s. 115.01 (10) (a) 2. or 3., Stats.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: Section 121.02 (1) (f) 2., Stats.

Plain language analysis:

2009 Wisconsin Act 42 allows school boards to meet the 180 school day requirement by including the following in the definition of “school day”: 1) a school district administrator closing a school due to a threat to the health or safety of pupils or school personnel, unless the school board determines otherwise (this does not include days closed due to inclement weather) and 2) the department of health services (in addition to a local health officer) closing a school.

Notwithstanding these provisions, a school board must still provide the required number of instructional hours under s. 121.02 (1) (f) 2., Stats. Thus, the Act requires the department to promulgate rules establishing criteria for waiving the required number of hours of direct pupil instruction if a school is closed for either reason stated above.

As required in the Act, the proposed rules will establish criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified under s. 121.02 (1) (f) 2., Stats., to address either of the above scenarios.

Summary of, and comparison with, existing or proposed federal regulations: None.

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to school hours or waiving of school hours.

Summary of factual data and analytical methodologies:

The information required in the rule is typical of information requested from school districts that have requested waivers from the school hour standard requirement under s. 121.02 (1) (f) 2., Stats.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A.

Anticipated costs incurred by private sector: N/A.

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

Deborah Mahaffey, Assistant State Superintendent, Division for Academic Excellence, (608) 266-3361 or deborah.mahaffey@dpi.wi.gov.

Place where comments are to be submitted and deadline for submission:

The department published a hearing notice in the *Administrative Register* which included this information.

A public hearing to consider the proposed rule was conducted by the department on February 1, 2010, in Madison. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Madison Hearing, February 1, 2010

| NAME | ORGANIZATION | IN FAVOR OR GENERALLY IN FAVOR | OPPOSED OR GENERALLY OPPOSED | OTHER |
|--------------|----------------------|--------------------------------------|------------------------------------|-------|
| Bret Steffen | Omro School District | X | | |

The following persons submitted written testimony:

| NAME | ORGANIZATION | IN FAVOR OR GENERALLY IN FAVOR | OPPOSED OR GENERALLY OPPOSED | OTHER |
|----------------|----------------------------|--------------------------------------|------------------------------------|-------|
| William Hughes | Greendale School District | | | X |
| Bernie Nikolay | Milton School District | | | X |
| Karen Schulte | Janesville School District | | | X |
| Kurt Wachholz | West Allis School District | | | X |

Summary of public comments relative to the rule, the agency's response to those comments, and changes made as a result of those comments:

Comments – One person testified he was pleased that the rule allows the district administrator of a school district (in addition to the health department) to close a school due to health reasons. This provision provides the school district with some flexibility in determining whether or not a school should be closed due to health issues. Some school districts are located in 4 or 5 different counties. Under the former law, the district would have to work with 4 or 5 county health departments to make such determinations.

Discussion – The change allowing the district administrator to close a school due to a threat to the health or safety of pupils or school personnel was made under s. 115.01 (10), Stats., not the rule. Regardless, no changes are necessary based on this testimony.

Changes – None.

Comments – Three persons testified that waivers should be granted if a district can demonstrate that they provided a “continued, meaningful educational opportunity” to students while the school was closed. DPI staff have suggested these efforts be made via video streaming, podcasting, web-based resources, lesson plans delivered to homes, telephone and other electronic communication.

Discussion – While the department has encouraged school districts to provide continued, meaningful educational opportunities to students for extended school closings, and providing such activities is laudable, it should not be considered a substitute for face-to-face student instruction time.

Changes – None.

Comments – One person testified that because the required days of instruction are automatically waived, the required hours of instruction that go along with those days should also be automatically waived.

Discussion – Under s. 121.02 (1) (f), Stats., and PI 8.01 (2) (f), Wis. Admin. Code, each school board must 1) schedule at least 180 school days and 2) schedule and hold a specific number of hours of direct pupil instruction at various grade levels. The definition of “school day” under s. 115.01 (10), Stats., allows certain school days (closed by the district administrator/health department for health and safety issues) to “count” towards meeting the 180 school day requirement. The statutes make no allowances for the hours to be counted as well.

Changes – None.

Changes made as a result of oral or written testimony: None.

Changes to the analysis or the fiscal estimate: None.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

Recommendations accepted, changes made.

5. Clarity, Grammar, Punctuation and Plainness:

Recommendation accepted. An initial applicability section has been added.

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Summary of Comments:

No comments were reported.