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**SUBCHAPTER I**

**DEFINITIONS AND GENERAL PROVISIONS**

**121.004 Definitions.** In this chapter, unless the context clearly requires otherwise:

**(1) AVERAGE DAILY MEMBERSHIP.** "Average daily membership" is the sum of all pupils enrolled in all schools of the school district for each day of the school term, divided by the number of days school is actually taught. If it contains a fraction, the quotient shall be expressed as the nearest whole number.

**(2) EQUALIZED VALUATION.** The "equalized valuation" of a school district is the full value of the taxable property of the territory in the school district as certified for the prior year under s. 121.06 (2).

**(3) FUND.** "Fund" is an independent accounting entity with its own assets, liabilities, fund balances, receipts, and disbursements, as prescribed under s. 115.28 (13).

**(4) GROSS COST.** The "gross cost" of a fund means the sum of all nonduplicative expenditures from that fund.

**(5) MEMBERSHIP.** "Membership" for any school district is the sum of pupils enrolled as

reported under s. 121.05 and the summer average daily membership equivalent for classes approved under s. 121.14.

**(6) NET COST.** The "net cost" of a fund means the gross cost of that fund minus all nonduplicative receipts of that fund except property taxes and state general aids. In this subsection, "nonduplicative receipts" includes federal financial assistance under 20 USC 236 to 245, to the extent permitted under federal law and regulations, multiplied by 50% in the 1981-82 school year, 75% in the 1982-83 school year and 100% in every school year thereafter.

**(7) PUPILS ENROLLED.** (a) "Pupils enrolled" is the total number of pupils, as expressed by official enrollments, in all schools of the school district, except as provided in pars. (b) to (d). If such total contains a fraction, it shall be expressed as the nearest whole number. The same method shall be used in computing the number of pupils enrolled for resident pupils, nonresident pupils or both.

(b) A first grade pupil may be counted only if the pupil attains the age permitted under s. 115.28 (8) or required under s. 118.14 for first grade admission.

(c) 1. A pupil enrolled in kindergarten may be counted only if the pupil attains the age permitted under s. 115.28 (8) or required under s.

118.14 for kindergarten admission. A kindergarten pupil shall be counted as one-half pupil except that:

a. A kindergarten pupil enrolled in a program requiring full-day attendance for 5 days a week for an entire school year shall be counted as one pupil.

b. A kindergarten pupil enrolled in a program requiring full-day attendance for less than 5 days a week for an entire school year shall be counted as the result obtained by multiplying the number of hours in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, and dividing the result by the product of the number of hours of attendance per day required of first grade pupils in the school district multiplied by 180.

2. In subd. 1. a and b, "full-day" means the length of the school day for pupils in the first grade of the school district operating the kindergarten program.

(d) A pupil enrolled in a preschool program under subch. V of ch. 115 who is 3 years of age or older shall be counted as one-half pupil.

(8) **SUMMER AVERAGE DAILY MEMBERSHIP EQUIVALENT.** "Summer average daily membership equivalent" is the sum of all summer classroom or laboratory periods in which each pupil is enrolled, as determined by multiplying the total number of periods in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, divided by 1,080.

(9) **TEACHER-PUPIL RATIO.** "Teacher-pupil ratio" is the quotient of the number of pupils enrolled divided by the number of teachers employed.

(10) **TEACHERS EMPLOYED.** "Teacher" means a person holding a license or certificate under s. 115.28 (7), but does not include any person under s. 115.29 (3). In computing the number of teachers employed, professional workers who devote less than full time to their professional duties shall be counted in proportion to the time devoted to such duties. Teachers who devote full time to handicapped children shall not be counted.

**History:** 1977 c. 29 ss. 1081, 1085e, 1085m; 1977 c. 418, 429; 1979 c. 34, 221; 1979 c. 346 s. 15; 1981 c. 20, 317; 1983 a. 27, 189.

**121.006 State aid withheld.** (1) (a) The state superintendent may withhold state aid from any school district in which the scope and character of the work are not maintained in such manner as to meet the state superintendent's approval.

(b) No state aid may be paid in any year under this chapter to a school district which fails to meet the requirements under sub. (2).

(2) Unless the state superintendent is satisfied that the failure to meet the requirements of

pars. (a) and (b) was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers, every school district shall:

(a) Hold school for at least 180 days each year, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes, the days to be computed in accordance with s. 115.01 (10).

(b) Employ teachers qualified under s. 118.19.

(c) File all reports as required by state law.

(5) In the event of a school district labor dispute, s. 121.23 shall apply.

**History:** 1973 c. 90, 157; 1977 c. 26; 1977 c. 29 s. 1097; 1977 c. 178, 203, 206, 273, 447; 1979 c. 221.

**121.007 Use of state aid; exemption from execution.** All moneys paid to a school district under s. 20.255 (2) (ac), (cg) and (cr) shall be used by the school district solely for the purposes for which paid. Such moneys are exempt from execution, attachment, garnishment or other process in favor of creditors, except as to claims for salaries or wages of teachers and other school employes and as to claims for school materials, supplies, fuel and current repairs.

**History:** 1971 c. 125 s. 522 (1); 1973 c. 90; 1975 c. 39, 220; 1977 c. 29 s. 1099; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221; 1981 c. 20; 1983 a. 27 s. 2202 (42); 1983 a. 538.

## SUBCHAPTER II

### GENERAL AID

**121.01 Purpose.** It is declared to be the policy of this state that education is a state function and that some relief should be afforded from the local general property tax as a source of public school revenue where such tax is excessive, and that other sources of revenue should contribute a larger percentage of the total funds needed. It is further declared that in order to provide reasonable equality of educational opportunity for all the children of this state, the state must guarantee that a basic educational opportunity be available to each pupil, but that the state should be obligated to contribute to the educational program only if the school district provides a program which meets state standards. It is the purpose of the state aid formula set forth in this subchapter to cause the state to assume a greater proportion of the costs of public education and to relieve the general property of some of its tax burden.

A "uniform" education: reform of local property tax school finance systems through state constitutions. 62 MLR 565.

**121.02 School district standards.** (1) A school district shall meet the following standards under criteria established by the department in compliance with sub. (2).

(a) Every teacher, supervisor, administrator and professional staff member shall hold a certificate, license or permit to teach issued by the department before entering on duties for such position.

(b) It shall provide a planned, continuous in-service program for the professional staff.

(c) Provision shall be made for remedial reading services for under-achieving students in grades kindergarten through grade 3.

(d) It shall operate a 5-year-old kindergarten program.

(e) It shall make available guidance and counseling services.

(f) School shall be held and students shall receive actual instruction for at least 180 days, as defined in s. 115.01 (10), less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes.

(g) Provision shall be made for emergency nursing services.

(h) It shall provide adequate instructional materials, texts and library services which reflect the cultural diversity and pluralistic nature of American society.

(i) It shall make adequate provision for safe and healthful facilities.

(j) Provision shall be made for instruction in elementary and high schools by qualified teachers in health, physical education, art and music.

(2) A school district shall be in compliance with all standards established in this section by July 1, 1975, except as provided in subs. (3) and (4).

(3) Union high school districts are exempt from standards in sub. (1) (c) and (d) but are subject to all other provisions of this section.

(4) Any school district which is completely surrounded by water may meet the requirements of this section by being in substantial compliance with the standards in sub. (1). Annually by August 15, the school district shall submit to the state superintendent for approval a report describing the methods by which the school district intends to substantially comply with the standards. The state superintendent shall allow any such school district maximum flexibility in the school district's substantial compliance plans.

(5) Prior to any finding that a school district is not in compliance with the standards under sub. (1), the state superintendent shall, upon request of the school board, conduct a public

hearing in the school district. If the state superintendent, after the hearing, finds that the district is not in compliance with the standards, the state superintendent may develop with the school board a plan which describes methods of achieving compliance. The plan shall specify the time within which compliance shall be achieved. The state superintendent may provide in the criteria established by the department under sub. (1) alternative methods for districts to comply with each of the standards in this section.

**History:** 1973 c. 90, 115, 243, 333; 1975 c. 39, 198; 1977 c. 29, 178, 206, 418, 429, 447; 1979 c. 34, 221.

### **121.05 Budget and membership report. (1)**

The school district clerk shall include, as part of the annual school district report under s. 120.18:

(a) The average of the number of pupils enrolled on the 3rd Friday of September and the 2nd Friday of January of the previous school year, including:

1. Pupils enrolled concurrently in the school district and in a special education program operated by a county handicapped children's education board and in facilities of the school district. This subdivision does not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c);

2. Pupils enrolled in home instruction or any other school district special education program under s. 115.83;

3. Pupils who are residents of one school district who are enrolled in another school district and for whom tuition is paid under s. 115.87 (5) or 121.78;

4. Pupils who are residents of the school district who are enrolled in special education model schools and for whom tuition is paid under s. 36.25 (19) (b);

5. Pupils who are enrolled in a public special education program located in another state under s. 115.85 (2) (c) 2; and

6. Pupils enrolled in a special education program operated by a county handicapped children's education board under contract with the school board. This subdivision applies beginning on the effective date of a resolution adopted under s. 115.86 (9) (c).

7. Pupils enrolled in a nonsectarian private school or program under s. 118.15 (1) (d) 4.

(b) The number of teachers employed in the school district on the 3rd Friday of September of the previous school year.

(c) The estimated budget for the current school year which shall be based upon the uniform accounting system prescribed by the department.

(d) In school years 1980-81 to 1984-85, the number of pupils for whom contracts with private education services are entered into under s. 120.13 (26) or 120.49 (15).

(3) If a school district is unable to hold school on either of the 2 dates specified in sub. (1) (a), the state superintendent shall designate alternative membership counting dates.

**History:** 1971 c. 125; 1973 c. 89; 1975 c. 224; 1977 c. 29, 418; 1979 c. 34, 221, 244; 1981 c. 20, 251; 1983 a. 27, 192, 509

**121.06 Determination and certification of equalized valuation.** (1) Annually on or before October 1, the full value of the taxable property in each school district, in each part of a city, village and town in a joint school district and in each city authorized to issue bonds for school purposes, including territory attached only for school purposes, shall be determined by the department of revenue according to its best judgment from all sources of information available to it and shall be certified by the department to the state superintendent.

(2) The state superintendent shall certify to each school district clerk the appropriate full values certified to the state superintendent under sub. (1).

(3) Beginning in the 1984-85 school year and thereafter, for purposes of computing state aid under s. 121.08 equalized valuations calculated under sub. (1) and certified under sub. (2) shall exclude property taxed under s. 70.114, 70.116, 70.117 or 70.175, 1981 stats.

**History:** 1973 c. 61, 90; 1977 c. 29 ss 1084, 1647 (13); 1977 c. 300 s. 8; 1981 c. 20; 1983 a. 27

**121.07 General provisions; state aid computation.** In this subchapter:

(1) **BASIS FOR STATISTICS.** (a) The membership and teacher-pupil ratio of the school district in the previous school year as reported under s. 121.05 and the shared cost for the previous school year shall be used in computing general aid. In computing general aid, the teacher-pupil ratio shall not exceed 25.

(b) If the school district valuation is increased or decreased due to an alteration in school district boundaries before the 3rd Friday in September, the estimated shared cost for the current school year and the estimated mill levy rate shall be based on the school district equalized valuation of the territory comprising the altered school district.

(c) If an order of school district reorganization is not effective due to litigation until after the 3rd Friday in September but takes effect before April 1 of the current school year, state aid for the reorganized school district for the first year of operation shall be computed after

the order takes effect using calculations by the state superintendent of the number of pupils enrolled and teacher-pupil ratio for the territory in the reorganized school district, which shall be made as if the school district had been in existence on the 3rd Friday in September.

(d) At the end of the school year, the department shall adjust state aid payments according to the actual shared cost of the school district for that school year.

(6) **SHARED COST.** (a) "Shared cost" is the sum of the net cost of the general fund and the net cost of the debt service fund. The net cost of the debt service fund included in shared cost may not exceed an amount equal to \$90 multiplied by the membership.

(b) The "primary ceiling cost per member" is 110% of the state shared cost divided by the membership for the school year previous to the school year used for aid computation, as determined by the state superintendent, except as provided in s. 121.23.

(c) The "primary shared cost" is that portion of a district's shared cost which is less than the primary ceiling cost per member multiplied by its membership.

(d) The "secondary shared cost" is that portion of a district's shared cost which is not included in the primary shared cost.

(7) **GUARANTEED VALUATION PER MEMBER.** (a) The "primary guaranteed valuation per member" shall be \$269,100 in the 1983-84 school year and \$271,400 thereafter.

(b) The "secondary guaranteed valuation per member" shall be an amount rounded to the nearest \$100 determined by multiplying the equalized valuation of the state by 1.06 and dividing the result obtained by the state total membership.

(c) For districts operating only high school grades, the amounts in pars. (a) and (b) shall be multiplied by 3 and rounded to the nearest \$100.

(d) For districts operating only elementary grades, the amounts in pars. (a) and (b) shall be multiplied by 1.5 and rounded to the nearest \$100.

(8) **GUARANTEED VALUATION.** A school district's primary and secondary guaranteed valuations are determined by multiplying the amounts in sub. (7) by the district's membership.

(10) **REQUIRED LEVY RATE.** (a) The "required levy rate" is the sum of the rates derived in pars. (b) and (c).

(b) The "primary required levy rate" is the primary shared cost divided by the primary guaranteed valuation.

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(c) The "secondary required levy rate" is the secondary shared cost divided by the secondary guaranteed valuation.

**History:** 1971 c. 125; 1973 c. 61, 90, 190, 333; 1975 c. 39; 1977 c. 29, 178, 418; 1979 c. 34, 221; 1981 c. 20, 317, 385; 1983 a. 27, 212

**121.08 Payment of state aids; reductions. (1)**

The state shall pay to the school district a sum equal to the amount by which the primary guaranteed valuation exceeds the school district equalized valuation, multiplied by the primary required levy rate and a sum equal to the amount by which the secondary guaranteed valuation exceeds the school district equalized valuation multiplied by the secondary required levy rate.

(2) The aid computed under sub. (1) shall be reduced by the amount by which the school district equalized valuation exceeds the secondary guaranteed valuation, multiplied by the secondary required levy rate. In no case may the aid under this section be less than zero.

(3) The aid computed under sub. (1) shall be reduced by the amount by which the aid that the school district is receiving under sub. (1) as a result of the number of pupils reported as enrolled in the school district under s. 121.05 (1) (a) 7 exceeds the amount paid by the school district for tuition for such pupils.

**History:** 1973 c. 90; 1977 c. 29; 1983 a. 509

**121.082 Equalization aid percentage.** Beginning with the payment of aid under s. 121.08 in the 1985-86 school year, the percentage of total state school aid included in the appropriation under s. 20.255 (2) (ac) shall not be less than the percentage of total state school aid included in the appropriation under s. 20.255 (2) (ac) in the 1984-85 fiscal year.

**History:** 1983 a. 27

**121.085 Supplemental state aid. (1)** Except as provided under sub. (1m), the state shall pay to each school district the amount determined by subtracting the amount determined under par. (b) from the amount determined under par. (a):

(a) The amount which would be paid by the state to the school district under this subchapter other than this section if the full value of the taxable property of the territory in the school district were calculated and certified under s. 121.06 with the equalized valuation of any taxable property in a tax incremental district not exceeding its equalized value determined for the purpose of the determination of the tax incremental base of that district under s. 66.46.

(b) The amount to be paid to the school district under this subchapter other than this

section with the full value of the taxable property of the school district calculated and certified as provided in s. 121.06.

(1m) No aid under this section may be paid to any school district unless a city or village located within the school district verifies to the department of revenue that it has adopted a resolution under s. 66.46 (4) (gm) before January 1, 1983.

(2) Equalized valuation of the state for the purpose of calculations under sub. (1) means the full value of taxable property, including value increments under s. 66.46.

**History:** 1977 c. 418; 1981 c. 20; 1983 a. 27

**121.09 State aid adjustment; redetermination of assessment. (1)**

If, on or after July 1, 1980, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, the school board of the school district in which the property is located may, within 4 years after the date of the decision or judgment, file the decision of the tax appeals commission or the judgment of the court with the secretary of administration, requesting an adjustment in state aid to the school district. If the secretary of administration determines that the decision or judgment is final and that it has been filed within the 4-year period, the state shall pay to the school district in the subsequent fiscal year, from the appropriation under s. 20.255 (2) (ac), an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that school year using the school district's equalized valuation as recertified under s. 70.57 (2).

(2) If, on or after May 3, 1984, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is higher than the previous assessment, the state superintendent shall notify the school district in which the property is located of the recertification by the department of revenue under s. 70.57 (2). The state superintendent shall, in the subsequent fiscal year, withhold from the school district's state aid entitlement under s. 121.08 an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that

school year, using the school district's equalized valuation as recertified under s. 70.57 (2).

History: 1983 a 372

**121.11 Reimbursement for excess tax base loss.** (1) (a) The state shall pay to each school district the amount computed by multiplying the excess tax base loss under par. (b) by the shared cost levy rate under par. (c), and subtracting the reduction under par. (d).

(b) The excess tax base loss shall be computed by subtracting 5.4% of the equalized valuation of the school district without reduction for fractional assessment under s. 70.57 (5), 1979 stats., from the full value within the school district of merchants' stock-in-trade, manufacturers' materials and finished products and livestock without reduction for fractional assessment under s. 70.57 (5), 1979 stats., and multiplying the remainder by the percentage of such property not included in the school district equalized valuation under s. 70.57 (5), 1979 stats. If this computation results in a negative amount, the excess tax base loss shall be zero.

(c) For purposes of this section, the shared cost levy rate shall be computed by dividing the school district shared cost under s. 121.07 (6), less the amount of general aid determined under s. 121.08 without reduction for fractional assessment under s. 70.57 (5), 1979 stats., by the school district equalized valuation without reduction for fractional assessment under s. 70.57 (5), 1979 stats.

(d) The product of the excess tax base loss and the shared cost levy rate shall be reduced by the amount received by the school district as a result of the transfer from the personal property tax relief appropriation to general school aid under s. 79.16, 1979 stats.

(e) In order to compute the amount to be paid under this subsection in the 1982-83 and 1983-84 school years, the department shall calculate 66.66% of the aid paid in 1981-82 for payment in 1982-83 and 33.33% of the aid paid in 1981-82 for payment in 1983-84.

(3) No aid may be paid under this section after the 1983-84 school year.

History: 1979 c. 34, 221; 1981 c. 20 ss. 1371, 1372, 2202 (45) (b); 1983 a 27

**121.135 State aid to county handicapped children's education boards.** (1) If, upon receipt of the report under s. 115.84, the state superintendent is satisfied that any children enrolled and participating in a special education program provided by a county handicapped children's education board under this subchapter and not counted as pupils enrolled under s. 121.05 are receiving the substantial equivalent of an elementary or high school

education from those services, the superintendent shall certify to the department of administration from the appropriation under s. 20.255 (2) (ac) in favor of the county handicapped children's education board providing those services the amount specified under sub. (2) for each pupil enrolled, except as provided under sub. (3). Enrollment for aid purposes shall be determined in accordance with s. 121.05.

(2) In the 1981-82 and 1982-83 school years, the amount of aid under sub. (1) shall be \$180. Annually thereafter, this amount shall be increased or decreased by the same percentage as the appropriation under s. 20.255 (2) (ac).

(3) This section does not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c), except that in the school year beginning July 1 of the year prior to the effective date of the resolution, the state superintendent shall certify to the department of administration from the appropriation under s. 20.255 (2) (ac) in favor of the county handicapped children's education board an amount equal to one-half the amount specified under sub. (2) for each pupil enrolled.

History: 1973 c. 89, 243; 1979 c. 34 s. 2102 (43) (a); 1979 c. 176; 1981 c. 20; 1983 a 27 ss. 1482g, 1482f, 2202 (42)

**121.14 State aid for summer classes.** (1) State aid shall be paid to each district or county handicapped children's education board only for those academic summer classes or laboratory periods for which the state superintendent has given prior review and approval as to the content of such classes or laboratory periods so as to assure that such classes and laboratory periods are only for necessary academic purposes. Recreational programs and team sports shall not be eligible for aid under this section, and pupils participating in such programs shall not be counted as pupils enrolled under s. 121.004 (5) nor shall costs associated with such programs be included in shared costs under s. 121.07 (6).

(2) (a) State aid for summer classes shall be incorporated into the state aid paid for regular classes under this subchapter.

(b) Annually on or before October 1, the school district clerk or chairperson of the county handicapped children's education board shall file with the department a report stating the summer average daily membership equivalent.

(3) References to county handicapped children's education boards under subs. (1) and (2) (b) do not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c).

History: 1973 c. 89, 90, 243, 333; 1975 c. 39; 1977 c. 29; 1983 a 27; 1983 a 189 s. 329 (17m)

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**121.15 Payment of state aid. (1)** State aid under s. 121.08 shall be paid to school districts according to the following distribution schedule:

(a) Each school district shall receive 10% of its total aid entitlement in each month from August to February and 30% of its total aid entitlement in June.

(b) For the payments made from August to October, the total aid entitlement for each district shall be estimated based upon the total aid payment in the previous year.

(c) For the payments from November to June, the total aid entitlement for each district shall be computed on the basis of the budget and membership report under s. 121.05.

(d) Any aid adjustment for the previous year required under s. 121.07 (1)(d) shall be made by increasing or decreasing the payment made in June.

(2) No state aid payments may be made to any district until the annual report under s. 120.18 has been filed with the department.

(3) No state aid payments may be made to any district in the months of November to June until the budget and membership report under s. 121.05 is filed with the department.

**History:** 1977 c. 29 s. 1098; 1977 c. 273; 1979 c. 34.

**121.16 Proration of state aid.** If the appropriation under s. 20.255 (2) (ac) in any one year is insufficient to pay the full amount under s. 121.08, state aid payments shall be prorated among the school districts entitled thereto.

**History:** 1971 c. 125 s. 522 (1); 1973 c. 90; 1977 c. 29 s. 1100; 1979 c. 34 s. 2102 (43) (a); 1983 a. 27 s. 2202 (42).

**121.17 Use of federal revenue sharing funds.** It is the intent of the legislature that school districts receiving federal revenue sharing funds through the state under this subchapter shall utilize these funds in compliance with the federal revenue sharing requirements as defined in the state and local fiscal assistance act of 1972 (P.L. 92-512), as amended by P.L. 94-488. The department of public instruction shall assure compliance with this section.

**History:** 1973 c. 90; 1977 c. 29 s. 1101.

**121.23 Payment of aids in school district labor disputes. (1)** In the event that the state superintendent finds that school is not held, or educational standards are not maintained in accordance with s. 121.02 (1) (f) as the result of a strike by school district employes, make-up days are authorized to be scheduled but no make-up days are required.

(2) If a school district holds less than 180 days of school as the result of a strike by school district employes, for the purposes of comput-

ing general aid, the state superintendent shall compute the school district's primary ceiling cost per member in accordance with the procedure specified in pars. (a) to (e). In making the calculation, the state superintendent shall:

(a) Determine the amount of shared cost not incurred by the school district because of the strike.

(b) Determine the amount of shared cost that the school district would have incurred had the strike not occurred.

(c) Divide the amount determined under par. (a) by the amount determined under par. (b).

(d) Multiply the quotient determined under par. (c) by the amount determined under s. 121.07 (6) (b).

(e) Subtract the product determined under par. (d) from the amount determined under s. 121.07 (6) (b).

**History:** 1977 c. 178; 1979 c. 221 s. 2202 (43).

**SUBCHAPTER III****DRIVER EDUCATION AID AND FEES**

**121.41 Driver education programs. (1) STATE AID.** To promote a uniformly effective driver education program among high school and vocational, technical and adult education school pupils, each school district operating high school grades, each county handicapped children's education board which provides the substantial equivalent of a high school education and each vocational, technical and adult education district shall receive \$40 for each pupil of high school age who successfully completes a course in driver education approved by the department, but in no case may the state aid exceed the actual cost of instruction. If the appropriation under s. 20.255 (2) (r) is inadequate in any year to provide \$40 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under s. 121.08 is paid.

(2) **FEES.** A school board may establish and collect reasonable fees for any driver education program or part of a program which is neither required for nor credited toward graduation. The school board may waive any fee established under this subsection for any indigent pupil.

**History:** 1971 c. 125 s. 522 (1); 1971 c. 154, 211; 1973 c. 89, 90, 309, 336; 1977 c. 29 s. 1096; 1983 a. 22; 1983 a. 27 s. 2202 (42).

**SUBCHAPTER IV****TRANSPORTATION AID**

**121.51 Definitions.** In this subchapter:

(1) "Attendance area" is the geographic area designated by the governing body of a private school as the area from which its pupils attend and approved by the school board of the district in which the private school is located. If the private school and the school board cannot agree on the attendance area, the state superintendent shall, upon the request of the private school and the board, make a final determination of the attendance area. The attendance areas of private schools affiliated with the same religious denomination shall not overlap.

(3) "School board" has the meaning designated in s. 115.001 (7) and includes any governmental agency transporting children to and from public schools.

(4) "School bus" has the meaning designated in s. 340.01 (56).

**History:** 1975 c. 120; 1983 a. 189 ss. 185, 329 (17); 1983 a. 512.

The attendance areas of private schools affiliated with the same religious denomination shall not overlap" is not construed as mere surplusage, for although it adds no special restrictive ban on overlapping in that such restriction is inherent in the whole concept of "attendance areas," it makes the phrase "affiliated with the same religious denomination" the test of affiliation in a single school system rather than operation by a single agency or set of trustees or religious order within a particular religious denomination. State ex rel. Vanko v. Kahl, 52 W (2d) 206, 188 NW (2d) 460.

See note to art. I, sec. 18, citing Holy Trinity Community School v. Kahl, 82 W (2d) 139, 262 NW (2d) 210.

First amendment-based attacks on Wisconsin "attendance area" statutes. 1980 WLR 409.

**121.52 Vehicle, operator and driver requirements.** (1) (a) Rules governing the design, construction, inspection and operation of school buses adopted by the secretary of transportation under s. 110.06 (2) shall by reference be made part of any contract for the transportation of pupils.

(b) The school board may adopt additional rules, not inconsistent with law or with rules of the secretary of transportation or the state superintendent, for the protection of the pupils or to govern the conduct of the person in charge of the motor vehicle used for transportation of pupils for compensation.

(2) (a) All drivers of motor vehicles owned by the school district and used for the transportation of pupils shall be under written contract with the school board of the district.

(b) The owner or lessee of all privately owned motor vehicles transporting pupils for compensation shall be under written contract with the school board of the district for which such transportation is provided.

(c) The form of contract shall be prescribed by the department and shall provide that all parties to the contract are subject at all times to rules adopted by the secretary of transportation under s. 110.06 (2) and by the department.

(3) (a) If the contract is made under sub. (2)(b), the contract shall provide that the owner or lessee require his bus drivers, as a condition of employment, to take a physical examination, including a chest X-ray or tuberculin test, and to submit the physical examination report to the school board. If the reaction to the tuberculin test is positive, a chest X-ray shall be required. Freedom from tuberculosis in a communicable form is a condition of employment as a bus driver. Additional physical examinations shall be required thereafter at intervals determined by the school board but at not less than 3-year intervals for each bus driver.

(b) The contract shall provide that a physical examination report may be submitted on forms prescribed by the federal authority regulating motor carriers or the department and that a copy of a physical examination report obtained for other purposes within one year of the date of the contract may be substituted for the examination, if the report contains substantially the same information required by the department.

(c) Such physical examinations, chest X-rays or tuberculin tests shall not be required of a bus driver who files with the school board an affidavit setting forth that he depends exclusively upon prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect, denomination or organization and that he is to the best of his knowledge and belief in good health and that he claims exemption from health examination on these grounds. Notwithstanding the filing of such affidavit, if there is reasonable cause to believe that the bus driver is suffering from an illness detrimental to the health of the pupils, the school board may require a health examination of the bus driver sufficient to indicate whether or not he is suffering from such an illness. No bus driver may be discriminated against by reason of his filing such affidavit.

(4) The use of any motor vehicle to transport pupils shall be discontinued upon receipt of an order signed by the state superintendent or the secretary of transportation ordering such discontinuance. Personnel under the state superintendent or the secretary of transportation may ride any school bus at any time for the purpose of inspection.

**History:** 1977 c. 29 s. 1654 (7) (d).

**121.53 School bus insurance.** (1) No motor vehicle may be used as a school bus unless a policy of bodily injury and property damage liability insurance, issued by an insurer authorized to transact business in this state, is maintained thereon. The policy shall provide property damage liability coverage with a limit of not less than \$10,000. The policy also shall

provide bodily injury liability coverage with limits of not less than \$75,000 for each person and, subject to such limit for each person, total limits as follows:

(a) \$150,000 for each accident for each such motor vehicle having a seating capacity of 7 passengers or less.

(b) \$200,000 for each accident for each such motor vehicle having a seating capacity of 8 to 15 passengers.

(c) \$250,000 for each accident for each such motor vehicle having a seating capacity of 16 to 24 passengers.

(d) \$375,000 for each accident for each such motor vehicle having a seating capacity of 25 to 36 passengers.

(e) \$1,000,000 for each accident for each such motor vehicle having a seating capacity of 37 or more passengers.

(2) The policy under this section shall cover the transportation of pupils, their parents or guardians, authorized chaperones, school district officers, faculty and employes and school doctors, dentists and nurses:

(a) To and from the school or school district which operates the school bus or contracts for its operation.

(b) In connection with any extracurricular school activity authorized by and made in compliance with s. 121.54 (7).

(3) An insurer issuing a policy under this section may exclude coverage for public or livery use of the school bus, but any such exclusion does not apply:

(a) When the school bus, while regularly used as such, also is used to transport pupils of another public or private school, whether or not a charge is made for such transportation.

(b) When used in accordance with sub. (2), whether or not any person lawfully transported is required to pay a charge therefor.

(4) Every school board shall require that there be filed with it and with the department of transportation a certificate of insurance showing that an insurance policy has been procured and is in effect which covers the owner and operator of the school bus and the school board or shall procure an insurance policy and file such certificate with the department of transportation. Unless such certificate is on file with the department of transportation, no registration plates for a school bus may be issued by the department of transportation. No such policy may be terminated prior to its expiration or canceled for any reason, unless a notice thereof is filed with the department of transportation and with the school board by the insurer at least 10 days prior to the date of termination or cancellation. The department of transportation

shall revoke the registration of a school bus on which the policy has been terminated or canceled, effective on the date of termination or cancellation.

(5) Subsections (1) to (4) do not apply to:

(a) A motor vehicle owned or operated by a parent or guardian transporting only his own children, whether or not any contract is made with or compensation paid to the parent or guardian for such transportation by a school board.

(b) A motor vehicle operated by a common carrier certificated under ch. 194, where such motor vehicle is used under contract pursuant to this subchapter, if the common carrier has complied with s. 194.41 or 194.42.

(c) A taxicab regulated by a municipal ordinance under s. 349.24 when used to transport pupils.

(6) Within 10 days after its occurrence, every accident involving a motor vehicle while providing transportation under this subchapter shall be reported to the appropriate school board and promptly by it to the state superintendent on forms provided by him.

**History:** 1975 c. 60; 1977 c. 29 s. 1654 (7) (b); 1979 c. 281; 1981 c. 25

#### 121.54 Transportation by school districts. (1)

**CITY OPTION.** Subsections (2) and (6) and s. 121.57 do not apply to pupils who reside in a school district that contains all or part of a city unless the school they attend is located outside the city but within the boundaries of the school district. Where an annual or special meeting of a common school district or a union high school district, or the school board of a city school district or unified school district determines to provide transportation for such pupils, state aid shall be paid in accordance with s. 121.58 and there shall be reasonable uniformity in the transportation furnished such pupils whether they attend public or private schools. This subsection does not apply to pupils who reside in a school district that contains all or part of a 1st, 2nd or 3rd class city with a population exceeding 40,000 unless transportation for such pupils is available through a common carrier of passengers operating under s. 85.20 or ch. 194.

(2) **GENERAL TRANSPORTATION.** (a) Except as provided in sub. (1), every school board shall provide transportation to and from public school for all pupils who reside in the school district 2 miles or more from the nearest public school they are entitled to attend.

(b) 1. Except as provided in sub. (1) or otherwise provided in this subsection, the school board of each district operating high school grades shall provide transportation to and from the school he attends for each pupil

residing in the school district who attends any elementary grade, including kindergarten, or high school grade at a private school located 2 miles or more from his residence, if such private school is a school within whose attendance area the pupil resides and is situated within the school district or not more than 5 miles beyond the boundaries of the school district measured along the usually traveled route.

2. In lieu of transporting students under subd. 1 and paying for transportation under sub. (8) (b), an underlying elementary school district of a union high school district may elect, by resolution adopted at its annual or special meeting, to transport elementary school children who reside within the underlying district and qualify for transportation under subd. 1, in vehicles owned, operated or contracted for by the district. Once adopted, such a resolution may be repealed only upon one year's notice to the board of the union high school district of which the underlying district is a part. An elementary school district shall notify the union high school district of any action under this paragraph no later than June 15 preceding the school year in which the elementary school district's action takes effect.

3. No later than May 15 in each year, each private school shall notify each school board of the names, grade levels and locations of all pupils, if any, eligible to have transportation provided by such school board under this paragraph and planning to attend such private school during the forthcoming school term. The school board may extend the notification deadline.

(c) An annual or special meeting of a common school district or union high school district, or the school board of a city school district or unified school district may determine to provide transportation for all or part of the pupils who reside in the school district to and from the nearest public school they are entitled to attend or the private school within or without the school district within whose attendance area they reside, but if transportation is provided for less than all such pupils there shall be reasonable uniformity in the minimum distance that pupils attending public and private schools will be transported. Except for elementary school districts electing to furnish transportation under par. (b) 2, this paragraph does not permit the annual or special meeting or school board in a district operating only elementary grades to provide for the transportation of pupils attending private schools.

(d) A school board may provide transportation for teachers to and from public school, subject to the same controls and limitations as apply to the transportation of pupils.

(3) **TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS.** Every school board shall provide transportation for children with exceptional educational needs, as defined in s. 115.76 (3), to any public or private elementary or high school, to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf or to any special educational program for children with exceptional educational needs sponsored by a state tax-supported institution of higher education, regardless of distance, if the request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this subsection.

(4) **SUMMER CLASS TRANSPORTATION.** (a) A school board may provide transportation for pupils residing in the school district and attending summer classes. If the school board provides transportation for less than all pupils, there shall be reasonable uniformity in the minimum and maximum distances pupils are transported.

(b) A school board, a county handicapped children's education board or a cooperative educational service agency may provide transportation regardless of distance for children with exceptional educational needs who attend a summer special education program under s. 115.83 (4), if a request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this paragraph.

(5) **TRANSPORTATION TO VOCATIONAL SCHOOLS.** The school board of a district operating high school grades may provide for the transportation or board and lodging of residents of the school district attending vocational, technical and adult education schools outside the school district who are not high school graduates, are less than 20 years of age and attend such schools full time. The school board of such a district may also provide transportation for residents of the district participating in vocational education programs organized cooperatively between school districts under s. 66.30. The school district shall be paid state aid for such transportation or board and lodging in accordance with s. 121.58. This subsection does not apply if the distance between a pupil's home and the vocational, technical and adult education school along the usually traveled public highway is more than 15 miles, unless the pupil resides on an approved bus route or board and lodging are provided.

(6) **TRANSPORTATION IN SPECIAL CASES.** The school board of a district operating high school grades which, under s. 121.84 (2), must permit a pupil to attend high school outside the school district shall provide transportation for such pupil if he resides 2 or more miles from the high school he attends.

(7) **TRANSPORTATION FOR EXTRACURRICULAR ACTIVITIES.** (a) A school board may provide transportation for pupils attending public or private schools, their parents or guardians, authorized chaperones, school officers, faculty and employes and school doctors, dentists and nurses in connection with any extracurricular activity of the public or private school, such as a school athletic contest, school game, after school practice, late activity, school outing or school field trip or any other similar trip when:

1. A school bus or motor bus or a motor vehicle under s. 121.555 (1) (a) is used and such transportation is under the immediate supervision of a competent adult employe of the school district.

2. A school operated by the school district or the private school has an actual interest in the safety and welfare of the children transported to the activity;

4. The school principal or other person with comparable authority authorizes such use.

(b) 1. If transportation is provided to pupils and other persons in connection with any extracurricular activity of a public school under par. (a), the school board may make a charge for such transportation, to be paid by the persons transported, sufficient to reimburse it for the cost of providing the transportation. If transportation is provided to pupils and other persons in connection with any extracurricular activity of a private school under par. (a), the school board shall make a charge for such transportation, to be paid by the private school or the persons transported, sufficient to reimburse it for the cost of providing the transportation.

2. The school board may contract under s. 121.52 (2) (b) for transportation authorized under par. (a) for pupils attending public schools. The school board may authorize a charge for the transportation, to be paid by the persons transported, sufficient to make reimbursement for the cost of providing the transportation.

(8) **PAYMENT OF TRANSPORTATION COSTS.** (a) The cost of providing transportation for pupils under subs. (1) to (6) and s. 121.57 shall be paid by the school district in which they reside, and no part of such cost may be charged to the pupils or their parents or guardians.

(b) At the end of the school term, every union high school district shall submit to each of its underlying school districts operating only elementary grades a certified statement of the actual cost for the school year, less the amount to be paid for such pupils for that school year under s. 121.58 (2), of transporting the private school pupils residing in the underlying school district under sub. (2) (b). On or before June 30 in each year each underlying school district shall reimburse the union high school district for the net cost of transporting its resident private school pupils as so reported in the statement.

(9) **TRANSPORTATION IN AREAS OF UNUSUAL HAZARDS.** (a) In school districts in which unusual hazards exist for pupils in walking to and from the school where they are enrolled, the school board shall develop a plan which shall show by map and explanation the nature of the unusual hazards to pupil travel and propose a plan of transportation if such transportation is necessary, which will provide proper safeguards for the school attendance of such pupils. Copies of the plan shall be filed with the sheriff of the county in which the principal office of the school district is located. The sheriff shall review the plan and may make suggestions for revision deemed appropriate. The sheriff shall investigate the site and plan and make a determination as to whether unusual hazards exist which cannot be corrected by local government and shall report the findings in writing to the state superintendent and the school board concerned. Within 60, but not less than 30, days from the day on which the state superintendent receives the sheriff's report, the state superintendent shall determine whether unusual hazards to pupil travel exist and whether the plan provides proper safeguards for such pupils. If the state superintendent makes findings which support the plan and the determination that unusual hazards exist which seriously jeopardize the safety of the pupils in their travel to and from school, the school board shall put the plan into effect and state aid shall be paid under s. 121.58 (2) (c) for any transportation of pupils under this subsection. Any city, village or town may reimburse, in whole or in part, a school district for costs incurred in providing transportation under this subsection for pupils who reside in the city, village or town.

(am) Any person aggrieved by the failure of a school board to file a plan with the sheriff as provided in par. (a) may notify the school board in writing that an area of unusual hazard exists. The school board shall reply to the aggrieved person in writing within 30 days of receipt of the aggrieved person's notice. The school board shall send a copy of the board's reply to the

sheriff of the county in which the principal office of the school district is located and to the state superintendent. Upon receipt of the school board's reply, the aggrieved person may request a hearing before the state superintendent for a determination as to whether an area of unusual hazard exists. If the state superintendent determines that an area of unusual hazard exists, the state superintendent shall direct the school board to proceed as provided in par. (a).

(b) Within 30 days after the sheriff's report is received by the state superintendent, any aggrieved person may request a hearing before the state superintendent on the determination by the sheriff and on the plan. After such hearing, the state superintendent shall proceed as provided in par. (a).

(c) The state superintendent and the department of transportation shall establish a definition of "unusual hazards" and "area of unusual hazards" for the implementation of this subsection. Such definition shall be promulgated, as a rule, by the state superintendent.

**History:** 1971 c. 162; 1973 c. 89, 107, 333; 1975 c. 60, 392, 421; 1977 c. 227, 252, 418; 1981 c. 20 s. 2202 (51) (e); 1983 a. 27, 175.

121.51 (4) and 121.54 (2) (b) 1 as enacted in 1969 are constitutional. *State ex rel. Vanko v. Kahl*, 52 W (2d) 206, 188 NW (2d) 460.

Exceptions to the mandatory provision of transportation should be narrowly construed. The exception for children who "reside in cities" should be confined to its common and approved usage. *Morrisette v. DeZonia*, 63 W (2d) 429, 217 NW (2d) 377.

Although private school was only 127 feet beyond 5-mile limit of (2) (b) 1, statutory construction is not available to extend such limit. *Young v. Bd. of Ed., Jt. Dist. No. 10*, 74 W (2d) 144, 246 NW (2d) 230.

Refusal of board to transport parochial pupils during public school vacation violated (2) (b) 1. *Hahner v. Board of Ed., Wisconsin Rapids*, 89 W (2d) 180, 278 NW (2d) 474 (Ct. App. 1979).

Common carrier passenger service need not be available to all city pupils for school board to possess option under (1). "Reasonable uniformity" requirement was directed at distance pupils are transported, not at means of transportation chosen. *St. John Vianney Sch. v. Janesville Ed. Bd.* 114 W (2d) 140, 336 NW (2d) 387 (Ct. App. 1983).

Transportation must be on a reasonably uniform basis to all children attending either public or private schools. 61 Atty. Gen. 240.

Students living less than 2 miles from school may not be transported by the school board at parental expense. 62 Atty. Gen. 95.

City school bussing policies adopted pursuant to (1) and (2) (b) 1 were without rational basis and violated the equal protection rights of city resident private school students who resided more than 2 miles from school but were denied transportation solely because the school was located 400 feet outside the city and school district boundaries. *Deutsch v. Teel*, 400 F Supp. 598.

Sub. (2) (b) 1 does not deny equal protection to students attending parochial school beyond 5-mile limit. *O'Connell v. Kniskern*, 484 F Supp. 896 (1980).

**121.545 Additional transportation.** The parent or guardian of a pupil who attends a public or private school and who is not required to be transported under s. 121.54 may contract with the school board of the district for transportation under this section. The school board of the district may provide transportation under this

section to a pupil not required to be transported under s. 121.54, if requested to do so by the parent or guardian of the pupil and if the parent or guardian agrees to pay to the school board a fee sufficient to reimburse the board for the costs incurred in providing such transportation. State aid shall not be provided for transportation under this section.

**History:** 1979 c. 221.

### 121.55 Methods of providing transportation.

(1) School boards may provide transportation by any of the following methods:

(a) By contract with a common carrier, a taxi company or other parties.

(b) By contract with the parent or guardian of the pupil to be transported. If the school board and the parent or guardian cannot agree upon the amount of compensation, the department shall determine the amount of compensation to be designated in the contract.

(c) By contract with another school board, board of control of a co-operative educational service agency or the proper officials of any private school or private school association.

(d) By contract between 2 or more school boards and an individual or a common carrier.

(e) By the purchase and operation of a motor vehicle.

(3) If the estimated cost of transporting a pupil under s. 121.54 (2) (b) 1 is more than 1.5 times the school district's average cost per pupil for bus transportation in the previous year, exclusive of transportation for kindergarten pupils during the noon hour and for handicapped pupils, the school board may fulfill its obligation to transport a pupil under s. 121.54 (2) (b) 1 by offering to contract with the parent or guardian of the pupil. 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 year exclusive of transportation for kindergarten pupils during the noon hour and for handicapped pupils, whichever is greater, but the payment shall not exceed the actual cost nor may the aids paid under s. 121.58 (2) (a) for the pupil exceed the cost thereof. A school board which intends to offer a contract under this subsection shall notify the parent or guardian of the private school pupil of its intention at least 30 days before the commencement of the school term of the public school district.

**History:** 1979 c. 34, 221; 1981 c. 263; 1983 a. 264.

**121.555 Alternative methods of providing transportation.** (1) A school board or the governing body of a private school may provide

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pupil transportation services by the following alternative methods:

(a) A motor vehicle transporting 9 or less passengers in addition to the operator.

(b) A motor vehicle transporting 10 or more passengers in addition to the operator and used temporarily to provide transportation for purposes specified under s. 340.01 (56) (a) when the school board or the governing body requests the secretary of transportation to determine that an emergency exists because no regular transportation is available. The secretary of transportation shall approve or deny the request in writing. Any authorization granted under this paragraph shall specify the purpose and need for the emergency transportation service.

(2) The school board or governing body of a private school shall determine that any motor vehicle used under sub. (1) complies with the following conditions:

(a) *Insurance.* If the vehicle is owned or leased by a school or a school bus contractor, or is a vehicle authorized under sub. (1) (b), it shall comply with s. 121.53. If the vehicle is transporting 9 or less persons in addition to the operator and is not owned or leased by a school or by a school bus contractor, it shall be insured by a policy providing property damage coverage with a limit of not less than \$10,000 and bodily injury liability coverage with limits of not less than \$25,000 for each person, and, subject to the limit for each person, a total limit of not less than \$50,000 for each accident.

(b) *Inspection.* The motor vehicle shall be inspected annually for compliance with the requirements of s. 110.075, ch. 347, and the rules of the department of transportation. The owner or lessee of the vehicle is responsible for the annual inspection.

(c) *Operator requirements.* The operator:

1. Shall possess a valid Wisconsin operator's license.

2. Shall be at least 18 years of age.

3. Shall have sufficient use of both hands and the foot normally employed to operate the foot brake and foot accelerator. The department of transportation may require substantiation of such use by a driving examination conducted by the department or by a medical opinion.

4. Shall submit at least once every 3 years to the school a medical opinion in such form as the school may prescribe that the operator is not afflicted with or suffering from any mental or physical disability or disease such as to prevent the operator from exercising reasonable control over a motor vehicle. The examination report prescribed in s. 118.25 (2) and (4) may be used to satisfy this requirement.

5. May not be a person convicted of reckless driving under s. 346.62, operating a motor vehicle while under the influence of an intoxicant or of a controlled substance under s. 346.63 (1), or any of the offenses enumerated under s. 343.31 (1), within a 2-year period. Upon request of the operator or school, the department shall certify whether the operator meets this requirement.

(d) *Seating requirements.* The vehicle may not be used to transport more persons than can be seated on the permanently mounted seats facing forward without interfering with the operator.

**History:** 1983 a. 175.

**121.56 School bus routes.** The school board of each district shall make and be responsible for all necessary provisions for the transportation of pupils, including establishment, administration and scheduling of school bus routes. Upon the request of any school board, the state superintendent shall provide advice and counsel on problems of school transportation. Any private school shall, upon the request of the public school officials, supply all necessary information and reports. The transportation of public and private school pupils shall be effectively co-ordinated to insure the safety and welfare of the pupils. Upon receipt of a signed order from the state superintendent, the school board shall discontinue any route specified by him.

See note to 121.54, citing *Hahner v. Board of Ed. Wisconsin Rapids*, 89 W. (2d) 180, 278 NW (2d) 474 (Ct. App. 1979)

**121.57 Board and lodging or house rental in lieu of transportation.** (1) (a) If a school board determines it is to the advantage of the school district and if the parent or guardian determines it is to the advantage of the pupil that board and lodging in lieu of transportation be provided for all or part of the time for a pupil of the school district required to be transported or for whom it has been authorized under s. 121.54 (2), the school board shall enter into a written contract under which the pupil shall be properly boarded and lodged and the school board shall pay for such board and lodging. The parent or guardian may select the home in which his child is boarded and lodged. If a school board determines it is in the interest of the school district, it may pay the tuition of a pupil in a school in another school district in lieu of providing transportation to a school in the school district of residence or board and lodging. If the distance from the pupil's home to the school in another school district is 2 miles or more, the school board of the district of residence shall provide transportation.

(b) This subsection also applies to handicapped children. The state superintendent may grant permission for a handicapped child to be transported to a school in another school district if an acceptable form of transportation is provided and if such school offers equal or better educational opportunities for the child.

(2) If a school board determines it is in the interest of the school district to rent a house for the family of children required to be transported in lieu of providing such transportation, it may enter into a written lease for such housing and pay as rental therefor not more than the amount which otherwise would be paid for transportation.

(3) This section does not apply to pupils who attend private schools.

**121.58 State aid. (1) REPORT.** In the report filed under s. 120.18 the school district clerk shall include such information as the department requires on the number of pupils for whom transportation or board and lodging is provided.

(2) **STATE AID FOR TRANSPORTATION.** (a) A school district which provides transportation to and from a school under ss. 121.54 (1) to (3), (5) and (6) and 121.57 shall be paid state aid for such transportation at the rate of \$30 per school year per pupil so transported whose residence is at least 2 miles and not more than 5 miles from the school attended, \$45 per school year per pupil so transported whose residence is at least 5 miles and not more than 8 miles from the school attended, \$60 per school year per pupil so transported whose residence is at least 8 miles and not more than 12 miles from the school attended, \$68 per school year per pupil so transported whose residence is at least 12 miles and not more than 15 miles from the school attended, \$75 per school year per pupil so transported whose residence is at least 15 miles and not more than 18 miles from the school attended, and \$85 per school year per pupil so transported whose residence is more than 18 miles from the school attended. Such state aid shall be reduced proportionately in the case of a pupil transported for less than a full school year because of nonenrollment. State aid for transportation shall not exceed the actual cost thereof. No state aid of any kind may be paid to a school district which charges the pupil transported or his or her parent or guardian any part of the cost of transportation provided under ss. 121.54 (1) to (3), (5) and (6) and 121.57 or which wilfully or negligently fails to transport all pupils for whom transportation is required under s. 121.54.

(c) A school district which provides transportation to and from a school under s. 121.54 (9) shall be paid state aid for such transportation at the rate of \$12 per school year per pupil so transported. Such state aid shall be reduced proportionately in the case of a pupil transported for less than a full year because of nonenrollment. State aid for such transportation shall not exceed the actual cost thereof.

(3) **STATE AID FOR BOARD AND LODGING.** A school district which provides board and lodging or housing under s. 121.57 (2) in lieu of transportation shall be paid state aid for such board and lodging or housing at the rate of not more than \$6 per week of 5 days for each pupil so boarded and lodged or housed, but not to exceed 60% of the cost. For children with exceptional educational needs such state aid shall be supplemented by the state aid under s. 115.88 in an amount not to exceed the full cost of such board and lodging.

(4) **STATE AID FOR SUMMER CLASS TRANSPORTATION.** Annually on or before October 1 of the year in which transportation is provided under s. 121.54 (4), the school district clerk shall file with the department a report, containing such information as the department requires, on transportation provided by the school board to and from summer classes. Upon receipt of such report and if the summer classes meet the requirements of s. 121.14 (1), state aid shall be paid for such transportation. A school district which provides such transportation shall be paid state aid for such transportation at the rate of \$4 per pupil transported to and from public school whose residence is at least 2 miles and not more than 5 miles by the nearest traveled route from the public school attended, and \$6 per pupil transported to and from public school whose residence is more than 5 miles by the nearest traveled route from the public school attended, if the pupil is transported 30 days or more. The state aid shall be reduced proportionately if the pupil is transported less than 30 days.

(5) **STATE SUPERINTENDENT APPROVAL.** If the state superintendent is satisfied that transportation or board and lodging was provided in compliance with law, he shall certify to the department of administration the sum due the school district. In case of differences concerning the character and sufficiency of the transportation or board and lodging, the state superintendent may determine such matter and his decision thereon is final.

(6) **APPROPRIATION PRORATED.** If the appropriation under s. 20.255 (2) (cr) in any one year is insufficient to pay the full amount of approved claims under this section, state aid pay-

ments shall be prorated among the school districts entitled thereto.

**History:** 1971 c. 125 s. 522 (1); 1973 c. 89, 333; 1975 c. 392; 1977 c. 29; 1979 c. 34 ss. 966d, 2102 (43) (a); 1979 c. 221; 1983 a. 27, 538.

## SUBCHAPTER V

### TUITION PAYMENTS

#### 121.77 Admission of nonresident pupils. (1)

Every elementary school and high school shall be free to all persons of school age who reside in the school district. If facilities are adequate, a school board may admit nonresident pupils who meet the entrance requirements to the schools of the school district. Nonresident pupils shall have all the rights and privileges of resident pupils and shall be subject to the same rules and regulations as resident pupils. The school board shall charge tuition for each nonresident pupil.

(2) Annually on or before August 15, the school district clerk shall file with the department a certified copy of each tuition claim of the school district.

**History:** 1977 c. 29, 78, 203

"Legal settlement" as used in (1) interpreted 65 Atty. Gen. 301.

#### 121.78 Tuition payments by school districts.

(1) Upon the approval of the state superintendent, the school board of the district of residence and the school board of the district of attendance may make a written agreement to permit an elementary or high school pupil to attend a public school, including an out-of-state school, outside the school district of residence, and the school district of residence shall pay the tuition. The school district of residence shall be paid state aid as though the pupil were enrolled in the school district of residence.

(2) A school board, upon its own order, may provide for the enrollment of a pupil in a public school located outside this state, if the course of study in such school is equivalent to the course of study in this state and if the school is at least 1.5 miles nearer the pupil's home than any public school in this state. The school board shall pay the tuition for such pupil and the school district shall be paid state aid as though such pupil was enrolled in the school district of residence. The school board shall pay for the transportation of a pupil so enrolled who resides 2 or more miles from such out-of-state school. The school district shall be paid state aid under subch. IV for the transportation of such pupil as though the pupil had been transported to the school of the school district of residence.

(3) (a) Annually, the school board of any school district may, upon the approval of the state superintendent, enter into an agreement for the enrollment of some of its resident pupils in the schools of an adjacent school district, if:

1. That school district determines that its enrollment of resident pupils in the following school year will be greater than its enrollment of resident pupils in the base school year as reported under s. 121.05; and

2. The adjacent school district determines that its enrollment of resident pupils in the following school year will be less than its enrollment of resident pupils in the base school year as reported under s. 121.05.

(b) For pupils enrolled as part of an agreement under par. (a), the school district of residence shall pay tuition to the school district of attendance, and such pupils shall be counted as pupils enrolled in the school district of residence for the computation of state aid under subch. II. A copy of any agreement under this section shall be provided to the state superintendent as part of the school district report under s. 121.05.

(c) Any pupil who has attended a high school for one or more years through an agreement under par. (a) shall be permitted to graduate from that school, notwithstanding the termination of the original agreement. Tuition for such pupils shall be paid by the district of residence, and such pupils shall be counted as pupils enrolled in the district of residence for the computation of state aid under subch. II.

(d) In this subsection, "base school year" means the school year prior to the school year for which an agreement is first effective under this section.

**History:** 1977 c. 29, 418; 1979 c. 244.

121.79 Tuition payments by state. (1) The state shall pay tuition from the appropriation under s. 20.255 (2) (cg) for children attending public schools in the following cases:

(a) For children in children's homes.

(b) For children of parents employed at and residing on the grounds of a state or federal military camp, federal veteran hospital or state charitable or penal institution.

(d) For children in foster homes, and beginning in the 1978-79 fiscal year, for claims incurred in the 1977-78 school year and thereafter, for children in group homes, if:

1. The foster or group home is located outside the school district in which the child's parent or guardian resides; and

2. The foster or group home is exempted under s. 70.11.

(2) When transportation is provided for children under this section, state aid shall be paid in accordance with subch. IV.

**History:** 1971 c. 125 ss. 459, 460, 522 (1); 1973 c. 89, 90, 336; 1975 c. 39, 199; 1977 c. 29; 1979 c. 34 s. 2102 (43) (a); 1979 c. 60, 221; 1983 a. 27 ss. 1486m, 2202 (42).

**121.80 Tuition payments by counties.** The county shall pay the elementary and high school tuition of every person of school age who is a child of a parent employed at and residing on the grounds of a county institution. The county board may charge such tuition to the account of the county asylum or the county home.

**121.81 Tuition payments by parents. (1)**

**GENERAL.** Before the admission of a nonresident pupil to an elementary or a high school of a school district, the school board of that district shall make a written agreement with the parents for the payment of tuition at the rate established in accordance with this subchapter, except when the tuition is otherwise chargeable under this subchapter or under subch. V of ch. 115.

(2) **SPECIAL.** (a) A pupil whose parent or legal custodian is a resident of this state but not a resident of the school district may file with the school board of the district a written application for enrollment in the schools of the school district. The application shall be accompanied by a written declaration of the parent or legal custodian that he will establish residence in the school district by a specified time. If facilities are adequate, the school board may permit the pupil to enroll in the schools of the school district, and may require prepayment of a tuition fee for 9 school weeks or may waive the tuition requirement for that pupil. If the parent or legal custodian establishes residence in the school district within such 9 school weeks, the school board shall refund the tuition fee. If such residence is not established there shall be no refund of the tuition fee but another written application for enrollment may be filed for the next succeeding 9 school weeks and, upon prepayment of a tuition fee for such 9 school weeks, the school board may permit the pupil to reenroll. If the parent or legal custodian establishes residence in the school district within the second 9 school weeks, the school board shall refund the tuition fee for the second 9 school weeks.

(b) If the parent or legal custodian establishes residence in the school district prior to the expiration of the first 18 school weeks of the school term and if the pupil was enrolled in the school district on the 3rd Friday in September, the pupil shall be considered a resident pupil in computing general aid under subch. II.

(c) The parent or legal custodian of a pupil who is enrolled under this subsection shall be responsible for the transportation of such pupil to the school in which the pupil is so enrolled. No transportation aid under subch. IV may be paid for such transportation.

**History:** 1971 c. 200; 1977 c. 29; 1979 c. 346 s. 15.

**121.82 Computation of tuition. (1)** In computing tuition, 5 school days constitute a school week. No deduction of tuition may be made because of the absence of a pupil, unless the pupil has been absent more than 10 consecutive school days. In case of an absence for more than 10 consecutive school days, deduction shall be made only for the absence in excess of 10 days. If a school is closed pursuant to an order of a health officer during the school term and if operation and maintenance costs are incurred by the school district as if the school were operating, tuition shall be charged as if the school were operating.

(2) (a) The tuition for any given school year shall be the sum of the net cost of the general fund and the net cost of the debt service fund for that school year for the school district of attendance divided by the average daily membership of that school district, rounded to the nearest dollar.

(b) The tuition for summer classes shall be the tuition for the previous school year multiplied by the quotient of the summer average daily membership equivalent and the average daily membership for the previous school year.

(3) All disbursements for tuition shall be made from the school district general fund. All receipts for tuition shall be made to the school district general fund.

**History:** 1977 c. 29; 1981 c. 20.

**121.84 Tuition waiver; special cases; reorganized districts. (1)**

(a) The school board of a district may permit a pupil who is enrolled in a school under its jurisdiction and is a resident of the school district at the beginning of the 2nd semester of the school year to complete the school year at the school without payment of tuition, even though his or her parents move out of the school district before the close of the school year.

(b) The school board of a district operating high school grades may permit a pupil who has gained 12th grade status in a high school under its jurisdiction and is a resident of the school district at the time of gaining such status to complete 12th grade at the high school without payment of tuition, even though his parents move out of the school district.

(c) The transportation requirement in s. 121.54 (2) shall not apply to transportation

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beyond the school district boundaries for pupils under this subsection.

(2) The school board of a district operating high school grades shall permit a high school pupil who resides in the school district as the result of school district reorganization and has completed 9th and 10th grades at one high school outside the school district to complete his high school education at such high school. The school board of residence shall pay tuition for such pupil. If the parent or guardian of such pupil has paid tuition in order to enroll such pupil in such high school, the school board of residence shall reimburse the parent or guardian for the tuition upon receipt of a tuition claim within 3 years from the date such tuition was paid.

(3) (a) A reorganized school district, in its first year of operating high school grades, may provide for its 11th and 12th grade pupils on a tuition basis and, in its 2nd such year, may provide for its 12th grade pupils on a tuition basis. The clerk of the school district in which nonresident pupils under this subsection are enrolled shall certify the number of such pupils enrolled to the department and to the clerk of their school district of residence. The school district of residence shall include such pupils in membership for aid under subch. II.

(b) A reorganized school district which has at least one operating high school within its territory and which does not have sufficient building facilities to provide high school educational services for all of the high school pupils residing in the reorganized school district may provide for such high school pupils on a tuition basis for a period of 2 years. The reorganized school district shall be eligible for state aid in accordance with par. (a).

History: 1973 c. 90; 1977 c. 29, 78

**SUBCHAPTER VI****SPECIAL TRANSFER AID**

**121.85 Special transfer programs. (1) DEFINITIONS.** In this section:

(a) "Attendance area" means the geographical area within a school district established by the school board thereof for the purpose of designating the elementary, middle, high or other school which pupils residing within the area normally would attend.

(b) "Minority group pupil" means a pupil who is a Black American, a native American, a Spanish-surnamed American or an Oriental American and who has reached the age of 4 on or before September 1 of the year he or she enters school.

(c) "Net school cost" is the sum of the net cost of the general fund and the net cost of the debt service fund for the previous school year.

(d) "School" means an organized educational activity operated by the school board and approved by the department of public instruction.

(2) **APPLICABILITY OF SECTION.** This section applies to transfers:

(a) *Interdistrict.* 1. By minority group pupils who reside in an attendance area in a school district where minority group pupils constitute 30% or more of the number of pupils enrolled in the school serving that attendance area and which the pupil would normally attend, from that district to a school in a school district where minority group pupils constitute less than 30% of the number of pupils enrolled in that school, as of May 1 of the prior year.

2. By nonminority group pupils who have reached the age of 4 on or before September 1 of the year they enter school and who reside in an attendance area in a school district where minority group pupils constitute less than 30% of the number of pupils enrolled in the school serving that attendance area and which the pupil would normally attend in the district, from that district to a school in a school district where minority group pupils constitute 30% or more of the number of pupils enrolled in that school, as of May 1 of the prior year.

(b) *Intradistrict.* 1. By minority group pupils who reside in an attendance area where minority group pupils constitute 30% or more of the number of pupils enrolled in the school serving that attendance area and which the pupil normally would attend, from that school to another school within the district where minority group pupils constitute less than 30% of the number of pupils enrolled in that school or to a school serving the entire district.

2. By nonminority group pupils who have reached the age of 4 on or before September 1 of the year they enter school and who reside in an attendance area where minority group pupils constitute less than 30% of the number of pupils enrolled in the school serving that attendance area and which the pupil normally would attend, from that school to another school within the district where minority group pupils constitute 30% or more of the number of pupils enrolled in that school or to a school serving the entire district.

(3) **TRANSFER AGREEMENTS.** In accordance with sub. (2) and with the approval of the parents or guardian of the pupil:

(a) *Interdistrict.* The school board of the district of residence and the school board of the district of attendance may enter into annual written agreements to permit a pupil to attend a

public school outside the school district of residence.

(b) *Intradistrict*. The school board of the district may permit a pupil to attend a public school within the district which is outside the pupil's attendance area.

(4) **OTHER PLANS TO REDUCE RACIAL IMBALANCE**. Pupil transfers resulting from a plan implemented by the school board to reduce racial imbalance in a school district or attendance area shall be deemed to be transfer agreements under sub. (3) and shall be eligible for state aid under this section if the transfers comply with sub. (2).

(5) **PART-TIME TRANSFERS**. Part-time transfers for curriculum offerings also may be permitted under this section. The department shall establish procedures for aid computations in such cases.

(6) **STATE AIDS**. (a) *Intradistrict transfer*. The school district of attendance of pupils transferring from one attendance area to another under subs. (3) (b) and (4) shall be entitled to:

1. An amount equal to that produced by counting each transfer pupil as 1.0 pupil in membership for general aid under subch. II; plus

2. An amount equal to that produced by counting each transfer pupil as 0.325 pupil in membership for general aid under subch. II.

(b) *Interdistrict transfer*. 1. If a pupil transfers from one school district to another under sub. (3) (a), the school district of residence shall count each such pupil as 1.0 pupil in membership for general aid under subch. II.

2. If, in any one school year, the number of pupils transferring from one school district to another under sub. (3) (a) constitute less than 5% of the total membership of the school district of attendance, the school district of attendance shall receive an amount equal to that produced by multiplying the number of pupils transferred into the district under sub. (3) (a) by the amount produced by dividing the school district's net school cost by the sum of the membership, plus the number of pupils transferred into the district of attendance under sub. (3) (a).

3. If, in any one school year, the number of pupils transferring from one school district to another under sub. (3) (a) constitute 5% or more of the total membership of the school district of attendance, the school district of attendance shall receive an amount equal to 1.2 multiplied by the amount to which the district is entitled under subd. 2.

(c) *Special applications*. If a school district finds that it has incurred costs beyond aids received because of the number of pupils which

it has accepted as transfers under this section, it may apply to the department for supplementary aids under this subsection. If the department finds that the school district has incurred costs for which reimbursement has not been made under par. (b) 2 or 3, it shall supplement the state aids paid to the district under this subchapter in an amount equal to the unreimbursed cost.

(d) *Aid in lieu of tuition*. Aid payments under this subchapter shall be in lieu of tuition payments required under subch. V. Aid payments under this subchapter shall not be made for interdistrict transfers under sub. (6) (b), if tuition payments are made from funds received by the school district of residence under P.L. 73-167 and P.L. 81-874, as amended, for pupils so transferring from such district of residence.

(e) *Sources of aid payments*. State aid under this subchapter shall be paid from the appropriation under s. 20.255 (2) (ac).

(f) *Applicability*. No school district may receive state aid under par. (a) 1 or (b) 1 for transfer pupils who have not reached the age of 5 on or before September 1 of the year they enter school.

(7) **TRANSPORTATION**. Transportation shall be provided to pupils transferring schools under this subchapter if required under subch. IV. Transportation for a pupil attending a public school under sub. (3) (a) outside the pupil's school district of residence shall be provided pursuant to agreement between the school district of residence and the school district of attendance. If either the school district of residence or the school district of attendance operates a program of intradistrict transfers under sub. (3) (b), that school district shall be responsible for the cost of transportation. The school district may meet this responsibility either by contracting directly for provision of transportation or by reimbursing another school district for the cost of such a contract. Transportation for a pupil attending a public school under sub. (3) (b) outside his or her attendance area of residence may be provided by his or her school district. A school district providing transportation under this subsection may not claim transportation aid under subch. IV for pupils so transported.

(8) **TRANSFERRED PUPILS**. Pupils transferring schools under this section shall be subject to the same rules and regulations as resident pupils and shall have the responsibilities, privileges and rights of resident pupils in the school district or attendance area. Subject to this subsection, a pupil transferring schools under either sub. (3) (a) or (b) has the right to complete his or her education at the elementary, middle or high school to which he or she transfers so long as

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full funding therefor is available under s. 20.255 (2) (ac).

(9) **PLANNING COUNCILS.** (a) Annually, beginning within 60 days after May 4, 1976, and thereafter on or before October 1, the school board of each school district lying wholly or partially within a county having a population of 500,000 or more shall organize a planning council with the school board of the school district within such county containing a city of the 1st class. Each planning council shall consist of 10 members, 5 members from the school district containing a city of the 1st class and 5 members from the school district which does not contain a city of the 1st class. The representatives of the planning council from each school district shall include, for terms of membership determined by the school board, 3 school board members, the school district administrator and one public member who resides in the school district. In the case of school districts containing a city of the 1st class, the school board may appoint the same persons as representatives to more than one planning council, and the school district administrator may select a representative to serve in his or her place on any planning council. Within 180 days after its appointment, each planning council shall make a recommendation to its appointing school boards on a cooperative program designed to facilitate transfers under sub. (3) (a) for the ensuing school term to promote cultural and racial integration. The recommendations shall include socioeconomic, achievement and other relevant factors for the school boards to consider in permitting pupils

to transfer for the purpose of facilitating, so far as possible, a balanced representation of the pupils who might transfer under sub. (3) (a). Within 90 days after receiving the recommendation of the planning council, each school board shall determine the extent to which its district will participate in the cooperative program. Upon making its determination, each school board shall disseminate information concerning the cooperative program to pupils and parents and guardians of pupils in the school district. Information shall be disseminated regarding the availability of transfers, the nature of the transportation to be provided, the courses and programs to be available to transfer pupils and any other aspects which the school board determines to be appropriate.

(b) Within 90 days after determining that its district will participate in transfers under this section, the school board of a district not subject to par. (a) shall make appointments to, and shall organize with other participating school districts, a planning council to make recommendations to facilitate cooperative programs.

(c) The obligation under par. (a) to organize planning councils shall apply only with regard to school terms for which full pupil transfer aids are appropriated under s. 20.255 (2) (ac) and planning council assistance funds are appropriated under s. 20.255 (1) (a).

**History:** 1975 c. 220; 1977 c. 29, 418; 1979 c. 34 ss. 966m, 2102 (43) (a); 1979 c. 221; 1981 c. 20, 385; 1983 a. 27 s. 2202 (42); 1983 a. 189

**NOTE:** Chapter 220, laws of 1975, which created this section, contains a legislative declaration of policy in section 1 of the act.