

## CHAPTER 119

## FIRST CLASS CITY SCHOOL SYSTEM

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**Cross-reference:** See definitions in s. 115.001.

**119.01 Applicability.** This chapter applies only to cities of the 1st class.

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

(1) “Board” means the board of school directors in charge of the public schools of a city of the 1st class.

(2) “City” means a city of the 1st class.

(3) “Members–elect” of a body at a particular time are those members who have been duly elected or appointed for a current regular or unexpired term and whose service has not terminated by death, resignation or removal from office.

**119.04 Public instruction laws applicable.** (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35), (37), [(37m),] and (38), 120.14, and 120.25 are applicable to a 1st class city school district and board.

**NOTE:** Sub. (1) is shown as affected by 3 acts of the 2005 Wisconsin legislation and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates a missing cross-reference. Corrective legislation is pending.

(2) The board shall exercise the powers, perform the functions and be entitled to all school aid under sub. (1) insofar as the same are relevant to cities of the 1st class. The board and the schools in cities of the 1st class shall be governed in all matters by the general laws of the state, except as altered or modified by express amendments.

**History:** 1971 c. 152 s. 38; 1971 c. 154 s. 80; 1973 c. 89 s. 20 (1); 1973 c. 90; 1973 c. 188 s. 6; 1973 c. 243, 254, 290, 307, 333; 1975 c. 39, 41, 95, 220, 379, 395, 422; 1977 c. 29; 1977 c. 203 s. 106; 1977 c. 206, 284, 447; 1979 c. 20; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221, 298, 331; 1979 c. 346 s. 15; 1979 c. 355; 1981 c. 59; 1981 c. 241 s. 4; 1983 a. 193; 1983 a. 339 s. 10; 1983 a. 374 s. 12; 1983 a. 412, 489, 538; 1985 a. 29 s. 3202 (43); 1985 a. 56 s. 43; 1985 a. 214 s. 4; 1985 a. 225, 332; 1987 a. 27, 187, 285, 386, 403; 1989 a. 31, 120, 121, 122, 201, 209, 359; 1991 a. 39, 42, 189, 269; 1993 a. 16, 334, 377, 491; 1995 a. 27, 225; 1997 a. 27, 77, 113, 240, 252, 335; 1999 a. 9, 32, 73; 1999 a. 150 ss. 631, 672; 1999 a. 186; 2005 a. 99, 290, 346; s. 13.93 (2) (c).

**119.06 Initial establishment of board.** (1) Members of a school board in existence in a city immediately prior to the date on which such city becomes a city of the 1st class shall continue to hold office and shall exercise all of the rights and privileges and discharge the duties of members of the board until their successors appointed under sub. (2) are appointed and qualified.

(2) Within 120 days after the date on which a city becomes a 1st class city, the mayor, the city treasurer, the city comptroller, the city attorney and the president of the common council of that city, acting as a commission for the city, shall meet and appoint a board of one at–large member and 8 members from election districts numbered and designated by the common council. The election districts shall be substantially equal in population and the boundaries of the election districts shall be drawn so as to reflect a balanced representation of citizens of all areas within the city. The person appointed to represent an election district shall reside within the boundaries of the election district as determined by the common council under this subsection.

(3) The terms of members first appointed to the board by the commission shall be as follows:

(a) The at–large member and 4 of the combined aldermanic district members shall serve for a term beginning on the 4th Monday of the month next following their appointment and expiring on the 4th Monday in April in the 2nd year following the year in which a city becomes a city of the 1st class.

(b) Four of the combined aldermanic district members shall serve for a term beginning on the 4th Monday of the month next following their appointment and expiring on the 4th Monday in April in the 4th year following the year in which a city becomes a city of the 1st class.

(4) (a) Within 90 days after the board members appointed by the commission under sub. (2) have taken office, the common council of the city may, by resolution adopted by a majority of its members–elect, call a special election to elect successors to the board members so appointed. Such resolution shall be introduced at a regular meeting of the common council. No action may be taken on the resolution until the next regular meeting of the common council and until the resolution has been published as a class 1 notice, under ch. 985, together with a notice of the time when the resolution will be considered by the common council.

(b) The board members elected at the special election shall be nominated and elected to succeed the board members appointed

for the terms expiring under sub. (3) (a) and (b) and for the same terms. The terms of office of the board members elected at the special election shall begin on the 4th Monday following the election.

(c) Candidates for the board at the special election shall be nominated in the same manner as for the spring election.

(d) The special election shall be held at the polling places and shall be conducted in the manner of and by the election officials for the spring election.

(5) The board first appointed under sub. (2) or first elected at a special election under sub. (4) shall hold an organizational meeting under s. 119.10 (2) on the 4th Monday of the month, or the next day if the 4th Monday is a legal holiday, following their appointment or election, and annually thereafter shall meet in accordance with s. 119.10 (2).

(6) Successors to board members appointed under sub. (3) or elected under sub. (4) shall be elected at the spring election immediately preceding the expiration of the terms of such board members and shall serve for 4-year terms.

(7) This chapter does not affect the term of office or employment of any person serving in any capacity by virtue of an appointment or contract of employment made by the school board in a city prior to the date on which a city becomes a city of the 1st class, but such person shall continue to serve in the same capacity under the board for the term for which the person was so appointed or employed, unless removed from such office or employment for the causes and in the manner provided in this chapter.

**History:** 1977 c. 445; 1983 a. 484; 1989 a. 290; 1993 a. 492.

**119.08 Election of board members.** (1) (a) The board shall consist of one member elected at-large and 8 members elected from numbered election districts determined by the board. The election districts shall be substantially equal in population and the boundaries of the election districts shall be drawn so as to reflect a balanced representation of citizens in all areas within the city.

(b) Within 60 days after the common council of the city enacts an ordinance determining the boundaries of the aldermanic districts in the city following the federal decennial census under s. 62.08 (1), the board shall, by vote of a majority of the membership of the board, adopt an election district apportionment plan for the election of board members which shall be effective until the city enacts a new ordinance under s. 62.08 (1) redetermining the aldermanic district boundaries.

(c) A person elected to represent a district shall reside within the boundaries of the district, except that if a person ceases to reside within the district because the boundaries of the district are changed during the person's term of office, the person may continue to serve for the balance of the term for which he or she was elected for so long as the person resides in the school district. Before taking office, the members of the board shall take the official oath of office and file it, duly certified by the officer administering the oath, with the city clerk.

(2) The electors of each election district shall elect one member residing within the election district to represent the election district. The at-large member shall be elected by the electors of the city. Board members shall be electors of the city and shall be elected at the spring election. Candidates shall file nomination papers for full terms or, when vacancies are to be filled, for unexpired terms. The primary and spring elections for board members shall be conducted by the election officials for the election of judicial or other officers held on that date. The polling places for the state, municipal or judicial election shall be the polling places for the board election and the municipal election hours shall apply.

(3) The regular terms of board members shall be 4 years.

(4) A vacancy on the board shall be filled by a special election ordered by the board. At such election the vacancy shall be filled for the unexpired term. The board shall follow procedures under s. 8.50, so far as applicable.

**History:** 1977 c. 445; 1983 a. 105, 484; 1985 a. 312; 1987 a. 176; 1989 a. 290.

**119.10 Meetings of the board.** (1) The board is a continuing body. Any unfinished business before the board or any of its standing or special committees on the date of the annual meeting under sub. (2) shall be considered as pending before the board newly organized on such date. At its annual meeting, after the election of the new board president and the designation of the clerk, the clerk shall report to the board items of business pending before the board as a whole. After the annual April meeting, unless otherwise directed by the board, the clerk shall report items of business which had been pending before committees of the board to the corresponding committees of the board appointed by the new president. Matters thus reported may be acted upon by the board in the same manner and with the same effect as if the board had not been newly organized.

(2) Annually, no earlier than the 4th Monday in April and no later than the first Monday in May, the board shall hold its organizational meeting, shall elect a president from among its members to serve for one year and until a successor is chosen and shall designate an individual to serve as clerk. In the absence or during the disability of the board president, the board shall elect an acting president. The board president shall appoint standing committees to serve for one year.

(3) The board shall hold a regular meeting at least once each month at times fixed and published by the board in its rules. If a regular board meeting falls on a legal holiday, it shall be held on the next business day. Special meetings may be called and held as provided by the rules of the board. No business may be transacted at a special meeting other than that specified in the notice of the meeting, which shall be delivered personally or by mail to each member at least 24 hours before the time of such meeting.

(4) A majority of the members-elect of the board constitute a quorum for the transaction of business but a smaller number may adjourn. A majority of the members-elect of the board shall be necessary to elect any person authorized to be elected by the board.

(5) If a board member is absent for 4 successive board meetings without presenting satisfactory reason therefor in writing to the board, the board shall declare the member's seat vacant and shall fill the vacancy under s. 119.08 (4). If any person appointed or elected by the board is absent or is unable to perform the duties of the person's office, the board may appoint or elect a suitable person to act in the person's place during the person's absence or inability.

(6) All elections or appointments by the board shall be by roll call vote which shall be entered by the clerk in the minutes and printed proceedings of the board.

**History:** 1977 c. 445; 1979 c. 110; 1991 a. 39, 269; 1993 a. 492.

**119.12 Board; general provisions.** (1) Board members are subject to all restrictions, liabilities, punishments and limitations, including recall under s. 9.10 (4), prescribed by law for members of the common council in their city. A majority of the members-elect of the board may dismiss from office for malfeasance any member of the board. The board shall provide by resolution the manner of hearing and disposing of complaints against a board member.

(2) In any action or proceeding in which the board is a defendant, service of any summons, writ, pleading or other papers served in commencing the action or proceeding upon the board president and the superintendent of schools constitutes service upon the entire board. It is sufficient to serve on such 2 officers any notice required by law to be served upon the board.

(3) Each member of the board shall be paid an annual salary in the amount set by the board. The salary shall be paid monthly.

(4) The board shall not in any one year contract any debt or incur any expense greater than the amount of the school funds subject to its order.

(5) If the board president is by law a member of any board or commission, the board may appoint another board member to serve on such board or commission in place of the board president.

(6) The city attorney of the city shall be the legal adviser of and attorney for the board, except that the board may retain an attorney to represent the board in any matter if the board determines that it requires specialized legal expertise not possessed by the city attorney, the city attorney does not have sufficient staff to adequately represent the interests of the board or a conflict of interest exists. The board shall provide the city attorney with reasonable notice of any board meeting at which the board will consider retention of an attorney.

**History:** 1977 c. 318, 403, 445, 447; 1983 a. 27; 1985 a. 158; 1991 a. 39.

**119.16 Board; duties.** (1) **EDUCATIONAL PRIORITIES AND OBJECTIVES.** The board and the superintendent of schools shall identify broad yearly objectives and assess priorities for education in the district and shall issue an annual report and such additional reports as the board and superintendent deem desirable on the progress of pupils enrolled in the public schools.

(1m) **MANAGEMENT OF SCHOOL DISTRICT.** The board shall have the possession, care, control and management of the schools, facilities, operations, property and affairs of the school district.

(2) **ESTABLISH SCHOOLS AND DISTRICTS.** The board shall maintain the public schools in the city and shall establish, organize and maintain such schools as the board determines are necessary to accommodate the children entitled to instruction therein. The board shall divide the city into attendance districts for such schools.

(3) **BUILDINGS AND SITES.** (a) The board shall construct, purchase, lease, improve or enlarge buildings and purchase furniture and sites for the public schools, shall purchase, install and maintain heating systems in public schools and may contract for carrying out any of these purposes.

(b) Except as provided in par. (c), schoolhouses and the sites on which they are situated shall be the property of the city. No site may be purchased or leased and no schoolhouse may be constructed unless a resolution therefor is duly adopted by the board. Except as provided in par. (c), deeds of conveyance and leases shall be made to the city.

(c) If the redevelopment authority of the city issues bonds under s. 66.1333 (5r), the board may lease buildings or sites from the redevelopment authority or borrow money from the redevelopment authority for the purposes of par. (a).

(4) **COMPETITIVE BIDDING.** The board shall establish competitive bidding policies and procedures for purchases and for construction contracts.

(5) **SPECIAL COURSES.** Within budgetary limitations, the board shall establish in any public school, in grade 7 and higher, such classes of instruction consistent with the educational goals and objectives adopted by the board under sub. (1) as are petitioned for by the parents of a number of pupils attending the school sufficient to form one or more classes of instruction. Petition by the parents of 30 or more pupils of like classification attending any such school requesting the establishment of instruction in a specified subject is prima facie evidence of the sufficiency of the number of pupils to commence instruction therein.

(6) **CUSTODIANS OF SCHOOL PREMISES.** The board shall fix the duties and responsibilities of principals, as custodians of the school premises, and of the school engineers. Each principal shall have general supervision of and shall be custodian of all school premises over which the principal presides.

(8) **BUDGET.** (a) Annually before adopting its budget for the ensuing school year and at least 5 days before transmitting its completed budget under par. (b), the board shall hold a public hearing on the proposed school budget at a time and place fixed by the board. At least one week before the public hearing, the board shall publish a class 1 notice, under ch. 985, of the public hearing.

(b) The board shall transmit its completed budget to the common council on or before the first Monday in August of each year on forms furnished by the auditing officer of the city. Such completed budget shall be published with the budget summary under s. 65.04 (2) or 65.20 and budget under s. 65.05 (7).

(10) **SCHOOL FACILITIES.** (a) The board may not demolish any school facility that is 50 years old or older without the approval of the city historic preservation commission.

(b) The board may construct new school facilities only in the areas of greatest local need for such facilities.

**History:** 1973 c. 17, 188; 1975 c. 353; 1977 c. 109; 1983 a. 391; 1985 a. 29; 1987 a. 395; 1989 a. 290; 1993 a. 492; 1999 a. 9; 2001 a. 30.

The authority of school boards to contract for services and facilities for "academically and socially retarded" children is discussed, 61 Atty. Gen. 203.

One who deals with a municipality does so at his or her own risk and may be subject to any provisions of law that might prevent him or her from being paid by a municipality even though the services were rendered. Unless the power to bind the municipality financially has been specifically delegated, the only entity with the statutory authority to contract is the municipality. The statutes do not authorize anyone other than the board to enter into contracts. The board may delegate that authority, but it must do so clearly and specifically. For an MPS employee to have such power, it must be specifically delegated by the board to that employee or class of employees. *Holzbauer v. Safway Steel Products, Inc.* 2005 WI App 240, 288 Wis. 2d 250, 706 N.W.2d 36, 04–2058.

**119.18 Board; powers.** (1g) **GENERALLY.** The board may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils.

(1r) **RULES.** The board may adopt and modify or repeal rules for its own government and for the organization, discipline and management of the public schools which shall promote the good order and public usefulness of the public schools.

(2) **DISTRIBUTION OF PRINTED PROCEEDINGS.** The board may determine the distribution of the printed proceedings of the board.

(3) **TRANSPORTATION.** The board may provide for the transportation of pupils to and from any school within the city.

(4) **INSURANCE.** The board may provide for accident insurance covering pupils in the school district.

(5) **TEXTBOOKS FOR INDIGENT PUPILS.** The board may purchase textbooks for pupils whose parents, guardians or other persons having control or custody of such pupils are without means to furnish them with textbooks, if the indigency of such pupils have been investigated and certified by a welfare worker or attendance officer. The local governmental authority administering poor relief in the city shall reimburse the board for all expenditures by the board for such textbooks. Such textbooks shall be the property of the city and subject to the disposal of the board.

(6) **SCHOOL CALENDAR.** The board may determine the school calendar and vacation periods for each school year for the regular day schools, summer schools, social centers and playgrounds, except that:

(a) The period of teaching service in the regular day schools shall not exceed 200 days, including the legal holidays and educational convention days on which the schools are closed.

(b) The board may close any school or dismiss any class in the event of an emergency, fire or other casualty, quarantine or epidemic.

(7) **SCHOOL HOURS.** The board may establish rules scheduling the hours of each school day during which the schools shall be in session. The board may differentiate between the various grades in scheduling such school hours.

(8) **SCHOOLS CLOSED.** The board may determine on which national, state and local legal holidays and for which educational conventions the public schools shall be closed. There shall be no deductions from the annual or monthly compensation of employees not rendering services on such days.

(9) **ENROLLMENT UNDER LEGAL NAME.** The board may require that any pupil attending public school shall be enrolled under the pupil's legal name.

(10) **EMPLOYEES.** (b) Subject to ss. 63.18 to 63.53 when applicable, the board may employ and determine the qualifications,

duties and compensation of any persons as are required in the operation and management of the schools.

(c) The board may employ a staff to aid it in its duties. The board shall determine the compensation, duties and qualifications of its staff, including whether or not employment of such staff shall be subject to ss. 63.18 to 63.53.

(11) BONDED OFFICERS AND EMPLOYEES. The board may require any officer or employee of the board to give security for the faithful performance of the officer's or employee's duties in such form and amount as the board determines, and may require at any time additional bonds and sureties of any officer or employee.

(12) EMPLOYER CONTRIBUTION. The board may make as the employer agency the contributions to the city retirement system payable under chapter 396, laws of 1937, in respect to its employees who are members of such system.

(13) EXCHANGE TEACHERS. The board may make an agreement with the managing body of the schools in any city or school district in the United States or another country for the exchange of one of the board's teachers for a teacher of such other city or school district for a period not exceeding one school year. The board shall determine the qualifications and compensation of the teacher rendering service under the agreement in the schools under its jurisdiction, who shall be counted as a regular teacher in the city in the computation of state and county school aids. The agreement shall state:

(a) The manner and by whom the salaries of such exchange teachers shall be paid.

(b) That any teacher regularly employed by the board under this chapter shall receive credit for the year of exchange teaching service in the computation of any benefits to which the teacher is entitled under ch. 40 and the manner in which the monthly reservations shall be paid under that subchapter.

(c) Such other provisions as the board and the other managing body deem appropriate.

(14) SALES AND CHARGES. The board may establish and maintain, in any of the schools or playgrounds under its jurisdiction, cafeterias and stores for the sale of schoolbooks, candies, refreshments and supplies. The board also may charge or permit the making of a charge for admission to any school, social center or athletic entertainment or activity, under such terms and conditions as the board prescribes.

(15) LEASE SCHOOL PROPERTY. In addition to any other authority, the board may lease school sites, buildings and equipment not needed for school purposes to any person for any lawful use at a reasonable rental for a term not exceeding 15 years.

(16) GIFTS AND GRANTS. The board may receive, accept and use gifts or grants of furniture, books, equipment, supplies, moneys, securities or other property used or useful for school and educational purposes. The board shall make such use of gifts or grants, or invest the same in the case of moneys, as the donor or grantor specifies. In the absence of any specific direction as to the use of such gifts or grants by a donor or grantor, the board may determine the use of or may invest the same in accordance with the law applicable to trust investments. In the use, control or investment of such gifts or grants, the board may exercise the rights and powers generally conferred upon trustees.

(17) PURCHASES FROM HOUSE OF CORRECTION. The board may purchase for use in the schools, from any county in which the city is located, furniture, furnishings and equipment manufactured in any house of correction under s. 303.16 (1). The board may waive the furnishing by the county or institution of bid bonds and performance bonds otherwise required by the statutes in connection with any such purchase.

(18) COPYRIGHT MATERIALS. The board may copyright under the applicable federal laws any book, pamphlet, bulletin or record form edited and published by or under the direction of the board.

(19) FENCES. The board may construct around any school-house or playground site a fence of materials and design approved by the board.

(20) DIPLOMAS. The board may grant diplomas in testimony of the completion of high school or special education requirements, including the requirements of special schools established under s. 119.28.

(21) RULES ON CONDUCT AND DRESS. The board may establish rules pertaining to conduct and dress of pupils in order to maintain good decorum and a favorable academic atmosphere.

(22) RECORDS CUSTODIAN. On behalf of any school district authority as defined in s. 19.32 (1), including the board, school district officers and any subunit of the board or school district, designate one or more persons to be legal custodians of records.

(23) SCHOOL CLOSINGS. The board may close any school that it determines is low in performance by adopting a resolution to that effect. If the superintendent of schools recommends to the board that a school be closed, he or she shall state the reasons for the recommendation in writing. If the board closes a school, the superintendent of schools may reassign the school's staff members without regard to seniority in service. If the board reopens the school, the superintendent of schools may reassign staff members to the school without regard to seniority in service.

**History:** 1973 c. 16, 21, 91, 188, 243; 1981 c. 96 ss. 45, 46, 67; 1981 c. 335; 1985 a. 225 ss. 67, 69; 1989 a. 31, 290; 1993 a. 492; 1995 a. 27; 1997 a. 164.

**119.19 Released time for religious instruction. (1)** The board may permit a pupil, with the written permission of the pupil's parent or guardian, to be absent from school for up to 180 minutes per week to obtain religious instruction outside the school during the required school period. The board shall determine periods allotted for the pupil to be absent from school for the purpose of religious instruction. Monthly, the supervisor of the religious instruction shall report the names of the pupils who attended such weekly religious instruction to the principal of the school that the pupil regularly attends. The board may withdraw permission to be absent from school if a pupil does not attend the religious instruction.

(2) The board is not responsible for transporting a pupil to or from religious instruction under sub. (1).

(3) The board is released from all liability for a pupil who is absent from school under sub. (1).

**History:** 1989 a. 267.

**119.22 Sex discrimination in physical education or physical training prohibited.** Except as provided in s. 120.13 (38) [s. 120.13 (37m)], courses in physical education or physical training may not discriminate on the basis of sex in the provision of necessary facilities, equipment, instruction or financial support, or the opportunity to participate in any physical education or training activity as provided in 20 USC 1681 et seq.

**NOTE:** The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

**History:** 1971 c. 219, 307, 336; 1973 c. 188; 1977 c. 284; 1979 c. 53; 1983 a. 36, 412; 2005 a. 346.

**119.23 Milwaukee parental choice program. (1)** In this section:

(a) "Membership" has the meaning given in s. 121.004 (5).

(b) "Summer average daily membership equivalent" has the meaning given in s. 121.004 (8).

(c) "Summer choice average daily membership equivalent" means the summer average daily membership equivalent of pupils who were attending a private school under this section on the 2nd Friday of January of the school term immediately preceding that summer or whose applications have been accepted under sub. (3) for attendance at the private school in the school term immediately following that summer.

(d) "Teacher" means a person who has primary responsibility for the academic instruction of pupils.

(2) (a) Subject to par. (b), any pupil in grades kindergarten to 12 who resides within the city may attend, at no charge, any private school located in the city if all of the following apply:

1. The pupil is a member of a family that has a total family income that does not exceed an amount equal to 1.75 times the poverty level determined in accordance with criteria established by the director of the federal office of management and budget. A pupil attending a private school under this section whose family income increases may continue to attend a private school under this section if the pupil is a member of a family that has a total family income that does not exceed an amount equal to 2.2 times the poverty level determined in accordance with criteria established by the director of the federal office of management and budget. For purposes of admission to a private school under this section, siblings of pupils attending a private school under this section are subject to the higher income limit. If a pupil attending a private school under this section ceases to attend a private school under this section, the lower income limit applies unless the pupil is a sibling of a pupil attending a private school under this section.

3. The private school notified the state superintendent of its intent to participate in the program under this section by February 1 of the previous school year. The notice shall specify the number of pupils participating in the program under this section for which the school has space.

4. The private school complies with 42 USC 2000d.

5. The private school meets all health and safety laws or codes that apply to public schools.

6. All of the private school's teachers have graduated from high school or been granted a declaration of equivalency of high school graduation.

7. The private school achieves accreditation by the Wisconsin North Central Association, the Wisconsin Religious and Independent Schools Accreditation, the Independent Schools Association of the Central States, the Archdiocese of Milwaukee, the Institute for the Transformation of Learning at Marquette University, or any other organization recognized by the National Council for Private School Accreditation, by December 31 of the 3rd school year following the first school year that begins after June 30, 2006, in which it participates in the program under this section, or the private school was approved for scholarship funding for the 2005–06 school year by Partners Advancing Values in Education.

(b) No more than 22,500 pupils, as counted under s. 121.004 (7), may attend private schools under this section. Whenever the state superintendent determines that the limit is reached, he or she shall issue an order prohibiting the participating private schools from accepting additional pupils until he or she determines that the number of pupils attending private schools under this section has fallen below the limit.

(3) (a) The pupil or the pupil's parent or guardian shall submit an application, on a form provided by the state superintendent, to the participating private school that the pupil wishes to attend. Within 60 days after receiving the application, the private school shall notify the applicant, in writing, whether the application has been accepted. The state superintendent shall ensure that the private school determines which pupils to accept on a random basis, except that the private school may give preference in accepting applications to siblings of pupils accepted on a random basis.

(b) If the private school rejects an applicant because it has too few available spaces, the pupil may transfer his or her application to a participating private school that has space available.

(4) (a) Annually, on or before October 15, a private school participating in the program under this section shall file with the department a report stating its summer average daily membership equivalent and its summer choice average daily membership equivalent for the purpose of sub. (4m).

(b) Upon receipt from the pupil's parent or guardian of proof of the pupil's enrollment in the private school during a school term, the state superintendent shall pay to the parent or guardian,

from the appropriation under s. 20.255 (2) (fu), an amount equal to the lesser of the following:

1. The amount equal to the private school's operating and debt service cost per pupil that is related to educational programming, as determined by the department.

2. The amount paid per pupil under this paragraph in the previous school year multiplied by the sum of 1.0 plus the percentage change from the previous school year to the current school year in the total amount appropriated under s. 20.255 (2) (ac) expressed as a decimal, but not less than zero.

(c) The state superintendent shall pay 25% of the total amount under par. (b) in September, 25% in November, 25% in February and 25% in May. The state superintendent may include the entire amount under sub. (4m) in one of those installments or apportion the entire amount among one or more of those installments. The department shall send the check to the private school. The parent or guardian shall restrictively endorse the check for the use of the private school.

(4m) In addition to the payment under sub. (4) the state superintendent shall pay to the parent or guardian of each pupil enrolled in a private school under this section, in the manner described in sub. (4) (c), an amount determined by multiplying 40% of the payment under sub. (4) by the quotient determined by dividing the summer choice average daily membership equivalent of the private school by the total number of pupils for whom payments are being made under sub. (4).

(5) The state superintendent shall ensure that pupils and parents and guardians of pupils who reside in the city are informed annually of the private schools participating in the program under this section.

(6) The board shall provide transportation to pupils attending a private school under this section if required under s. 121.54 and may claim transportation aid under s. 121.58 for pupils so transported.

(7) (a) Each private school participating in the program under this section shall meet at least one of the following standards:

1. At least 70% of the pupils in the program advance one grade level each year.

2. The private school's average attendance rate for the pupils in the program is at least 90%.

3. At least 80% of the pupils in the program demonstrate significant academic progress.

4. At least 70% of the families of pupils in the program meet parent involvement criteria established by the private school.

(am) Each private school participating in the program under this section is subject to uniform financial accounting standards established by the department. Annually by September 1 following a school year in which a private school participated in the program under this section, the private school shall submit to the department all of the following:

1. An independent financial audit of the private school conducted by a certified public accountant, accompanied by the auditor's statement that the report is free of material misstatements and fairly presents pupil costs under sub. (4) (b) 1. The audit under this subdivision shall be limited in scope to those records that are necessary for the department to make payments under subs. (4) and (4m).

2. Evidence of sound fiscal practices, as prescribed by the department by rule.

(c) A private school may not require a pupil attending the private school under this section to participate in any religious activity if the pupil's parent or guardian submits to the pupil's teacher or the private school's principal a written request that the pupil be exempt from such activities.

(d) By August 1 before the first school term of participation in the program, or by May 1 if the private school begins participating in the program during summer school, each private school partici-

pating in the program under this section shall submit to the department all of the following:

1. A copy of the school's current certificate of occupancy issued by the city. If the private school moves to a new location, the private school shall submit a copy of the new certificate of occupancy issued by the city to the department before the attendance of pupils at the new location and before the next succeeding date specified in s. 121.05 (1) (a). A temporary certificate of occupancy does not meet the requirement of this subdivision.

2. Evidence of financial viability, as prescribed by the department by rule.

3. Proof that the private school's administrator has participated in a fiscal management training program approved by the department.

(e) 1. Annually, each private school participating in the program under this section shall administer a nationally normed standardized test in reading, mathematics, and science to pupils attending the school under the program in the 4th, 8th, and 10th grades. The private school may administer additional standardized tests to such pupils. Beginning in 2006 and annually thereafter until 2011, the private school shall provide the scores of all standardized tests that it administers to the School Choice Demonstration Project.

2. The legislative audit bureau shall review and analyze the standardized test score data received from the School Choice Demonstration Project. Based on its review, in 2007 and annually thereafter until 2011, the bureau shall report to the legislature under s. 13.172 (2) the results of the standardized tests administered under subd. 1., the scores of a representative sample of pupils participating in the program on the tests under ss. 118.30 and 121.02 (1) (r), and the scores of a comparable group of pupils enrolled in the school district operating under this chapter on the tests under ss. 118.30 and 121.02 (1) (r).

(f) A private school that is neither accredited nor approved under sub. (2) (a) 7., and to which either of the following applies, shall apply for accreditation by December 31 of the school year in which it enters or reenters the program under this section:

1. The private school did not participate in the program under this section during the 2005–06 school year.

2. The private school participated in the program under this section during the 2005–06 school year but did not participate in the program during the 2006–07 school year.

(8) There is created a pupil assignment council composed of one representative from each private school participating in the program under this section. Annually by June 30, the council shall make recommendations to the participating private schools to achieve, to the extent possible, a balanced representation of pupils participating in the program under this section.

(9) If any accrediting agency specified under sub. (2) (a) 7. determines during the accrediting process that a private school does not meet all of the requirements under s. 118.165 (1), it shall report that failure to the department.

(10) (a) The state superintendent may issue an order barring a private school from participating in the program under this section in the current school year if the state superintendent determines that the private school has done any of the following:

1. Misrepresented information required under sub. (7) (d).

2. Failed to provide the notice required under sub. (2) (a) 3., or the information required under sub. (7) (am) or (d), by the date or within the period specified.

3. Failed to refund to the state any overpayment made under sub. (4) (b) or (4m) by the date specified by department rule.

4. Failed to meet at least one of the standards under sub. (7) (a) by the date specified by department rule.

(am) If the state superintendent determines that any of the following have occurred, he or she may issue an order barring the private school from participating in the program under this section in the following school year:

1. The private school has not complied with the requirement under sub. (7) (f).

2. The private school's application for accreditation has been denied by the accrediting organization.

3. The private school has not achieved accreditation within the period allowed under sub. (2) (a) 7.

(b) The state superintendent may issue an order immediately terminating a private school's participation in the program under this section if he or she determines that conditions at the private school present an imminent threat to the health or safety of pupils.

(c) Whenever the state superintendent issues an order under par. (a), (am), or (b), he or she shall immediately notify the parent or guardian of each pupil attending the private school under this section.

(d) The state superintendent may withhold payment from a parent or guardian under subs. (4) and (4m) if the private school attended by the child of the parent or guardian violates this section.

(11) The department shall promulgate rules to implement and administer this section.

**History:** 1989 a. 336; 1993 a. 16; 1995 a. 27 ss. 4002 to 4009, 9145 (1); 1995 a. 216; 1997 a. 27, 113; 1999 a. 9; 2001 a. 16, 105; 2003 a. 33, 155; 2005 a. 25, 125.

**Cross Reference:** See also ch. PI 35, Wis. adm. code.

This section is constitutional. Jackson v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602 (1998), 97–0270.

Although portions of the plaintiff's property were located in Milwaukee, the school itself was not when its buildings were not in the city and it was unable to obtain a certificate of occupancy from Milwaukee as required under sub. (7) (d). Without the requisite certificate on file, the plaintiff is ineligible to participate in the choice program under this section. Thomas More High School v. Burmaster, 2005 WI App 204, 287 Wis. 2d 220, 704 N.W.2d 349, 04–2511.

The Cleveland, Ohio school choice program, which provides tuition aid to parents who may use the money to pay tuition to private, religious schools, does not violate the establishment of religion clause of the 1st Amendment. When an aid program is neutral with respect to religion and provides assistance to a broad class of citizens who, in turn, direct the aid to religious schools through individual choice, the program is not subject to challenge. Zelman v. Simmons–Harris, 536 U.S. 639, 153 L. Ed. 2d 604, 122 S. Ct. 2460 (2002).

Milwaukee Parental Choice Program Upheld. Beard. 75 MLR 673 (1992).

The Constitutional Implications of School Choice. 1992 WLR 459.

Opening the Door to School Choice in Wisconsin. Is *Agosti v. Felton* the Key? Kimball. 81 MLR 843 (1998).

### 119.235 Contracts with private schools and agencies.

(1) The board may contract with any nonsectarian private school located in the city or any nonsectarian private agency located in the city to provide educational programs to pupils enrolled in the school district operating under this chapter. The board shall ensure that each private school or agency under contract with the board complies with ss. 118.125 and 118.13, 20 USC 1232g, 20 USC 1681 to 1688, 20 USC 3171 to 3197, 29 USC 794, 42 USC 2000d and 42 USC 6101 to 6107, and all health and safety laws and rules that apply to public schools.

(2) Each private school or agency under contract with the board shall do all of the following:

(a) Offer a full school year educational program.

(b) Participate in the board's parent information program.

(c) Offer diverse opportunities for parents to participate in the school's programs.

(d) Meet insurance and financial requirements established by the board.

(e) Develop a pupil recruitment and enrollment plan that incorporates all of the following:

1. A good faith effort to achieve racial balance.

2. A pupil selection process that gives preference to the siblings of enrolled pupils and that gives no other preferences except those approved by the board.

3. A statement describing how the plan will serve the needs of low–academic achievers and pupils from low–income families.

(f) Report to the board any information requested by the board.

(3) Any pupil enrolled in the school district operating under this chapter may attend, at no charge, any private school or agency with which the board has contracted under sub. (1) if space is available in the private school or agency.

(4) The board shall establish appropriate, quantifiable performance standards for pupils at each private school or agency with which it contracts in such areas as attendance, reading achievement, pupil retention, pupil promotion, parent surveys, credits earned and grade point average.

(5) Annually, the board shall monitor the performance of the program under this section. The board may use the results of standardized basic educational skills tests to do so. The board shall include a summary of its findings in its annual report to the state superintendent under s. 119.44.

**History:** 1995 a. 27.

**119.24 Admission of pupils.** A pupil may attend a school in an attendance district other than the one in which he or she resides with the written permission of the superintendent of schools. Beginning in the 2000–01 school year, the board shall provide spaces in each school for pupils who reside outside the attendance district for the school, but shall fill any unused spaces with pupils who reside in the attendance district. A pupil who attends a school may continue to attend that school until he or she graduates from the school and each sibling of that pupil shall be given priority over other pupils in the process of admission for that school.

**History:** 1985 a. 29; 1999 a. 9.

**119.25 Expulsion of pupils. (1)** The board may adopt a resolution, which is effective only during the school year in which it is adopted, authorizing any of the following to determine pupil expulsion from school under sub. (2) instead of using the procedure under s. 120.13 (1) (c):

- (a) An independent hearing panel appointed by the board.
- (b) An independent hearing officer appointed by the board.

(2) (a) During any school year in which a resolution adopted under sub. (1) is effective, the independent hearing officer or independent hearing panel appointed by the board:

1. May expel a pupil from school whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under s. 120.13 (1) (c) 1. or 2.

2. Shall commence proceedings under par. (b) and expel a pupil from school for not less than one year whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under s. 120.13 (1) (c) 2m.

(b) No administrator may be designated to participate in an expulsion hearing if he or she was involved in the incident that led to the expulsion proceeding. Prior to expelling a pupil, the hearing officer or panel shall hold a hearing. Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. The pupil and, if the pupil is a minor, the pupil's parent or guardian, may be represented at the hearing by counsel. The hearing officer or panel shall keep a full record of the hearing. The hearing officer or panel shall inform each party of the right to a complete record of the proceeding. Upon request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil's parent or guardian. Upon the ordering by the hearing officer or panel of the expulsion of a pupil, the school district shall mail a copy of the order to the board, the pupil and, if the pupil is a minor, the pupil's parent or guardian. A school board, hearing officer or panel may disclose the transcript to the parent or guardian of an adult pupil, if the adult pupil is a dependent of his or her parent or guardian under section 152 of the internal revenue code. Within 30 days after the date on which the order is issued, the board shall review the expulsion order and shall, upon review, approve, reverse or modify the order. The order of the hearing officer or panel shall be enforced while the board reviews the order. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the board's decision to the state superintendent. If the board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state

superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court for the county in which the school is located.

(c) Not less than 5 days' written notice of the hearing under par. (b) shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall include all of the information specified in s. 120.13 (1) (e) 4.

(d) 1. In this paragraph:

a. "Early reinstatement" means the reinstatement to school of an expelled pupil before the expiration of the term of expulsion specified in the pupil's expulsion order under par. (b).

b. "Early reinstatement condition" means a condition that a pupil is required to meet before he or she may be granted early reinstatement or a condition that a pupil is required to meet after his or her early reinstatement but before the expiration of the term of expulsion specified in the pupil's expulsion order under par. (b).

2. An independent hearing panel or independent hearing officer appointed by the board may specify one or more early reinstatement conditions in the expulsion order under par. (b) if the early reinstatement conditions are related to the reasons for the pupil's expulsion. Within 15 days after the date on which the expulsion order is issued, the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the determination regarding whether an early reinstatement condition specified in the expulsion order is related to the reasons for the pupil's expulsion to the board. The decision of the board regarding that determination is final and not subject to appeal.

3. If the superintendent of schools or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil's school, determines that a pupil has met the early reinstatement conditions that he or she is required to meet before he or she may be granted early reinstatement, the superintendent of schools or designee may grant the pupil early reinstatement. The determination of the superintendent of schools or designee is final.

4. If a pupil violates an early reinstatement condition that the pupil was required to meet after his or her early reinstatement but before the expiration of the term of expulsion, the superintendent of schools or a principal or teacher designated by the superintendent of schools may revoke the pupil's early reinstatement as provided in s. 120.13 (1) (h) 4.

5. Except as provided in subd. 6., if the pupil's early reinstatement is revoked under subd. 4., the pupil's expulsion shall continue to the expiration of the term specified in the expulsion order unless the pupil or, if the pupil is a minor, the pupil's parent or guardian and the board, independent hearing panel or independent hearing officer agree, in writing, to modify the expulsion order.

6. Within 5 school days after the revocation of a pupil's early reinstatement under subd. 4., the pupil or, if the pupil is a minor, the pupil's parent or guardian may request a conference with the superintendent of schools or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil's school. If a conference is requested, it shall be held within 5 school days following the request. If, after the conference, the superintendent of schools or his or her designee finds that the pupil did not violate an early reinstatement condition or that the revocation was inappropriate, the pupil shall be reinstated to school under the same reinstatement conditions as in the expulsion order and the early reinstatement revocation shall be expunged from the pupil's record. If the superintendent of schools or his or her designee finds that the pupil violated an early reinstatement condition and that the revocation was appropriate, he or she shall mail separate copies of the decision to the pupil and, if the pupil is a minor,

to the pupil's parent or guardian. The decision of the superintendent of schools or his or her designee is final.

**History:** 1987 a. 88; 1995 a. 27 s. 9145 (1); 1995 a. 32, 75, 235, 417; 1997 a. 27; 1999 a. 128, 186.

Having established the right to an education, the state may not withdraw the right on grounds of misconduct absent fundamentally fair procedures to determine if misconduct occurred. Attendance by the student at expulsion deliberations is not mandatory; all that is required is that the student have the opportunity to attend and present his or her case. *Remer v. Burlington Area School District*, 149 F. Supp. 2d 665 (2001).

**119.26 Partial annexation of school district.** When the city has annexed a portion of the territory of a school district and such annexation does not include the site of any school building of such school district, the school board of the district and the board may enter into an agreement to permit pupils residing in the annexed territory to continue to attend school in the school district, and the board shall pay tuition to the school district for the pupils in accordance with s. 121.78.

**History:** 1985 a. 29 s. 3202 (43).

**119.28 Special schools. (1)** The board shall establish and maintain such special schools for children with disabilities, as defined in s. 115.76 (5), as are required to accommodate pupils of school age desiring to attend school. The board shall prescribe the courses of study and the educational and other activities in special schools.

**(2)** The board may employ teachers to give instruction in homes or hospitals to pupils unable to attend special schools.

**(3)** The board may provide transportation for pupils attending special schools and provide school lunches for pupils under such terms as it determines.

**(4)** The superintendent of schools shall prescribe, with the approval of the committee on instruction, the periods of instruction at special schools subject to amendment, rejection or confirmation by the board.

**(5)** Any action under subs. (3) and (4) shall be subject to the direction of the state superintendent and the division for learning support, equity and advocacy in the department as provided by law.

**History:** 1973 c. 89; 1983 a. 27 s. 2200 (42); 1993 a. 335; 1995 a. 27; 1997 a. 27, 164.

**119.30 Trade schools. (1)** The board may establish, conduct and maintain one or more schools for the purpose of giving practical instruction in the useful trades and may purchase the proper machinery, tools and equipment and employ a sufficient number of teachers and other necessary employees in such schools. Such schools shall be known as senior trade schools and junior trade schools.

**(2)** Until otherwise determined by the board, only pupils who have completed the 8th grade in an accredited school whose graduates are eligible for admission to a high school in the city shall be admitted to the senior trade schools. Only pupils who have attained the age of 14 years or have completed at least 6 grades in elementary school shall be admitted to the junior trade schools.

**(3)** The board may require pupils in trade schools to pay the cost of all materials consumed in the course. In lieu of that requirement, the board may establish a fixed sum to be paid by each pupil in a course which shall be sufficient to cover the cost of materials to be consumed by the pupil in the course. The board may sell any articles made or manufactured in a trade school and determine the use of the proceeds from the sale.

**History:** 1973 c. 15; 1989 a. 290.

**119.32 Superintendent of schools; business manager.**

**(1)** The board shall elect by roll call vote at a regular meeting a superintendent of schools whenever that office becomes vacant. The superintendent of schools shall be a person of suitable learning and experience in the art of instruction and shall have practical familiarity with the most approved methods of organizing and conducting a system of schools.

**(2)** Under the direction of the board, the superintendent of schools shall have general supervision of:

(a) The public schools and the manner of conducting and grading such schools.

(b) The assistant superintendents, supervisors, educational department heads, professional assistants to the superintendent of schools, principals, vice principals and teachers in the city.

**(3)** Subject to confirmation by the board, the superintendent of schools shall appoint the deputy superintendent of schools, associate superintendent of schools, executive assistant to the superintendent of schools, assistant to the superintendent of schools, assistant superintendent, division director, department director and other supervisory or administrative employees designated by the board.

**(4)** The superintendent of schools shall be an advisory member of every committee of the board, except when an inquiry into his or her acts or an investigation of his or her official conduct is under consideration by such committee.

**(5)** The superintendent of schools shall assign all teachers and engage and assign substitute teachers at the per diem compensation fixed by the board.

**(6)** The superintendent of schools shall collect such statistics and information relating to schools and the population entitled to school privileges in the city as the board directs.

**(7)** Notwithstanding ss. 115.28 (7), 118.19 (1) and 121.02 (1) (a), the board may elect a superintendent of schools, and may employ a business manager, who are not licensed by the department.

**History:** 1989 a. 4; 1991 a. 10, 39, 189; 1993 a. 16, 58, 490, 492; 1995 a. 27 ss. 4013, 4014, 9145 (1); 1997 a. 27.

**119.36 Dismissal of superintendent of schools.** By a two-thirds vote of the members—elect and upon compliance with this section, the board may remove from office the superintendent of schools for a misdemeanor in office, incompetency or inattention to the duties of the office. Notice in writing of the charges against the accused and of the time and place of hearing and acting upon the charges shall be served upon the accused at least 5 days before the time of hearing and before any action is taken by the board on the charges. On demand, the accused or counsel for the accused shall be heard. Both the board and the accused may produce witnesses who shall be sworn by the board president and shall give testimony subject to the penalty for perjury.

**History:** 1991 a. 39, 189.

**119.40 Salary schedules. (1)** (a) Annually, the board shall establish a schedule of salaries for all classroom teachers, not including principals and vice principals, in the schools of the city.

(b) Annually, the board may establish one or more schedules of salaries for all its employees not covered under par. (a).

**(2)** All schedules of salaries annually fixed by the board shall be adopted for the same period and on the same year basis as the annual school budget is adopted by the board.

**119.42 Teacher tenure. (1)** In this section, “teacher” has the meaning given under s. 40.02 (55), but excludes the superintendent of schools, deputy superintendent of schools, associate superintendent of schools, executive assistant to the superintendent of schools, assistant to the superintendent of schools, assistant superintendent, division director and department director.

**(1m)** The appointment of a teacher in a 1st class city school district shall be probationary. After successful probation by completing 3 years of continuous service, the appointment shall be permanent during efficiency and good behavior. A teacher who has a permanent appointment shall not be discharged, except for cause upon written charges. After 10 days' written notice to the teacher of the charges and upon the teacher's written request, the charges shall be investigated, heard and determined by the board. The action of the board on the matter shall be final.

**(2)** Any teacher employed in a public school in territory annexed to the city, who at the time of the annexation possesses the qualifications required by law and by the rules of the board for probationary or permanent appointment to a teaching position in

the city, shall have the status of a regularly appointed teacher in the schools of the city and shall be entitled to all the rights and privileges of regularly appointed teachers in the city. Time spent in teaching in the annexed territory prior to annexation shall be credited to each such teacher as time spent in teaching in the city.

(3) This section does not apply after December 21, 1995. Any person whose employment is permanent under this section on December 21, 1995, shall retain all of the rights and privileges of such permanent employment after that date.

**History:** 1981 c. 96 s. 67; 1985 a. 225; 1989 a. 4; 1991 a. 39; 1993 a. 58; 1995 a. 111.

Teacher tenure laws are in derogation of the common law, creating a contract between the parties by operation of law, and therefore are to be strictly construed. The scope of the tenure created by the statute, or by school board rule enacted pursuant to statute, must be determined from the language of the section and cannot be broadened beyond the intent of the legislature. *Farley v. Milwaukee Board of School Directors*, 49 Wis. 2d 765, 183 N.W.2d 148 (1971).

A probationer gains permanent status upon completion of six semesters; the school board's letter, sent after the sixth semester stating the plaintiff would not be reappointed, was ineffective. *Bufkin v. Milwaukee Board of School Directors*, 179 Wis. 2d 228, 507 N.W.2d 571 (Ct. App. 1993).

**119.44 Board report.** (1) The board shall file its annual financial report with the city clerk and shall send a copy of the report to the state superintendent.

(2) Annually at such times as the department prescribes but on or before September 1, the board shall file a verified annual report with the department, on forms supplied by the department. The annual report shall contain all of the following:

(a) Prior school year attendance data, including all of the following categorized by school, grade, gender and ethnicity:

1. The number of children:

a. Attending a technical college under s. 118.15 (1) (b) or (cm).

b. Excused from school attendance under s. 118.15 (1) (c).

c. Provided each of the program or curriculum modifications under s. 118.15 (1) (d).

2. a. The number of pupils suspended, the number of suspensions and the total number of school days missed as a result of suspensions under s. 120.13 (1) (b).

b. The number of pupils expelled, the number of expulsions and the total number of school days missed as a result of expulsions under s. 120.13 (1) (c).

3. The number of pupils transferred by the school board to a different school in the same school district.

4. The high school graduation rate.

(b) Scores of the standardized reading tests administered to pupils during the prior school year under s. 121.02 (1) (r), categorized by school, gender and ethnicity.

(c) The information specified under s. 120.18 (1) (gm) and (i).

(d) The information specified under s. 120.18 (1) (a).

(3) Rules promulgated under s. 120.18 (3) apply to the information reported under sub. (2).

**History:** 1987 a. 333; 1989 a. 31, 290; 1993 a. 16, 223, 399, 491; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**119.46 Taxes for school operations fund.** (1) As part of the budget transmitted annually to the common council under s. 119.16 (8) (b), the board shall report the amount of money required for the ensuing school year to operate all public schools in the city under this chapter, to repair and keep in order school buildings and equipment, to make material improvements to school property and to purchase necessary additions to school sites. The common council shall levy and collect a tax upon all the property subject to taxation in the city, which shall be equal to the amount of money required by the board for the purposes set forth in this subsection, at the same time and in the same manner as other taxes are levied and collected. Such taxes shall be in addition to all other taxes which the city is authorized to levy. The taxes so levied and collected, any other funds provided by law and placed at the disposal of the city for the same purposes, and the

moneys deposited in the school operations fund under s. 119.60 (1), shall constitute the school operations fund.

(2) If moneys specified in s. 119.60 (1) are deposited in the school operations fund, the moneys shall be used to pay the principal due on any bonds issued under s. 66.1333 (5r) (b), to make sinking fund payments with respect to such bonds, to purchase or redeem such bonds, to pay any redemption premium required to be paid when such bonds are redeemed prior to maturity, or to establish a defeasance escrow account for such bonds in an amount sufficient to provide for the payment of principal, any redemption premium and interest on such bonds when due, whether at maturity or upon prior redemption, and to pay any fees or expenses associated with the establishment of the defeasance escrow account.

**History:** 1975 c. 353; 1993 a. 437; 1995 a. 27; 2005 a. 453.

**119.47 Taxes for school extension fund.** (1) If activities are being conducted under s. 119.70 (1), the board as part of the budget transmitted annually to the common council under s. 119.16 (8) (b) shall specify the amount of money required for the ensuing school year under s. 119.70 (3). The taxes so levied and collected shall constitute the school extension fund.

(2) The board may receive and expend, in addition to the tax levied and collected under s. 119.70 (3), any sums of money appropriated by the common council of the city for community services. The common council may appropriate from the city general fund or a similar fund to the school district such sums of money as the common council deems expedient.

**History:** 1971 c. 211 s. 126; 1975 c. 353; 1985 a. 225 ss. 60, 61, 77.

**119.48 Taxes for school construction fund.** (1) If the board adopts a resolution by a two-thirds vote of the members—elect to provide funds, in addition to receipts from the sale of bonds, to purchase school sites, to construct school buildings and additions thereto or to remodel existing buildings, the board may include, as part of the budget transmitted to the common council under s. 119.16 (8) (b), a communication stating the amount of funds needed for such purposes. Upon receipt of the communication, the common council shall levy and collect a tax upon all property subject to taxation in the city, which shall be equal to the amount of money required by the board for the purposes set forth in the communication, at the same time and in the same manner as other taxes are levied and collected. Such taxes shall be in addition to all other taxes which the city is authorized to levy. The taxes so levied and collected and the moneys under s. 119.60 (1) that are deposited in the school construction fund shall constitute the school construction fund. If moneys under s. 119.60 (1) are deposited in the school construction fund, the moneys shall be used for the purchase of real property for school purposes. The board may allow the school construction fund to accumulate from year to year.

(2) The common council shall have the following options on the board's communication under sub. (1):

(a) To levy and collect a tax equal to the amount of money specified by the board under sub. (1).

(b) To levy and collect a tax to realize part of the money so specified and to provide the remainder thereof from the permanent improvement fund of the city.

(c) To decline to levy and collect a school construction fund tax and to provide the entire amount of money so specified from the permanent improvement fund.

(3) (a) The school construction fund taxes in any one year shall not exceed the levy rate specified in s. 65.07 (1) (f), unless the decision to exceed the levy rate specified in s. 65.07 (1) (f) is approved through the voter referendum procedure specified in sub. (4). Any such approval is applicable only for one year.

(b) The school construction fund tax levy shall be reduced in any year only by the amount which the common council in such year provides from the permanent improvement fund of the city.

(4) (a) If the board deems it necessary to exceed the levy rate specified under s. 65.07 (1) (f), it may by a two-thirds vote of the members—elect include a communication to the common council as part of the budget transmitted to the common council under s. 119.16 (8) (b).

(b) The communication shall state the purposes for which the funds from the increase in the levy rate will be used and shall request the common council to submit to the voters of the city the question of exceeding the levy rate specified in s. 65.07 (1) (f) at the September election or a special election.

(c) Upon receipt of the communication, the common council shall file the communication as provided in s. 8.37 and shall cause the question of exceeding the levy rate specified under s. 65.07 (1) (f) to be submitted to the voters of the city at the September election or at a special election. The question of exceeding the levy rate specified under s. 65.07 (1) (f) shall be submitted so that the vote upon exceeding the levy rate specified in s. 65.07 (1) (f) is taken separately from any other question submitted to the voters. If a majority of the electors voting on the question favors exceeding the levy rate specified under s. 65.07 (1) (f), the common council shall approve the increase in the levy rate and shall levy and collect a tax equal to the amount of money approved by the electors.

**History:** 1987 a. 27; 1999 a. 182; 2005 a. 453.

**119.485 Taxes for state trust fund loans. (1)** If the board is awarded a state trust fund loan under subch. II of ch. 24, the board shall include in its budget transmitted to the common council under s. 119.16 (8) (b) a written notice specifying the amount of money necessary to pay the principal and interest on the loan as they become due. The common council shall levy and collect a tax upon all property subject to taxation in the city, at the same time and in the same manner as other taxes are levied and collected, equal to the amount of money required to make such payments. The taxes are in addition to all other taxes that the city is authorized to levy.

(2) Annually by December 31, the board shall transfer to the city an amount which, when added to the interest that will accrue on the amount, is sufficient to meet the anticipated costs of debt service on the loan in the ensuing year.

**History:** 1997 a. 27.

**119.49 Bond issues. (1)** (a) If the board deems it necessary to construct buildings or additions to buildings, to remodel buildings or to purchase school sites or to provide funds for any such purpose as a participant in a contract under s. 120.25, it may by a two-thirds vote of the members—elect send a communication to the common council of the city.

(b) The communication shall state the amount of funds needed under par. (a) and the purposes for which the funds will be used and shall request the common council to submit to the voters of the city at the next election held in the city the question of issuing school bonds in the amount and for the purposes stated in the communication.

(2) Upon receipt of the communication, the common council shall file the communication as provided in s. 8.37 and shall cause the question of issuing such school bonds in the stated amount and for the stated school purposes to be submitted to the voters of the city at the next election held in the city. The question of issuing such school bonds shall be submitted so that the vote upon issuing such school bonds is taken separately from any other question submitted to the voters. If a majority of the electors voting on the school bond question favors issuing such school bonds, the common council shall cause the school bonds to be issued immediately or within the period permitted by law, in the amount requested by the board and in the manner other bonds are issued.

(3) The proper city officials shall sell or dispose of the bonds in the same manner as other bonds are disposed of. The entire proceeds of the sale of the bonds shall be placed in the city treasury, subject to the order of the board for the purposes named in the

communication under sub. (1). Such school bonds shall be payable within 20 years from the date of their issue.

(4) The common council shall levy and collect a tax upon all taxable property in the city, in the same manner and at the same time as other taxes are levied and collected, which shall be sufficient to pay the interest on all school bonds issued under this chapter which are outstanding and to pay such part of the principal of such school bonds as becomes due during the ensuing school year.

(5) The sum of the amount of such school bonds outstanding and the amount of notes under s. 119.498 outstanding at any time shall not be greater than 2% of the total value of all taxable property in the city as certified under s. 121.06 (2). The tax levied to pay the interest and principal on such school bonds shall be in addition to the tax levied for general purposes upon all the taxable property of the city. The limit under s. 67.03 (1) (a) does not apply to bonds under this section.

**History:** 1973 c. 92, 172; 1975 c. 353; 1977 c. 418; 1989 a. 290; 1999 a. 150 s. 672; 1999 a. 182; 2003 a. 43.

**119.495 Borrowing on promissory notes; 1989 to 1993. (1)** Between July 1, 1989, and the first Monday in August, 1993, upon adopting a resolution by a two-thirds vote of the members elect, the board may direct the common council to issue promissory notes under s. 67.12 (12) for the purpose of providing additional classroom space to accommodate anticipated school enrollments.

(2) The board shall include in its budget transmitted to the common council under s. 119.16 (8) (b) a written notice specifying the amount of borrowing to be authorized in the budget for the ensuing year. The common council shall issue the notes and levy a direct annual irrevocable tax sufficient to pay the principal and interest on the notes as they become due. The common council may issue the notes by private sale. The common council shall make every effort to involve a minority investment firm certified under s. 560.036 as managing underwriter of the notes or to engage a minority financial adviser certified under s. 560.036 to advise the city regarding any public sale of the notes.

(3) The common council may not issue a note under this section or sell a note issued under this section after June 30, 1994. The total amount of notes issued under this section may not exceed \$27,500,000.

(4) The board may enter into a contract in anticipation of the sale of the notes on the same basis upon which a 1st class city may contract in anticipation of the sale of bonds under s. 67.10 (6).

(5) The city's budgetary authorization for borrowing in 1989 is increased by \$10,000,000 for the purpose of this section.

**History:** 1989 a. 31; 1991 a. 314.

**119.496 Borrowing on promissory notes; 1992 to 1995. (1)** Subject to sub. (6), between June 1, 1992, and June 30, 1995, upon adopting a resolution by a two-thirds vote of the members elect and receipt of written approval by the mayor of the city, the board may direct the common council to issue promissory notes under s. 67.12 (12) for the purpose of providing additional classroom space to accommodate anticipated school enrollments and for educational programming.

(2) The board shall include in its budget transmitted to the common council under s. 119.16 (8) (b) a written notice specifying the amount of borrowing to be authorized in the budget for the ensuing year. The common council shall issue the notes and levy a direct annual irrevocable tax sufficient to pay the principal and interest on the notes as they become due. The common council may issue the notes by private sale. The common council shall establish goals of involving minority investment firms certified under s. 560.036 as managing underwriters for at least 50% of the total amount financed by the notes and of engaging a minority financial adviser certified under s. 560.036 to advise the city regarding any public sale of the notes.

(3) The common council may not issue a note under this section or sell a note issued under this section after June 30, 1995.

The total amount of notes issued under this section may not exceed \$35,000,000.

(4) The board may enter into a contract in anticipation of the sale of the notes on the same basis upon which a 1st class city may contract in anticipation of the sale of bonds under s. 67.10 (6).

(5) The city's budgetary authorization for borrowing in 1992 is increased by \$8,000,000 for the purpose of this section.

(6) The board may not direct the common council to issue promissory notes under this section unless all of the following occur:

(a) The board adopts a resolution declaring its intention to comply with s. 119.497, 1995 stats., and notifies the secretary of administration of its action.

(b) The board adopts a resolution declaring its intention, beginning in 1992 and annually thereafter until all notes issued under this section are repaid, to include as part of its budget transmitted to the common council under s. 119.16 (8) (b) a communication under s. 119.48 stating an amount needed for a school construction fund that is sufficient to require the common council to levy 0.6 mills on each dollar of the assessed valuation of all taxable property in the city, and notifies the secretary of administration of its action.

**History:** 1991 a. 314; 1997 a. 113.

**119.498 Promissory notes; unfunded prior service liability contributions.** (1) Subject to s. 119.499 (1), the board may adopt a resolution requesting the common council of the city to authorize the issuance of promissory notes under s. 67.12 (12) for school purposes consisting of paying unfunded prior service liability contributions under the Wisconsin Retirement System.

(2) If the board adopts a resolution under sub. (1) and the city issues the notes, annually the board shall include in its budget transmitted to the common council under s. 119.16 (8) (b) an amount sufficient to pay the principal of and interest and redemption premium on the notes as they become due. The common council may authorize the issuance of the notes at public or private sale.

(3) The sum of the amount of notes under this section that are outstanding and the amount of bonds under s. 119.49 that are outstanding at any time may not exceed 2% of the total value of all taxable property in the city as certified under s. 121.06 (2). The limit under s. 67.03 (1) (a) does not apply to notes under this section.

(4) The city's budgetary authorization for borrowing in 2003 is increased by \$200,000,000 for the purposes of this section, and notes in that amount may be omitted from the city's 2003 budget.

**History:** 1995 a. 358; 2003 a. 43.

**119.499 Borrowing; unfunded prior service liability.**

(1) The board may not request the redevelopment authority of the city to issue bonds under s. 66.1333 (5s) or adopt a resolution under s. 119.498 (1) unless it develops information on both options and chooses the option that is in the best public interest.

(1m) If the redevelopment authority of the city issues bonds under s. 66.1333 (5s), the board may borrow money from the redevelopment authority to pay unfunded prior service liability contributions under the Wisconsin Retirement System for the board. If the board borrows money from the redevelopment authority of the city to make such payments, it may use any school district revenues, including state aid, to repay the loan.

(2) (a) If the board decides to use school district revenues to repay the loan, it may request the city to remit designated revenues of the school district to the redevelopment authority of the city at such times and in such amounts as the board determines. The city may agree to the request, which is irrevocable while any amount due under the loan remains outstanding.

(b) If the board decides to use state aid to repay the loan, it may request the department to remit the aid to the redevelopment authority of the city in an annual amount agreed to by the board

and the department, and the department shall ensure that the aid remittance does not affect the amount determined to be received by the board as state aid under s. 121.08 for any other purpose.

**History:** 2003 a. 43.

**119.50 Disbursement of moneys.** (1) All moneys received by or raised in the city for school district purposes shall be paid over to the city treasurer. Such moneys shall be disbursed by the city treasurer on the written order of the superintendent of schools, countersigned by the auditing officer of the city.

(2) The board shall provide by resolution for the manner in which the payroll shall be certified, audited, approved and paid.

(3) The superintendent of schools shall keep separate accounts of all money raised and apportioned for 1st class city school district purposes. The money shall be disbursed in accordance with this section and s. 66.0607 (5) and shall be paid from the proper funds.

**History:** 1971 c. 291; 1985 a. 225 s. 72; 1991 a. 39; 1993 a. 59; 1999 a. 150 s. 672.

One who deals with a municipality does so at his or her own risk and may be subject to any provisions of law that might prevent him or her from being paid by a municipality even though the services were rendered. Unless the power to bind the municipality financially has been specifically delegated, the only entity with the statutory authority to contract is the municipality. The statutes do not authorize anyone other than the board to enter into contracts. The board may delegate that authority, but it must do so clearly and specifically. For an MPS employee to have such power, it must be specifically delegated by the board to that employee or class of employees. *Holzbauer v. Safway Steel Products, Inc.* 2005 WI App 240, 288 Wis. 2d 250, 708 N.W.2d 36, 04–2058.

**119.55 Youth service centers, truancy abatement and burglary suppression.** (1) (a) The board shall establish one or more youth service centers for the counseling of children who are taken into custody under s. 938.19 (1) (d) 10. for being absent from school without an acceptable excuse under s. 118.15. The board shall contract with the boys and girls clubs of Greater Milwaukee for the operation of the centers.

(b) The board shall establish 2 youth service centers under par. (a).

(2) The board shall pay the city a sum sufficient to pay the costs of salaries and fringe benefits of 4 law enforcement officers to work on truancy abatement and burglary suppression on a full-time basis.

**History:** 1995 a. 27 ss. 4017t, 4017u, 7299m; 1997 a. 35, 113.

**119.60 Real property.** (1) If any real property within the city which is used for school purposes is sold, the board shall determine whether the proceeds of the sale are deposited in the school operations fund under s. 119.46 or are deposited in the school construction fund under s. 119.48.

(2) City-owned property used for school purposes shall be sold by the city upon written request of the board if the common council adopts a resolution approving the sale. If, within 12 months after a written request by the board, the city has not disposed of the property, has failed to obtain a written agreement to dispose of the property or has not provided the board with a written report giving specific reasons, which are not identified by the city attorney as constituting a conflict of interest, for its failure to dispose of the property or to obtain an agreement to dispose of the property, the board may retain a real estate agent to represent the board in its real estate transactions.

(3) The board's authority to retain a real estate agent under sub. (2) is limited to the actual sale of property. The board may compensate the real estate agent for his or her services only on the basis of a commission for specific property sold, and no property taxes may be levied for the purpose of providing funds to pay such commissions.

(4) The city is not liable for any action of the board or its real estate agent in the sale of property under this section.

**History:** 1983 a. 224; 2005 a. 453.

**119.66 Interest in contracts forbidden.** During the term for which elected or appointed and for 2 years after the expiration of the term, no member of the board may be employed by the board or by the department of employee trust funds in any capacity

for which a salary or emolument is provided by the board or the department of employee trust funds. No board member, superintendent of schools, assistant superintendent, other assistant, teacher or other employee of the board may have any interest in the purchase or sale of property by the city for the use or convenience of the schools. No contract made in violation of this section is valid. Any consideration paid by the city for a purchase or sale prohibited by this section may be recovered in an action at law in the name of the city. Any person violating this section shall be removed from any position held under this chapter.

**History:** 1981 c. 96; 1991 a. 39.

**119.68 Claims against the city or board. (1)** All claims against the city or board shall be audited for sufficiency of funds by the auditing officer of the city. The superintendent of schools shall furnish the auditing officer of the city a complete list of the claims. Before a warrant is issued therefor, the auditing officer of the city shall countersign it. Within 20 days after each regular or special meeting of the board, the superintendent of schools shall make and file with the auditing officer of the city statements of the condition of the funds for the support of the schools and of the financial transactions of the board during the period next preceding any such statement.

**(2)** No action may be brought or maintained against the school upon a claim or cause of action unless the claimant complies with s. 893.80. This subsection does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

**History:** 1971 c. 40, 291; 1977 c. 285; 1979 c. 323 s. 33; 1991 a. 39; 1993 a. 59; 1995 a. 158; 1997 a. 27.

The Milwaukee Public Schools are not a suable entity. That a complaint should have named the Milwaukee Board of School Directors or City of Milwaukee as defendant did not require dismissal. Amendment to name and serve the appropriate defendant was allowed. *Kleckley v. Milwaukee Public Schools*, 20 F Supp. 2d 1264 (1998).

**119.70 Use of school buildings and grounds for civic purposes. (1)** The board may establish and maintain for children and adults, in the school buildings and on the school grounds, evening schools, vacation schools, reading rooms, library stations, debating clubs, gymnasiums, public playgrounds, public baths and similar activities and accommodations to be determined by the board. The board may cooperate, by agreement, with other commissions or boards having the custody and management of public parks, libraries, museums and public buildings and grounds of whatever sort to provide the equipment, supervision, instruction and oversight necessary to carry on such public educational and recreational activities in and upon such other buildings and grounds.

**(3)** The board shall report to the common council on or before the first Monday in August of each year the amount of money required during the ensuing school year for the support of activities under sub. (1). The common council shall levy and collect a special tax in the manner that other taxes are levied and collected, equal to the amount of money so required for the activities. The tax shall not be used or appropriated, directly or indirectly, for any other purpose.

**(4)** All moneys received by or raised in the school district for the activities under sub. (1) shall be paid to the city treasurer, to be disbursed in the manner that other school district funds are disbursed.

**(5)** Nothing in this section prohibits the board from granting the use of school property to religious organizations under s. 120.13 (17).

**History:** 1971 c. 152 s. 31; 1973 c. 290; 1975 c. 353; 1983 a. 339 s. 10; 1985 a. 225 ss. 74, 75, 78; Stats. 1985 s. 119.70; 1989 a. 192, 290.

**119.71 Five-year-old kindergarten programs. (1)** In this section, “full-day” has the meaning given in s. 121.004 (7) (c) 2.

**(3)** (a) Annually, the board shall spend at least \$5,090,000 to expand its half-day 5-year-old kindergarten program to a full-day program, as provided under par. (b), and shall enroll in the expanded program only pupils who meet the income eligibility

standards for a free lunch under 42 USC 1758 (b). The board shall select pupils for the expanded program based on the order in which the pupils register for the program.

**(b)** The board shall use the funds specified under par. (a) to pay the costs of teachers, aides and other support staff, transportation of staff to pupils’ homes, in-service programs, parental involvement programs and instructional materials. The board may not use the funds to provide facilities to house the program or to pay pupil transportation or indirect administrative costs associated with the program.

**History:** 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

**119.73 Kindergarten programs.** The board shall evaluate the effectiveness of the expanded 5-year-old kindergarten programs under s. 119.71 in meeting the needs of disadvantaged children. Annually by January 1, the board shall submit a report summarizing its findings to the state superintendent and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

**History:** 1987 a. 399; 1989 a. 56 s. 259; 1995 a. 27 s. 9145 (1); 1997 a. 27, 113; 2003 a. 33.

**119.74 Extended-day elementary grade, 4-year-old kindergarten and alcohol and other drug abuse programs.** The board shall spend at least \$430,000 for the following programs in each school year:

**(1)** Extended-day preschool to grade 6 programs.

**(2)** Four-year-old kindergarten programs.

**(3)** Alcohol and other drug abuse programs at 68th Street school.

**History:** 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

**119.75 First grade programs. (1)** The board shall provide expanded educational opportunities for first grade pupils who have participated in an expanded 5-year-old kindergarten program under s. 119.71.

**(2)** Annually, the board shall spend at least \$1,070,000 to pay the costs of teachers, aides and other support staff, transportation of staff to pupils’ homes, in-service programs, parental involvement programs and instructional materials related to the programs under sub. (1). The board may not use the funds to provide facilities to house the programs under sub. (1) or to pay pupil transportation or indirect administrative costs associated with the programs under sub. (1).

**History:** 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

**119.78 Family resource center.** The board shall establish a family resource center to distribute parent education materials, conduct workshops on child development, facilitate communication between school personnel and parents of pupils enrolled in the school district and provide volunteer opportunities for parents within the schools.

**History:** 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

**119.82 Alternative educational programs for learnfare pupils. (1m)** Upon the request of the child or the child’s parent or guardian, the board shall provide an alternative educational program for any child who resides in the city and satisfies all of the following:

(a) Is at least 13 years of age but not more than 18 years of age.

(b) Is receiving aid to families with dependent children under s. 49.19 or is a member of a Wisconsin works group, as defined in s. 49.141 (1) (s), with a member who is participating in Wisconsin works under s. 49.147 (3) to (5).

(c) Has been or is being sanctioned under s. 49.26 (1) (h) or is subject to the monthly attendance requirement under s. DWD 11.195 (4) (b) 2., Wis. Adm. Code.

**NOTE:** Section DWD 11.195 (4) (b) 2., Wis. Adm. Code was repealed eff. 4-1-02.

**(2m)** Programs under sub. (1m) shall be designed to meet the high school graduation requirements under s. 118.33.

**History:** 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 4021, 9145 (1); 1995 a. 289; 1997 a. 27; 1999 a. 9; 2001 a. 104; 2003 a. 33.