

**ORDER OF THE
STATESUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING RULES**

The state superintendent of public instruction hereby creates s. PI 8.01 (4), relating to waiver of school hours.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

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

SECTION 1. PI 8.01 (4) is created to read:

PI 8.01 (4) WAIVER FROM SCHOOL HOURS. (a) In this subsection, “school closure” means the closure of one or more schools under s. 115.01 (10) (a) 2. and 3., Stats.

(b) A school district board may request a waiver from the requirements under this chapter, with some exceptions, as specified under s. 118.38, Stats. A school district board requesting a waiver from the requirement to schedule and hold at least the number of hours of direct pupil instruction specified under sub. (2) (f) 2. and s. 121.02 (1) (f) 2., Stats., shall submit all of the following information to the department:

1. A letter from the district administrator or school board president requesting a waiver from the hours of direct pupil instruction requirement under sub (2) (f). 2. and s. 121.02 (1) (f) 2., Stats., and specifying the reason or reasons for requesting the waiver.

2. A record of the public hearing held under s. 118.38 (1) (b), Stats., indicating the response from the community to the waiver request.

3. A copy of the order to close the school under s. 115.01 (10) (a) 2. or 3., if applicable. If the order is submitted under s. 115.01 (10) (a) 3., Stats., a copy of the board minutes indicating approval of the request for a waiver.

4. The number of hours requested to be waived.

5. The dates the school or schools were closed.

6. A description of the actions the school board took to make up the hours of instruction missed during the period of the school closure and what prevented the district from scheduling and holding at least the number of hours of direct pupil instruction specified under sub (2) (f) 2. and s. 121.02 (1) (f) 2., Stats.

7. The number of days planned for inclement weather and parent teacher conference days as specified under sub. (2) (f).

8. Any additional information requested by the department.

(c) In determining whether to grant a waiver from the requirement to schedule and hold at least the number of hours of direct pupil instruction specified under sub. (2) (f) 2. and s. 121.02 (1) (f) 2., Stats., the department shall consider all of the following factors and may consider additional factors:

1. Whether the department received all the information required under par. (b).

2. The response of the community to the proposed waiver as indicated by the record of the public hearing submitted under par. (b) 2.

3. The length of the school closure.

4. The dates of the school closure and whether there was sufficient time before the end of the school year to adjust the school calendar to provide the required hours of direct pupil instruction missed during the period of the school closure.

SECTION 2. INITIAL APPLICABILITY. The treatment of s. PI 8.01 (4) first applies to waivers requested for school closures beginning October 21, 2009.

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 March, 2010

Tony Evers, PhD
State Superintendent