

**Publication Date:** December 21, 2009

**Effective Dates:** December 21, 2009 through May 19, 2010

**ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
ADOPTING EMERGENCY RULES**

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

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**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](mailto:deborah.mahaffey@dpi.wi.gov).

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

The department will publish a hearing notice in the *Administrative Register* which will include this information.

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**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 PI 8.01 (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 s. PI 8.01 (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 s. 8.01 (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 s. PI 8.01 (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 PI 8.01 (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.

**FINDING OF EMERGENCY**

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

2009 Wisconsin Act 42 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. if school is closed for a

reason specified in s. 115.01 (10) (a) 2. or 3. The Act became effective October 21, 2009. Therefore, rules must be in place as soon as possible to establish the waiver procedure and criteria for the current school year.

FISCAL ESTIMATE  ORIGINAL  UPDATED

LRB or Bill No./Adm. Rule No.

DOA-2048 (R10/92) CORRECTED

Amendment No. If Applicable

**Subject: Waiver of School Hours**

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation  Increase Existing Revenues

Increase Costs-May be possible to Absorb

Within Agency's Budget  Yes  No

**Local:**  No local government costs  Indeterminate costs

- 1.  Increase Costs  
 Permissive  Mandatory
- 2.  Decrease Costs  
 Permissive  Mandatory

- 3.  Increase Revenues  
 Permissive  Mandatory
- 4.  Decrease Revenues  
 Permissive  Mandatory

- 5. Types of Local Governmental Units Affected:  
 Towns  Villages  Cities  
 Counties  Others \_\_\_\_\_  
 School Districts

**Fund Sources Affected**

GPR  FED  PRO  PRS  SEG  SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

The proposed rules 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., if a school is closed by a school district administrator, the Department of Health Services, or the local health officer under s. 115.01 (10) (a) 2. or 3., Stats.

**State:**

The costs associated with administering requests for these waivers will be absorbed by the department.

**Local:**

School districts may, but are not required to, apply for a waiver for the required number of hours of direct pupil instruction. The application procedures should not have a fiscal effect. The fiscal effect on a district that receives an approved waiver is indeterminate.

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

**Long-Range Fiscal Implications**

**Agency/Prepared by: (Name & Phone No.)**

**Authorized Signature/Telephone No.**

**Date**

**Department of Public Instruction**