

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING RULES**

The state superintendent of public instruction hereby creates subchapter I (title) and subchapter II of chapter PI 7, relating to pupil transportation.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11 (2) (a), Stats.

Statute interpreted: s. 121.55 (1) (b) and (3), Stats.

The rule clarifies current law relating to procedures school districts must follow in offering parent contracts for transportation to ensure greater consistency among school districts in the application of the law under ss. 121.55 (1) (b) and (3), Stats. The rule clarifies the difference between the two types of parent contracts available for use by school districts and assists districts in calculating the amount of compensation to be provided in parent contracts.

Section 121.55 (1) (b), Stats., allows a school board to provide transportation to a public or private school pupil by contracting with that pupil's parent or guardian to provide the transportation. The rules and present practice require the amount of compensation to be mutually agreed upon by the school board and the parent or guardian.

Section 121.55 (3), Stats., allows a school board to provide transportation to a private school pupil by contracting with that pupil's parent or guardian to provide the transportation if the estimated cost of transporting that pupil is more than 1.5 times the school district's average cost per pupil for bus transportation in the previous school year, exclusive of transportation for kindergarten pupils during the noon hour and for pupils with disabilities. The rules provide a uniform worksheet for school districts to use in calculating their average cost per pupil for bus transportation. Currently, the method of calculating average cost per pupil for bus transportation varies from district to district.

The impetus for this rule is a circuit court case involving a school district and the parent of a private school pupil living in that district. After the circuit court judge ordered the Department of Public Instruction to determine the amount of compensation provided in the parent contracts in question, the department held an administrative hearing in March, 2002. Both the circuit court judge and the administrative law judge expressed the opinion that the department should promulgate rules to assist school districts in applying the provisions of s. 121.55, Wis. Stats., relating to parent contracts for pupil transportation.

SECTION 1. Subchapter I (title) of chapter PI 7 is created to read:

SUBCHAPTER I

UNUSUAL HAZARDS

NOTE TO REVISOR: Subchapter I (title) of chapter PI 7 is to be inserted in front of s. PI 7.01

SECTION 2. Subchapter II (title) of chapter PI 7 is created to read:

SUBCHAPTER II

PARENT CONTRACTS FOR PUPIL TRANSPORTATION

PI 7.02 Purpose and scope. (1) This subchapter establishes procedures for school districts to follow in offering parent contracts for transportation to ensure greater consistency among school districts in applying the law under s. 121.55

(1) (b) and (3), Stats. This subchapter applies only to contracts to transport a pupil to and from school for the purpose of attending curricular programs or activities. This subchapter does not apply to transportation provided to a pupil for school-sponsored events, co-curricular activities, or extra-curricular activities.

PI 7.03 Definitions. In this subchapter:

- (1) "Department" means the Wisconsin department of public instruction.
- (2) "School board" has the meaning defined in s. 115.001 (7), Stats.
- (3) "School district" has the meaning defined in s. 115.01 (3), Stats.

PI 7.04 Parent contracts for transportation of pupils to public or private schools. (1) Under s. 121.55 (1) (b), Stats., school boards may provide transportation to a pupil, regardless of whether the pupil attends a public or private school, by contracting with that pupil's parent or guardian to provide the transportation. If the parent or guardian rejects a contract offered under this section, the school board is still obligated to provide transportation for the pupil using one of the options under s. 121.55 (1) (a) or (c) to (e), Stats.

(2) Except as provided in s. PI 7.05, the amount of compensation provided in the contract under sub. (1) shall be for any amount mutually agreed upon by the school board and the parent or guardian of the pupil to be transported.

(3) If the school board and the parent or guardian cannot agree on the amount of compensation, the department shall determine the amount of compensation under s. PI 7.06 (2). Until that determination is made by the department, the school board shall provide transportation for the pupil using one of the options under s. 121.55 (1) (a) or (c) to (e), Stats.

PI 7.05 Parent contracts for transportation of pupils to private schools. (1) If s. 121.55 (3), Stats., applies, a school board may fulfill its obligation to transport a pupil to a private school under s. 121.54 (2) (b) 1., Stats., by offering to contract with that pupil's parent or guardian to provide the transportation. Section 121.55 (3), Stats., applies if the estimated cost of transporting the private school pupil is more than 1.5 times the school district's average cost per pupil for bus transportation in the previous school year as specified under sub. (2) and the school board has notified the parent or guardian as specified under sub. (3).

(2) In order to determine whether a contract can be offered under this section, the school board shall make a good faith estimate of the cost of transporting the private school pupil for the upcoming school year using a cost-effective means of providing safe and timely transportation using one of the methods described under s. 121.55 (1) (a) or (c) to (e), Stats. If the estimated cost of transporting the private school pupil is more than 1.5 times the school district's average cost per pupil for bus transportation in the previous school year, exclusive of transportation for kindergarten pupils during the noon hour and for pupils with disabilities who receive special transportation, the school board may offer a contract under this section. The school board shall utilize the worksheet prescribed by the department in the appendix to this chapter in calculating the school district's average cost per pupil for bus transportation in the previous school year. The school board shall maintain a copy of the worksheet prescribed by the department in the appendix to this chapter and a written record of the estimated cost to transport the pupil which indicates the date the estimate was made and the assumptions used in calculating the

estimate. The worksheet shall be maintained for 7 years following the school year in which the contract would apply. The written estimate shall be maintained for whatever term specified in the school board's policy for pupil record retention under s. 118.125 (3), Stats.

NOTE: In the case of a dispute, the department will look to the school district to have preserved all the written records necessary to demonstrate how it properly applied the statutes and arrived at its estimate.

(3) The school board shall notify the parent or guardian of the private school pupil of its intention to offer a contract under this section at least 30 days before the commencement of the school term of the public school district. The notice shall be in writing, shall include a statement that the contract is being offered under s. 121.55 (3), Stats., shall specify the amount of compensation to be provided under the parent contract, shall include a statement that if a properly offered contract is rejected, the school board is not obligated to provide transportation, and shall include all of the written documentation required under sub. (2):

(4) The contract shall provide for an annual payment for each pupil of not less than \$5 times the distance in miles between the pupil's residence and the private school he or she attends, or the school district's average cost per pupil for bus transportation in the previous school year, exclusive of transportation for kindergarten pupils during the noon hour and for pupils with disabilities who receive special transportation, whichever is greater. The school board shall utilize the worksheet prescribed by the department in the appendix to this chapter in calculating the school district's average cost per pupil for bus transportation in the previous school year. The payment may not exceed the actual cost of providing the transportation.

(5) If the parent or guardian rejects a properly offered contract under this section, the school board is not obligated to provide transportation for the pupil.

PI 7.06 Parent contract disputes. (1) If the school board and the parent or guardian cannot agree upon the amount of compensation under s. PI 7.04 or 7.05, the department shall determine the amount of compensation to be designated in the contract as specified under sub. (2) or (3). If the department is asked to determine the amount of compensation, the department's determination shall be final, subject to judicial review pursuant to ch. 227, Stats.

(2) The department shall determine the amount of compensation for a contract under s. PI 7.04 upon the request of both parties. The department shall determine the amount of compensation on a case-by-case basis based on criteria that may include the following:

- (a) The estimated cost, as determined by the parent or guardian, to provide the transportation.
- (b) The ability of the parent to provide the transportation.
- (c) Other information deemed appropriate by the department.

(3) The department shall determine the amount of compensation for a contract under s. PI 7.05 upon the request of either party. The department shall determine the amount of compensation by reviewing the school board's estimated cost to transport the private school pupil and the school district's average cost per pupil for bus transportation in the previous school year determined under s. PI 7.05 (2).

NOTE: Any requests made to the department under this chapter should be sent to the School Management Services Team at the Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

NOTE TO REVISOR: Subchapter II is to be inserted after s. PI 7.01 (3).

SECTION 3. INITIAL APPLICABILITY

The treatment of this subchapter first applies to contracts provided for the 2004-05 school year.

The rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this _____ day of August, 2003

Elizabeth Burmaster
State Superintendent

CHAPTER PI 7

APPENDIX

**CALCULATION OF SCHOOL DISTRICT'S AVERAGE COST PER PUPIL
FOR BUS TRANSPORTATION IN THE PREVIOUS SCHOOL YEAR**

The following worksheet is provided to assist the school district in determining its average cost per pupil for bus transportation in the previous school year, exclusive of transportation for kindergarten pupils during the noon hour and for pupils with disabilities who received special transportation. Wisconsin Uniform Financial Accounting Requirements (WUFAR) function codes are provided where applicable.

Average cost in school year _____ for contract effective in _____ school year.

- 1. Regular (home-to-school) bus transportation -- district owned vehicles (256 210) _____
- 2. Regular (home-to-school) bus transportation -- contracted services (256 710) _____
- 3. Any portion of the following attributable to regular (home-to-school) bus transportation.
 - Direction of pupil transportation (256 100) _____
 - Vehicle repairs (256 500) _____
 - Vehicle servicing (256 600) _____
 - Insurance (256 800) _____
 - Vehicle depreciation _____
 - Bus Garage _____
 - Fuel _____
- 4. **Subtotal** (Add lines 1 through 3) _____
- 5. Transportation of kindergarten pupils at the noon hour. _____
- 6. **Total** regular (home-to-school) bus transportation cost (Subtract line 5 from line 4) _____
- 7. Number of pupils transported* _____
- 8. **Average Cost Per Pupil for Regular Bus Transportation** (Line 6 divided by line 7) _____

If the amount shown on line 8 is greater than the amount obtained by multiplying \$5 times the distance in miles between the pupil's home and the private school the pupil attends, measured along the usually traveled route, the annual payment under the contract must be at least equal to the amount shown on line 8, up to the actual cost of the transportation.

*Number of pupils transported means the number of pupils who were transported on a bus at least once during the school year for the purpose of attending curricular programs or activities, excluding pupils with disabilities who received special transportation and kindergarten pupils transported only during the noon hour.

Date completed _____

Completed by _____