

## CHAPTER 118

## GENERAL SCHOOL OPERATIONS

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

**118.001 Duties and powers of school boards; construction of statutes.** The statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state.

**History:** 1995 a. 27.

This section expresses the legislature's intent to give school boards broader powers and wide discretion in exercising those powers, but does not mean that, when the legislature had previously authorized the board to take particular actions using specified procedures the board has the authority to follow other procedures in taking those particular actions. *Madison Metropolitan School District v. Burmaster*, 2006 WI App 17, 288 Wis. 2d 771, 709 N.W.2d 73, 05-0875.

The duties and powers under ss. 118.001, 120.12 (14), and 120.13 extend to individual teachers as employees of the school board. It would be absurd to require teachers to obtain special permission from the school board with respect to every detail of their teaching. Summer homework, particularly for an honors class for which students receive additional credit, fits comfortably within the range of what is reasonable and is not unconstitutional. *Larson v. Burmaster*, 2006 WI App 142, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_, 05-1433.

**118.01 Educational goals and expectations. (1) PURPOSE.** Public education is a fundamental responsibility of the state. The constitution vests in the state superintendent the supervision of public instruction and directs the legislature to provide for the establishment of district schools. The effective operation of the public schools is dependent upon a common understanding of what public schools should be and do. Establishing such goals and expectations is a necessary and proper complement to the state's financial contribution to education. Each school board should provide curriculum, course requirements and instruction consistent with the goals and expectations established under sub. (2). Parents and guardians of pupils enrolled in the school district

share with the state and school board the responsibility for pupils meeting the goals and expectations under sub. (2).

**(2) EDUCATIONAL GOALS.** (a) *Academic skills and knowledge.* Since the development of academic skills and knowledge is the most important goal for schools, each school board shall provide an instructional program designed to give pupils:

1. Basic skills, including the ability to read, write, spell, perform basic arithmetical calculations, learn by reading and listening and communicate by writing and speaking.

2. Analytical skills, including the ability to think rationally, solve problems, use various learning methods, gather and analyze information, make critical and independent judgments and argue persuasively.

3. A basic body of knowledge that includes information and concepts in literature, fine arts, mathematics, natural sciences, including knowledge of the elements of agriculture and the conservation of natural resources, and social sciences, including knowledge of the rights and responsibilities of the family as a consumer, cooperative marketing and consumers' cooperatives.

4. The skills and attitudes that will further lifelong intellectual activity and learning.

5. Knowledge in computer science, including problem solving, computer applications and the social impact of computers.

(b) *Vocational skills.* Each school board shall provide an instructional program designed to give pupils:

1. An understanding of the range and nature of available occupations and the required skills and abilities.

2. Preparation to compete for entry level jobs not requiring postsecondary school education.

3. Preparation to enter job-specific vocational training programs.

4. Positive work attitudes and habits.

(c) *Citizenship.* Each school board shall provide an instructional program designed to give pupils:

1. An understanding of the basic workings of all levels of government, including the duties and responsibilities of citizenship.

2. A commitment to the basic values of our government, including by appropriate instruction and ceremony the proper reverence and respect for and the history and meaning of the American flag, the Declaration of Independence, the U.S. constitution and the constitution and laws of this state.

3. The skills to participate in political life.

4. An understanding of the function of organizations in society.

5. Knowledge of the role and importance of biological and physical resources.

6. Knowledge of state, national and world history.

7. An appreciation and understanding of different value systems and cultures.

8. At all grade levels, an understanding of human relations, particularly with regard to American Indians, Black Americans and Hispanics.

(d) *Personal development.* Each school board shall provide an instructional program designed to give pupils:

1. The skills needed to cope with social change.

2. Knowledge of the human body and the means to maintain lifelong health, including:

a. Knowledge of the theory and practice of physical education, including the development and maintenance of physical fitness;

b. Knowledge of the true and comparative vitamin content of food and food and health values of dairy products and their importance for the human diet; and

c. Knowledge of physiology and hygiene, sanitation, the effects of controlled substances under ch. 961 and alcohol upon the human system, symptoms of disease and the proper care of the body. No pupil may be required to take instruction in these subjects if his or her parent files with the teacher a written objection thereto. If a pupil does not take instruction in these subjects as a result of parental objection, the pupil may not be required to be examined in the subjects and may not be penalized in any way for not taking such instruction, but if the subjects receive credit toward graduation, the school board may require the pupil to complete an alternative assignment that is similar to the subjects in the length of time necessary to complete. Instruction in physiology and hygiene shall include instruction on sexually transmitted diseases and shall be offered in every high school.

3. An appreciation of artistic and creative expression and the capacity for self-expression.

4. The ability to construct personal ethics and goals.

5. Knowledge of morality and the individual's responsibility as a social being, including the responsibility and morality of family living and the value of frugality and other basic qualities and principles referred to in [article I, section 22, of the constitution](#) insofar as such qualities and principles affect family and consumer education.

6. Knowledge of the prevention of accidents and promotion of safety on the public highways, including instruction on the relationship between highway safety and the use of alcohol and controlled substances under ch. 961.

7. The skills needed to make sound decisions, knowledge of the conditions which may cause and the signs of suicidal tendencies, knowledge of the relationship between youth suicide and the use of alcohol and controlled substances under ch. 961 and knowledge of the available community youth suicide prevention and intervention services. Instruction shall be designed to help pre-

vent suicides by pupils by promoting the positive emotional development of pupils.

8. Knowledge of effective means by which pupils may recognize, avoid, prevent and halt physically or psychologically intrusive or abusive situations which may be harmful to pupils, including child abuse, sexual abuse and child enticement. Instruction shall be designed to help pupils develop positive psychological, emotional and problem-solving responses to such situations and avoid relying on negative, fearful or solely reactive methods of dealing with such situations. Instruction shall include information on available school and community prevention and intervention assistance or services and shall be provided to pupils in elementary schools.

**History:** 1983 a. 412; 1985 a. 29, 213; 1989 a. 31; 1995 a. 27, 229, 448; 1997 a. 27, 35.

**118.015 Reading instruction. (1) PURPOSE AND INTENT.** It is the purpose and intent of this section to provide for a developmental reading program for pupils at all grade levels.

**(2) EMPLOYMENT OF READING SPECIALISTS.** Each school district shall employ a reading specialist certified by the department to develop and coordinate a comprehensive reading curriculum in grades kindergarten to 12. At the discretion of the state superintendent, a school district may contract with other school districts or cooperative educational service agencies to employ a certified reading specialist on a cooperative basis.

**(3) DUTIES OF READING SPECIALIST.** The reading specialist shall:

(a) Develop and implement a reading curriculum in grades kindergarten to 12.

(b) Act as a resource person to classroom teachers to implement the reading curriculum.

(c) Work with administrators to support and implement the reading curriculum.

(d) Conduct an annual evaluation of the reading curriculum.

(e) Coordinate the reading curriculum with other reading programs and other support services within the school district.

**(4) SCHOOL BOARD DUTIES.** The school board shall:

(a) Develop a program of reading goals for the district for grades kindergarten to 12.

(b) Make an assessment of existing reading needs in grades kindergarten to 12 in the district based on the reading goals established under par. (a).

(c) Make an annual evaluation of the reading curriculum of the school district.

**History:** 1977 c. 29; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**118.017 Foreign language instruction. (1)** All instruction shall be in the English language, except:

(a) Those programs established under subch. VII of ch. 115 where instruction shall be in the English language and in the non-English language of the bilingual-bicultural education program.

(b) The school board may cause any foreign language to be taught to pupils who desire it.

(c) The school board may cause any course to be taught in a foreign language if the purpose is to facilitate the instruction of English speaking pupils in that language.

**(2)** A school board may grant foreign language credit to a pupil who has satisfactorily completed a high school course in American sign language.

**History:** 1983 a. 412 ss. 4, 5; Stats. 1983 s. 118.017; 1989 a. 280.

**118.019 Human growth and development instruction.**

**(1) PURPOSE.** The purpose of this section is to encourage all school boards to make available to pupils instruction in topics related to human growth and development in order to promote accurate and comprehensive knowledge in this area and responsible decision making and to support and enhance the efforts of parents to provide moral guidance to their children.

**(2) SUBJECTS.** A school board may provide an instructional program in human growth and development in grades kindergarten to 12. If provided, the program shall offer information and instruction appropriate to each grade level and the age and level of maturity of the pupils. Except as provided in sub. (2m), the program may include instruction in any of the following areas:

- (a) Self-esteem, responsible decision making and personal responsibility.
- (b) Interpersonal relationships.
- (c) Discouragement of adolescent sexual activity.
- (d) Family life and skills required of a parent.
- (e) Human sexuality; reproduction; family planning, as defined in s. 253.07 (1) (a), including natural family planning; human immunodeficiency virus and acquired immunodeficiency syndrome; prenatal development; childbirth; adoption; available prenatal and postnatal support; and male and female responsibility.
- (f) Sex stereotypes and protective behavior.

**(2m) REQUIRED SUBJECTS.** (a) If a school board provides instruction in any of the areas under sub. (2) (e), the school board shall ensure that instruction in marriage and parental responsibility is provided in the same course, during the same school year, as the area under sub. (2) (e).

(b) The school board shall ensure that instruction related to the areas under sub. (2) (e) does all of the following:

1. Presents abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried pupils.
2. Emphasizes that abstinence from sexual activity before marriage is the most effective way to prevent pregnancy and sexually transmitted diseases, including human immunodeficiency virus and acquired immunodeficiency syndrome.

**(3) DISTRIBUTION OF CURRICULUM TO PARENTS.** Each school board that provides an instructional program in human growth and development shall annually provide the parents of each pupil enrolled in the school district with an outline of the human growth and development curriculum used in the pupil's grade level and information regarding how the parent may inspect the complete curriculum and instructional materials. The school board shall make the complete human growth and development curriculum and all instructional materials available upon request for inspection at any time, including prior to their use in the classroom.

**(4) EXEMPTION FOR INDIVIDUAL PUPILS.** No pupil may be required to take instruction in human growth and development or in the specific subjects under sub. (2) if the pupil's parent files with the teacher or school principal a written request that the pupil be exempted.

**(5) ADVISORY COMMITTEE.** In any school district that offers a human growth and development curriculum, the school board shall appoint an advisory committee composed of parents, teachers, school administrators, pupils, health care professionals, members of the clergy and other residents of the school district. The advisory committee shall develop the human growth and development curriculum and advise the school board on the design, review and implementation of the advisory committee's human growth and development curriculum. The advisory committee shall review the curriculum at least every 3 years.

**History:** 1985 a. 56; 1987 a. 399; 1989 a. 203; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2005 a. 341, 445.

**118.02 Special observance days.** On the following days when school is held or, if the day falls on a Saturday or Sunday, on a school day immediately preceding or following the respective day, the day shall be appropriately observed:

- (1) January 15, Dr. Martin Luther King, Jr. Day.
- (2) February 12, Abraham Lincoln's birthday.
- (3) February 15, Susan B. Anthony's birthday.
- (4) February 22, George Washington's birthday.

(5) March 4, Casimir Pulaski Day.  
(5m) March 17, for "The Great Hunger" in Ireland from 1845 to 1850.

(5r) April 9, Prisoners of War Remembrance Day.

(6) April 13, American Creed Day.

(6m) April 19, Patriots' Day.

(7) April 22, Environmental Awareness Day.

(7g) The last Friday in April, Arbor Day, except that if the governor by proclamation sets apart one day to be designated as Arbor and Bird Day under s. 14.16 (1), that day shall be appropriately observed.

(7r) June 14, if school is held, Robert M. La Follette, Sr. Day.

(8) September 16, Mildred Fish Harnack Day.

(9) September 17, U.S. Constitution Day.

(9g) Wednesday of the 3rd week in September, as part of Wonderful Wisconsin Week under s. 14.16 (8), Wisconsin Day.

(9r) Friday of the 3rd week in September, POW–MIA Recognition Day.

(10) September 28, Frances Willard Day.

(11) October 9, Leif Erikson Day.

(12) October 12, Christopher Columbus' birthday.

(13) November 11, Veterans Day.

**History:** 1975 c. 204, 219, 398, 422; 1979 c. 214, 301, 355; 1985 a. 232; 1987 a. 11, 16, 403; 1989 a. 146; 1993 a. 333; 1999 a. 83; 2001 a. 16, 20, 104, 105; 2003 a. 305; 2005 a. 149.

**118.025 Arbor day observance.** A school principal may request one free tree provided from state forest nurseries by the department of natural resources under s. 28.06 for each 4th grade pupil in the school for planting in conjunction with an annual observance and celebration of arbor day.

**History:** 1981 c. 59.

**118.03 Textbooks. (1)** The school board shall adopt all the textbooks necessary for use in the schools under its charge. The list of the adopted books shall be filed with the school district clerk.

(2) The school board may purchase textbooks and sell them to the pupils at cost or it may designate agents of the school district to sell the textbooks to the pupils. The agents, at stated times, shall make settlement with the school district for books sold. The agents may add a selling commission which shall not exceed 10% of the net price.

(3) No dealer in textbooks may sell any books at a price to exceed 15% above the net list prices, transportation added thereto.

(4) Any person violating this section may be fined not less than \$25 nor more than \$100.

**History:** 1983 a. 412.

**118.035 School uniforms. (1)** In this section, "school" means a public school and includes a charter school other than a charter school under s. 118.40 (2r).

(2) A school board may adopt a policy that requires all pupils enrolled in school in the school district, or all pupils enrolled in one or more schools in the school district, to wear a uniform while in school or while under the supervision of a school authority.

(3) If a school board adopts a policy under sub. (2), it shall do all of the following:

(a) Establish a method whereby the parent or guardian of a pupil enrolled in a school in which the policy is in effect may exempt his or her child from complying with the policy.

(b) Ensure that no pupil is penalized academically or otherwise discriminated against because the pupil's parent or guardian has chosen to exempt the pupil from complying with the policy.

(c) Notify each parent or guardian of a pupil enrolled in a school in which the policy will be implemented of the policy at least 3 months before the school board implements the policy.

(d) Assist economically disadvantaged pupils to obtain the uniforms.

(4) The requirements under sub. (3) do not apply to any school board that has in effect on September 1, 2001, a school uniform policy for pupils enrolled in a school in the school district and has had such a policy in effect continuously since that date.

(5) By July 1, 2005, the department shall submit a report to the appropriate standing committees of the legislature under s. 13.172 (3). The report shall address all of the following issues relating to the imposition of school uniforms by school boards:

(a) Methods of encouraging the involvement of the parents or guardians of pupils enrolled in a school district in a school board's decision to require school uniforms.

(b) The ability of pupils to obtain the uniforms.

(c) The effect of the imposition of the requirement on crime in the school, including weapons possession, assault, battery, and vandalism, and on pupil suspensions and expulsions.

(6) Nothing in this section affects the authority of a school board to require pupils to wear uniforms for extracurricular activities, and the provisions of sub. (3) do not apply to such a requirement.

History: 2001 a. 16.

**118.04 Summer classes.** Any school board may elect to operate summer classes or to permit pupils to attend summer classes operated by another school district on a tuition basis if the school district of operation will accept them. Sections 118.15 and 118.16 shall not apply to summer classes. Every school board electing to operate summer classes:

(1) Shall make rules governing attendance and cause them to be spread on the school board minutes.

(2) May accord to children living in the school district during the summer session the status of residents of the school district for the purpose of attendance at summer classes, even though the children were not regular residents of the school district during the preceding regular school session, but any such children who are not legal residents of the state shall not be counted in computing the state aid to which the school district is entitled.

(3) May permit children from another school district to attend summer classes upon payment of nonresident tuition.

(4) Shall not charge tuition for attendance at summer classes of pupils who are residents of the school district if the school board receives aid for such classes under s. 121.14. The school board may establish and collect reasonable fees for social, recreational or extracurricular summer classes and programs which are neither credited toward graduation nor aided under s. 121.14.

History: 1983 a. 27.

**118.045 Commencement of school term.** (1) Except as provided in subs. (2) and (3), beginning in the year 2000, no public school may commence the school term until September 1.

(2) Subsection (1) does not prohibit a school board from doing any of the following:

(a) Holding athletic contests or practices before September 1.

(b) Scheduling in-service days or work days before September 1.

(c) Holding school year-round.

(3) A school board may commence the school term before September 1 in any school year if the school board requests the department to allow it to commence the school term before September 1 and the school board includes reasons with its request. The department may grant a request only if it determines that there are extraordinary reasons for granting it. The department shall promulgate rules to implement and administer this subsection.

History: 1999 a. 9; 2001 a. 16.

Cross Reference: See also ch. PI 27, Wis. adm. code.

**118.05 School conservation camps.** (1) To promote an understanding of geology, geography, conservation, nature study and other aspects of general knowledge which are learned best by actual contact with nature itself, any school district may establish, operate and maintain and levy taxes to support individually or in

cooperation with other school districts or municipalities a school conservation camp. The camp need not be within the school district.

(2) The school board of any such district may operate, contribute to the operation of, participate in the joint operation of, pay or charge fees for the operation of the school conservation camp. The school board may admit nonresident pupils as well as resident pupils of the school district. The school board shall determine age and other entrance requirements and the program to be offered. The camp may be operated in summer or at any other time that the school board determines.

(3) The school board may acquire, rent or accept the free use of facilities and equipment to operate the camp and may accept private contributions of any kind.

(4) The school board may conduct the camp on property under the custody of other municipal, state or federal agencies when permission is granted or on private property with consent of the owner.

(5) Every state agency shall cooperate in making their staff and facilities available to further the objectives of this program.

**118.06 Flag, pledge of allegiance, and national anthem.** (1) Every school board and the governing body of every private school shall cause the U.S. flag to be displayed in the schoolroom or from a flagstaff on each school ground during the school hours of each school day.

(2) Every public school shall offer the pledge of allegiance or the national anthem in grades one to 12 each school day. Every private school shall offer the pledge of allegiance or the national anthem in grades one to 12 each school day unless the governing body of the private school determines that the requirement conflicts with the school's religious doctrines. No pupil may be compelled, against the pupil's objections or those of the pupil's parents or guardian, to recite the pledge or to sing the anthem.

History: 1993 a. 492; 2001 a. 16.

**118.07 Health and safety requirements.** (1) Every school board and the governing body of every private school shall provide a standard first aid kit for use in cases of emergency.

(2) Once each month, without previous warning, the person having direct charge of any public or private school shall drill all pupils in the proper method of departure from the building as if in case of fire, except when the person having direct charge deems that the health of the pupils may be endangered by inclement weather conditions. The school board or governing body of the private school shall maintain for at least 7 years a record of each fire drill conducted.

(3) The department shall make available to school districts, private schools, and charter schools information about meningococcal disease, including the causes and symptoms of the disease, how it is spread, and how to obtain additional information about the disease and the availability, effectiveness, and risks of vaccinations against the disease. The department may do so by posting the information on its Internet site. At the beginning of the 2006–07 to 2011–12 school years, each school board and the governing body of each private school and each charter school shall provide the parents and guardians of pupils enrolled in grades 6 to 12 in the school district or school with the information. At the beginning of the 2012 school year and each school year thereafter, each school board and the governing body of each private school and each charter school shall provide the parents and guardians of pupils enrolled in grade 6 in the school district or school with the information.

NOTE: Sub. (3) is repealed eff. the day after the revisor of statutes publishes in the Wisconsin Administrative Register a statement that the secretary of health and family services has promulgated a rule under section 252.04 (2) of the statutes that requires vaccinations against meningitis.

History: 1971 c. 164 s. 85; 1975 c. 39; 1981 c. 373; 1987 a. 27; 1995 a. 27 ss. 3938, 9116 (5); 2005 a. 220, 221.

**118.08 School zones; crossings.** (1) On any street or highway which borders the grounds of any public or private

school in which school is held for a term of not less than 6 months, the authority in charge of the maintenance of the street or highway shall erect black and yellow “school” warning signs. The authority may also designate school crossings across any street or highway, whether or not the street or highway borders on the grounds of a school.

(2) All signs required by this section and their installation shall comply with standards adopted by the department of transportation.

**History:** 1973 c. 90; 1975 c. 48; 1977 c. 29 s. 1654 (8) (g).

**118.09 Safety zones.** (1) Every school district maintaining a school outside the corporate limits of a city or village shall provide at the school site a zone which will provide safety for pupils from vehicular traffic during loading and unloading of pupils at the school. The zone may consist of a widening toward or into the schoolyard of the traveled portion of the adjacent highway so as to permit a vehicle to stop in the extended area completely clear of such traveled portion or may be constructed wholly within the schoolyard with connecting roads to the adjacent highway. The zone and approaches from the highway for use of vehicles shall be graveled or hard-surfaced.

(2) The school district shall cooperate with the agency of the town, county or state having jurisdiction of the highway to the end that matters pertaining to the highway will be properly protected. Contracts for the necessary materials and construction and maintenance, including snow removal, of zones may be entered into with the county or town or with private persons. If the contracting party does not have jurisdiction over the highway, the contract shall be approved by the agency of the state, county or town having jurisdiction over the highway before any work is commenced thereunder.

(3) All loading and unloading of pupils at the school, whether transported by a public or private vehicle, shall take place in the safety zone. The operator of a vehicle under contract to transport pupils to the school shall have necessary police powers so that pupils will be properly safeguarded in loading and unloading at the zone and while the operator’s vehicle is approaching and leaving the zone. The operator shall first alight before loading or unloading pupils at the zone, and while at stops on the operator’s highway route to load and unload pupils, the operator shall exhibit the vehicle’s stop sign.

(4) Private schools shall comply with this section to the same extent as school districts.

**History:** 1993 a. 492.

**118.10 School safety patrols.** Any school board may organize school safety patrols and, with the permission of the parents, appoint pupils as members thereof for the purpose of influencing and encouraging the other pupils to refrain from crossing public highways at points other than at regular crossings and for the purpose of directing pupils not to cross highways at times when the presence of traffic would render such crossing unsafe. Nothing in this section authorizes or permits the use of any safety patrol member for the purpose of directing vehicular traffic, nor may any safety patrol member be stationed in that portion of the highway intended for the use of vehicular traffic. No liability shall attach to the school district or any individual, school board member, school district administrator, teacher or other school authority by virtue of the organization, maintenance or operation of a school safety patrol organized, maintained and operated under this section.

**History:** 1997 a. 113.

**118.105 Control of traffic on school premises.** (1) Any school board may request local authorities to control motor vehicle and pedestrian traffic on off-highway school premises located within the jurisdiction of such local authorities.

(2) If the governing body of any town, city or village by ordinance regulates the operation and parking of motor vehicles on off-highway public school premises, school drives or parking lots

or pedestrian traffic on any such drives or parking lots, the school board may enter into written agreements with such governing body for reimbursement of the cost of enforcing such ordinance.

(3) Nothing in this section shall preclude the governing body of any town, city or village from repealing ordinances regulating the operation or parking of motor vehicles on off-highway public school premises, drives or parking lots or regulating pedestrian traffic on such drives or parking lots without prior consent of a school board which requested enactment of such ordinance.

**History:** 1975 c. 251.

**118.11 School fences.** The school district shall erect and maintain all the fence necessary to enclose the school site or grounds without any financial burden on the holders of adjoining properties.

**118.12 Sale of goods and services at schools.** (1) (a) Except as provided under par. (b), any person may sell or promote the sale of goods or services on school district or cooperative educational service agency property.

(b) A school board may adopt written resolutions governing the sale and promotion of goods and services on school district property. The board of control of a cooperative educational service agency may adopt written resolutions governing the sale and promotion of goods and services on agency property. The resolutions may prohibit, restrict or provide guidelines for such sales and promotions.

(2) (a) No school district employee may receive for his or her personal benefit anything of value from any person other than his or her employing school district to sell, promote the sale of or act as an agent or solicitor for the sale of any goods or services to any public school pupil while on the property of his or her employing school district or at an activity of his or her employing school district.

(b) No cooperative educational service agency employee may receive for his or her personal benefit anything of value from any person other than his or her employing agency to sell, promote the sale of or act as an agent or solicitor for the sale of any goods or services to any public school pupil while on the property or at an activity of his or her employing agency or while on the property or at an activity of a school district in the agency.

(3) Any person violating sub. (2) is subject to a forfeiture of not more than \$200 for each offense.

(4) If a school board enters into a contract that grants to one vendor the exclusive right to sell soft drinks in one or more schools of the school district, the contract may not prohibit the sale of milk in any school and, to the maximum extent possible, the school board shall ensure that milk is available to pupils in each school covered by the contract.

(5) If a school board contracts with a person to provide photographs of 12th grade pupils for a school yearbook, the contract may not prohibit a pupil from supplying his or her own photograph for the yearbook, subject to the school board’s reasonable specifications.

**History:** 1985 a. 214; 1997 a. 35; 2001 a. 109; 2003 a. 132.

**118.123 Reports and records; forfeitures.** (1) Any officer or teacher who fails or neglects to make the reports or who fails to keep the records required by chs. 115 to 121 shall forfeit not less than \$5 nor more than \$25 for each such failure or neglect.

(2) If any person designated in chs. 115 to 121 to prosecute an action for a forfeiture or neglect of duty fails to prosecute the action within 10 days after being requested in writing by an elector of the school district to do so, any elector of the school district may prosecute the action.

**History:** 1979 c. 89, 301; 1985 a. 214 s. 1; Stats. 1985 s. 118.123.

**118.125 Pupil records.** (1) **DEFINITIONS.** In this section:

(a) “Behavioral records” means those pupil records that include psychological tests, personality evaluations, records of conversations, any written statement relating specifically to an

individual pupil's behavior, tests relating specifically to achievement or measurement of ability, the pupil's physical health records other than his or her immunization records or any lead screening records required under s. 254.162, law enforcement officers' records obtained under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3., and any other pupil records that are not progress records.

(b) "Directory data" means those pupil records which include the pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received and the name of the school most recently previously attended by the pupil.

(be) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(bL) "Law enforcement unit" means any individual, office, department, division, or other component of a school district that is authorized or designated by the school board to do any of the following:

1. Enforce any law or ordinance, or refer to the appropriate authorities a matter for enforcement of any law or ordinance, against any person other than the school district.

2. Maintain the physical security and safety of a public school.

(bs) "Law enforcement unit records" means records maintained by a law enforcement unit that were created by that law enforcement unit for the purpose of law enforcement.

(c) "Progress records" means those pupil records which include the pupil's grades, a statement of the courses the pupil has taken, the pupil's attendance record, the pupil's immunization records, any lead screening records required under s. 254.162 and records of the pupil's school extracurricular activities.

(cm) "Pupil physical health records" means those pupil records that include basic health information about a pupil, including the pupil's immunization records, an emergency medical card, a log of first aid and medicine administered to the pupil, an athletic permit card, a record concerning the pupil's ability to participate in an education program, any lead screening records required under s. 254.162, the results of any routine screening test, such as for hearing, vision or scoliosis, and any follow-up to such test, and any other basic health information, as determined by the state superintendent.

(d) "Pupil records" means all records relating to individual pupils maintained by a school but does not include any of the following:

1. Notes or records maintained for personal use by a teacher or other person who is required by the state superintendent under s. 115.28 (7) to hold a certificate, license, or permit if such records and notes are not available to others.

2. Records necessary for, and available only to persons involved in, the psychological treatment of a pupil.

3. Law enforcement unit records.

(e) "Record" means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

**(2) CONFIDENTIALITY.** All pupil records maintained by a public school shall be confidential, except as provided in pars. (a) to (p) and sub. (2m). The school board shall adopt regulations to maintain the confidentiality of such records.

(a) A pupil, or the parent or guardian of a minor pupil, shall, upon request, be shown and provided with a copy of the pupil's progress records.

(b) An adult pupil or the parent or guardian of a minor pupil shall, upon request, be shown, in the presence of a person qualified to explain and interpret the records, the pupil's behavioral records. Such pupil or parent or guardian shall, upon request, be provided with a copy of the behavioral records.

(c) 1. The judge of any court of this state or of the United States shall, upon request, be provided by the school district clerk or his or her designee with a copy of all progress records of a pupil who is the subject of any proceeding in such court.

2. Names of dropouts shall be provided to a court in response to an order under s. 118.163 (2m) (b).

(cg) The school district clerk or his or her designee shall provide a law enforcement agency with a copy of a pupil's attendance record if the law enforcement agency certifies in writing that the pupil is under investigation for truancy or for allegedly committing a criminal or delinquent act and that the law enforcement agency will not further disclose the pupil's attendance record except as permitted under s. 938.396 (1) (a). A school district clerk or designee who discloses a copy of a pupil's attendance record to a law enforcement agency for purposes of a truancy investigation shall notify the pupil's parent or guardian of that disclosure as soon as practicable after that disclosure.

(ch) The school district clerk or his or her designee shall provide a fire investigator under s. 165.55 (15) with a copy of a pupil's attendance record if the fire investigator certifies in writing that the pupil is under investigation under s. 165.55, that the pupil's attendance record is necessary for the fire investigator to pursue his or her investigation and that the fire investigator will use and further disclose the pupil's attendance record only for the purpose of pursuing that investigation.

(ck) The school district clerk or his or her designee shall make pupil records available for inspection or, upon request, disclose the contents of pupil records to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the pupil records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning pupil records made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(cm) If school attendance is a condition of a child's dispositional order under s. 48.355 (2) (b) 7. or 938.355 (2) (b) 7., the school board shall notify the county department that is responsible for supervising the child within 5 days after any violation of the condition by the child.

(d) Pupil records shall be made available to persons employed by the school district which the pupil attends who are required by the department under s. 115.28 (7) to hold a license and other school district officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records. Law enforcement officers' records obtained under s. 938.396 (1) (c) 3. shall be made available as provided in s. 118.127 (2). A school board member or an employee of a school district may not be held personally liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the member or employee acted with actual malice in failing to disclose the information. A school district may not be held liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

(e) Upon the written permission of an adult pupil, or the parent or guardian of a minor pupil, the school shall make available to the person named in the permission the pupil's progress records or such portions of the pupil's behavioral records as determined by the person authorizing the release. Law enforcement officers' records obtained under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3. may not be made available under this paragraph unless speci-

cally identified by the adult pupil or by the parent or guardian of a minor pupil in the written permission.

(f) Pupil records shall be provided to a court in response to subpoena by parties to an action for in camera inspection, to be used only for purposes of impeachment of any witness who has testified in the action. The court may turn said records or parts thereof over to parties in the action or their attorneys if said records would be relevant and material to a witness's credibility or competency.

(g) 1. The school board may provide any public officer with any information required to be maintained under chs. 115 to 121.

2. Upon request by the department, the school board shall provide the department with any information contained in a pupil record that relates to an audit or evaluation of a federal or state-supported program or that is required to determine compliance with requirements under chs. 115 to 121. The department shall keep confidential all pupil records provided to the department by a school board.

(h) Information from a pupil's immunization records shall be made available to the department of health and family services to carry out the purposes of s. 252.04.

(hm) Information from any pupil lead screening records shall be made available to state and local health officials to carry out the purposes of ss. 254.11 to 254.178.

(i) Upon request, the school district clerk or his or her designee shall provide the names of pupils who have withdrawn from the public school prior to graduation under s. 118.15 (1) (c) to the technical college district board in which the public school is located or, for verification of eligibility for public assistance under ch. 49, to the department of health and family services, the department of workforce development or a county department under s. 46.215, 46.22 or 46.23.

(j) 1. Except as provided under subs. 2. and 3., directory data may be disclosed to any person, if the school has notified the parent, legal guardian or guardian ad litem of the categories of information which it has designated as directory data with respect to each pupil, has informed the parent, legal guardian or guardian ad litem of that pupil that he or she has 14 days to inform the school that all or any part of the directory data may not be released without the prior consent of the parent, legal guardian or guardian ad litem and has allowed 14 days for the parent, legal guardian or guardian ad litem of that pupil to inform the school that all or any part of the directory data may not be released without the prior consent of the parent, legal guardian or guardian ad litem.

2. If a school has notified the parent, legal guardian or guardian ad litem that a pupil's name and address has been designated as directory data, has informed the parent, legal guardian or guardian ad litem of the pupil that he or she has 14 days to inform the school that the pupil's name and address may not be released without the prior consent of the parent, legal guardian or guardian ad litem, has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil to inform the school that the pupil's name and address may not be released without the prior consent of the parent, legal guardian or guardian ad litem and the parent, legal guardian or guardian ad litem has not so informed the school, the school district clerk or his or her designee, upon request, shall provide a technical college district board with the name and address of each such pupil who is expected to graduate from high school in the current school year.

3. If a school has notified the parent, legal guardian or guardian ad litem of the information that it has designated as directory data with respect to any pupil, has informed the parent, legal guardian or guardian ad litem of the pupil that he or she has 14 days to inform the school that such information may not be released without the prior consent of the parent, legal guardian or guardian ad litem, has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil to inform the school that such information may not be released without the prior consent of the parent, legal guardian or guardian ad litem and the parent, legal guardian or guardian ad litem has not so informed the school, the

school district clerk or his or her designee, upon request, shall provide any representative of a law enforcement agency, district attorney, city attorney or corporation counsel, county department under s. 46.215, 46.22 or 46.23 or a court of record or municipal court with such information relating to any such pupil enrolled in the school district for the purpose of enforcing that pupil's school attendance, investigating alleged criminal or delinquent activity by the pupil or responding to a health or safety emergency.

(k) A school board may disclose personally identifiable information from the pupil records of an adult pupil to the parents or guardian of the adult pupil, without the written consent of the adult pupil, if the adult pupil is a dependent of his or her parents or guardian under 26 USC 152, unless the adult pupil has informed the school, in writing, that the information may not be disclosed.

(L) A school board shall disclose the pupil records of a pupil in compliance with a court order under s. 48.236 (4) (a), 48.345 (12) (b), 938.34 (7d) (b), 938.396 (1) (d), or 938.78 (2) (b) 2. after making a reasonable effort to notify the pupil's parent or legal guardian.

(m) A parent who has been denied periods of physical placement with a child under s. 767.41 (4) does not have the rights of a parent or guardian under pars. (a) to (j) with respect to that child's pupil records.

(n) For the purpose of providing services to a pupil before adjudication, a school board may disclose pupil records to a law enforcement agency, district attorney, city attorney, corporation counsel, agency, as defined in s. 938.78 (1), intake worker under s. 48.067 or 938.067, court of record, municipal court, private school, or another school board if disclosure is pursuant to an interagency agreement and the person to whom the records are disclosed certifies in writing that the records will not be disclosed to any other person except as permitted under this subsection.

(p) A school board may disclose pupil records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual.

**(2m) CONFIDENTIALITY OF PUPIL PHYSICAL HEALTH RECORDS.**

(a) Except as provided in par. (b), any pupil record that relates to a pupil's physical health and that is not a pupil physical health record shall be treated as a patient health care record under ss. 146.81 to 146.84.

(b) Any pupil record that concerns the results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV shall be treated as provided under s. 252.15. In this subsection, "HIV" has the meaning given in s. 252.01 (1m).

**(3) MAINTENANCE OF RECORDS.** Each school board shall adopt rules in writing specifying the content of pupil records and the time during which pupil records shall be maintained. No behavioral records may be maintained for more than one year after the pupil ceases to be enrolled in the school, unless the pupil specifies in writing that his or her behavioral records may be maintained for a longer period. A pupil's progress records shall be maintained for at least 5 years after the pupil ceases to be enrolled in the school. A school board may maintain the records on microfilm, on an optical disk, or in electronic format if authorized under s. 19.21 (4) (c), or in such other form as the school board deems appropriate. A school board shall maintain law enforcement officers' records obtained under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3. separately from a pupil's other pupil records. Rules adopted under this subsection shall be published by the school board as a class 1 notice under ch. 985.

**(4) TRANSFER OF RECORDS.** Within 5 working days, a school district shall transfer to another school or school district all pupil records relating to a specific pupil if the transferring school district has received written notice from the pupil if he or she is an adult or his or her parent or guardian if the pupil is a minor that the pupil intends to enroll in the other school or school district or written notice from the other school or school district that the pupil has enrolled or from a court that the pupil has been placed in a juvenile

correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g). In this subsection, “school” and “school district” include any juvenile correctional facility, secured residential care center for children and youth, adult correctional institution, mental health institute, or center for the developmentally disabled, that provides an educational program for its residents instead of or in addition to that which is provided by public and private schools.

(5) USE FOR SUSPENSION OR EXPULSION. (a) Except as provided in par. (b), nothing in this section prohibits a school district from using a pupil’s records in connection with the suspension or expulsion of the pupil or the use of such records by a multidisciplinary team under ch. 115.

(b) Law enforcement officers’ records obtained under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3. and records of the court assigned to exercise jurisdiction under chs. 48 and 938 or of a municipal court obtained under s. 938.396 (2g) (m) may not be used by a school district as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action, including action under the school district’s athletic code, against a pupil.

(6) APPLICATION TO EXISTING RECORDS. Any records existing on June 9, 1974 need not be revised for the purpose of deleting information from pupil records to comply with this section.

(7) DISCLOSURE OF LAW ENFORCEMENT UNIT RECORDS. A school board shall treat law enforcement unit records of juveniles in the same manner as a law enforcement agency is required to treat law enforcement officers’ records of juveniles under s. 938.396 (1) (a).

**History:** 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265.

A public school student’s interim grades are pupil records specifically exempted from disclosure under s. 118.125. A failure to specifically state reasons for denying an open records request for records that are specifically exempted from disclosure does not compel disclosure of those records. *State ex rel. Blum v. Board of Education*, 209 Wis. 2d 377, 565 N.W.2d 140 (Ct. App. 1997), 96–0758.

Pupil information that local education agencies are required to release to the department of public instruction under the reporting provisions of ch. 89, laws of 1973, may be provided, with or without permission, without violation of the state or federal confidentiality statutes. 65 Atty. Gen. 1.

“Pupil records” are “public records” under 19.32 (2) but are subject to special statutes that limit access and direct maximum and minimum periods of maintenance before destruction. 72 Atty. Gen. 169.

Access to student records in Wisconsin. 1976 WLR 975.

**118.126 Privileged communications.** (1) A school psychologist, counselor, social worker and nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, shall keep confidential information received from a pupil that the pupil or another pupil is using or is experiencing problems resulting from the use of alcohol or other drugs unless:

(a) The pupil using or experiencing problems resulting from the use of alcohol or other drugs consents in writing to disclosure of the information;

(b) The school psychologist, counselor, social worker, nurse, teacher or administrator has reason to believe that there is serious and imminent danger to the health, safety or life of any person and that disclosure of the information to another person will alleviate the serious and imminent danger. No more information than is required to alleviate the serious and imminent danger may be disclosed; or

(c) The information is required to be reported under s. 48.981.

(2) A school psychologist, counselor, social worker or nurse, or any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, who in good faith discloses or fails to disclose information under sub. (1) is immune from civil liability for such acts or omissions. This sub-

section does not apply to information required to be reported under s. 48.981.

**History:** 1979 c. 331; 1985 a. 163; 1987 a. 188, 339.

**118.127 Law enforcement agency information.**

(1) Upon receipt of information from a law enforcement agency under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3., the school district administrator or private school administrator who receives the information shall notify any pupil named in the information, and the parent or guardian of any minor pupil named in the information, of the information.

(2) A school district or private school may disclose information from law enforcement officers’ records obtained under s. 938.396 (1) (c) 3. only to persons employed by the school district who are required by the department under s. 115.28 (7) to hold a license, to persons employed by the private school as teachers, and to other school district or private school officials who have been determined by the school board or governing body of the private school to have legitimate educational interests, including safety interests, in that information. In addition, if that information relates to a pupil of the school district or private school, the school district or private school may also disclose that information to those employees of the school district or private school who have been designated by the school board or governing body of the private school to receive that information for the purpose of providing treatment programs for pupils enrolled in the school district or private school. A school district may not use law enforcement officers’ records obtained under s. 938.396 (1) (c) 3. as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action, including action under the school district’s athletic code, against a pupil.

**History:** 1991 a. 39; 1995 a. 77, 173, 352; 1997 a. 27, 205; 2005 a. 344.

**118.128 Information related to pupil harm to others.** If a school district determines, based on evidence that a pupil engaged in behavior that seriously physically harmed another individual within the previous 12 months or that a pupil has engaged in a pattern of behavior causing serious physical harm to another individual, that there is reasonable cause to believe that the pupil may engage in behavior at school or while under the supervision of a school authority that is physically harmful to another individual, the school district may provide information concerning the pupil’s physically harmful behavior to the pupil’s teachers and to any other school district official who has a legitimate educational or safety interest in the information. The information provided under this section shall be limited to information reasonably necessary to meet the educational needs of the pupil and the safety needs of other pupils and school personnel. A teacher or other school district official may not disclose information provided to him or her under this section to any other person.

**History:** 1993 a. 334.

**118.13 Pupil discrimination prohibited.** (1) Except as provided in s. 120.13 (38) [s. 120.13 (37m)], no person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person’s sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

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

(2) (a) Each school board shall develop written policies and procedures to implement this section and submit them to the state superintendent as a part of its 1986 annual report under s. 120.18. The policies and procedures shall provide for receiving and investigating complaints by residents of the school district regarding possible violations of this section, for making determinations as



to whether this section has been violated and for ensuring compliance with this section.

(b) Any person who receives a negative determination under par. (a) may appeal the determination to the state superintendent.

(3) (a) The state superintendent shall:

1. Decide appeals made to him or her under sub. (2) (b). Decisions of the state superintendent under this subdivision are subject to judicial review under ch. 227.

2. Promulgate rules necessary to implement and administer this section.

3. Include in the department's biennial report under s. 15.04 (1) (d) information on the status of school district compliance with this section and school district progress toward providing reasonable equality of educational opportunity for all pupils in this state.

(b) The state superintendent may:

1. Periodically review school district programs, activities and services to determine whether the school boards are complying with this section.

2. Assist school boards to comply with this section by providing information and technical assistance upon request.

(4) Any public school official, employee or teacher who intentionally engages in conduct which discriminates against a person or causes a person to be denied rights, benefits or privileges, in violation of sub. (1), may be required to forfeit not more than \$1,000.

**History:** 1985 a. 29; 1987 a. 332; 1991 a. 131; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2005 a. 346.

**Cross Reference:** See also ch. PI 9, Wis. adm. code.

The use of an American Indian logo, mascot, or nickname by a public school could be a violation of s. 118.13, but is not a per se violation. 80 Atty. Gen. 321.

When a school board pursued purposefully segregative practices with current, systemwide impact, systemwide remedy was appropriate. Columbus Board of Education v. Penick, 443 U.S. 449 (1979).

For a school system that was a dual system when Brown I was decided in 1954, the measure of the school board's post-Brown I conduct under its unsatisfied duty to liquidate the dual system was the effectiveness, not the purpose, of its actions to desegregate the system. Dayton Board of Education v. Brinkman, 443 U.S. 526 (1979).

**118.135 Eye examinations and evaluations.** (1) Beginning in the 2002–03 school year, each school board and each charter school shall request each pupil entering kindergarten to provide evidence that the pupil has had his or her eyes examined by an optometrist licensed under ch. 449 or evaluated by a physician licensed under ch. 448.

(2) A pupil who complies with a request under sub. (1) shall provide evidence of an eye examination or evaluation by December 31 following the pupil's enrollment in kindergarten. The school board or charter school shall provide pupils with the form distributed by the department of regulation and licensing under s. 440.03 (16) for that purpose.

(3) To the extent feasible, the medical examining board and the optometry examining board shall encourage physicians and optometrists, for the purpose of this section, to conduct free eye examinations or evaluations of pupils who are in financial need and do not have insurance coverage for eye examinations or evaluations.

**History:** 2001 a. 16.

**118.14 Age of pupils.** (1) Except as provided in s. 120.12 (25):

(a) No child may be admitted to a 4-year-old kindergarten unless he or she is 4 years old on or before September 1 in the year that he or she proposes to enter school.

(b) No child may be admitted to a 5-year-old kindergarten unless he or she is 5 years old on or before September 1 in the year he or she proposes to enter school.

(c) No child may be admitted to the 1st grade unless he or she is 6 years old, on or before September 1 in the year he or she proposes to enter school.

(2) A resident over 20 years of age may be admitted to school when in the judgment of the school board the resident will not interfere with the pupils of school age.

**History:** 1977 c. 418, 429; 1983 a. 36; 1985 a. 29; 1997 a. 240.

**118.145 Admission to high school.** (1) The school board of a district operating high school grades shall determine the minimum standards for admission to high school.

(2) A certificate or diploma or other written evidence issued by a school board showing that the pupil has completed the course of study in the elementary grades of the school district in which the pupil resides shall entitle the pupil to admission to high school. Such certificate or diploma or a certified copy thereof or a certified copy of a list of graduates shall be filed with the school district clerk of the school district operating the high school.

(3) If the superintendent of a private school files with the department the course of study for elementary grades prescribed by such school and if such course of study is substantially equivalent to the course of study prepared for elementary grades by the department, a certificate or diploma or other written evidence issued by the superintendent of the private school showing that the pupil has completed such course of study shall entitle the pupil to admission to a public high school. The certificate or diploma or a certified copy thereof or a certified copy of a list of graduates shall be filed with the school district clerk of the school district operating the high school.

(4) The school board of a school district operating high school grades shall allow a pupil enrolled in a private school or a pupil enrolled in a home-based educational program, who has met the standards for admission to high school under sub. (1), to take up to 2 courses during each school semester if the pupil resides in the school district in which the public school is located and if the school board determines that there is sufficient space in the classroom.

**History:** 1975 c. 39, 199; 1995 a. 27 s. 9145 (1); 1997 a. 27, 240.

**118.15 Compulsory school attendance.** (1) (a) Except as provided under pars. (b) to (d) and sub. (4), unless the child is excused under sub. (3) or has graduated from high school, any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age.

(b) Upon the child's request of the school board and with the written approval of the child's parent or guardian, any child who is 16 years of age or over and a child at risk, as defined in s. 118.153 (1) (a), may attend, in lieu of high school or on a part-time basis, a technical college if the child and his or her parent or guardian agree, in writing, that the child will participate in a program leading to the child's high school graduation. The district board of the technical college district in which the child resides shall admit the child. Every technical college district board shall offer day class programs satisfactory to meet the requirements of this paragraph and s. 118.33 (3m) as a condition to the receipt of any state aid.

(c) 1. Upon the child's request and with the written approval of the child's parent or guardian, any child who is 16 years of age may be excused by the school board from regular school attendance if the child and his or her parent or guardian agree, in writing, that the child will participate in a program or curriculum modification under par. (d) leading to the child's high school graduation.

2. Upon the child's request and with the written approval of the child's parent or guardian, any child who is 17 years of age or over may be excused by the school board from regular school attendance if the child and his or her parent or guardian agree, in writing, that the child will participate in a program or curriculum modification under par. (d) leading to the child's high school graduation.

uation or leading to a high school equivalency diploma under s. 115.29 (4).

3. Prior to a child's admission to a program leading to the child's high school graduation or a high school equivalency program under par. (b) or subd. 1. or 2., the child, his or her parent or guardian, the school board and a representative of the high school equivalency program or program leading to the child's high school graduation shall enter into a written agreement. The written agreement shall state the services to be provided, the time period needed to complete the high school equivalency program or program leading to the child's high school graduation and how the performance of the pupil will be monitored. The agreement shall be monitored by the school board on a regular basis, but in no case shall the agreement be monitored less frequently than once per semester. If the school board determines that a child is not complying with the agreement, the school board shall notify the child, his or her parent or guardian and the high school equivalency program or program leading to the child's high school graduation that the agreement may be modified or suspended in 30 days.

(cm) 1. Upon the child's request and with the approval of the child's parent or guardian, any child who is 17 years of age or over shall be excused by the school board from regular school attendance if the child began a program leading to a high school equivalency diploma in a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), a juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile portion of a county jail, and the child and his or her parent or guardian agree under subd. 2. that the child will continue to participate in such a program. For purposes of this subdivision, a child is considered to have begun a program leading to a high school equivalency diploma if the child has received a passing score on a minimum of one of the 5 content area tests given under the general educational development test or has demonstrated under a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency to high school graduation a level of proficiency in a minimum of one of the 5 content areas specified in s. 118.33 (1) (a) 1. that is equivalent to the level of proficiency that he or she would have attained if he or she had satisfied the requirements under s. 118.33 (1) (a) 1.

2. Prior to the admission of a child under subd. 1. to a program leading to a high school equivalency diploma, the child, his or her parent or guardian, the school board and a representative of the agency providing the program shall enter into a written agreement. The agreement shall specify that the child is excused from regular school attendance while he or she is enrolled in the program and making progress toward completion of the program, or successfully completes the program. If the agency providing the program determines that the child is not making progress toward completion of the program, the agency shall notify the child and his or her parent or guardian that the agreement may be suspended within 30 days. If the agency suspends the agreement, the agency shall notify the child, his or her parent or guardian and the school board.

3. If the program that the child wishes to attend is provided by a technical college district, the technical college district board shall admit the child.

4. A child attending a program under this paragraph shall not be included in membership, as defined in s. 121.004 (5).

5. The state superintendent shall grant a high school equivalency diploma to a child under this paragraph who completes the general educational development test with a passing score, as determined by the state superintendent, and completes the additional requirements determined by the state superintendent under s. 115.29 (4).

(d) Any child's parent or guardian, or the child if the parent or guardian is notified, may request the school board, in writing, to

provide the child with program or curriculum modifications, including but not limited to:

1. Modifications within the child's current academic program.

2. A school work training or work study program.

3. Enrollment in any alternative public school or program located in the school district in which the child resides.

4. Enrollment in any nonsectarian private school or program, located in the school district in which the child resides, which complies with the requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant to a contractual agreement which provides for the payment of the child's tuition by the school district.

5. Homebound study, including nonsectarian correspondence courses or other courses of study approved by the school board or nonsectarian tutoring provided by the school in which the child is enrolled.

6. Enrollment in any public educational program located outside the school district in which the child resides. Enrollment of a child under this subdivision may be pursuant to a contractual agreement between school districts.

(dm) The school board shall render its decision, in writing, within 90 days of a request under par. (d), except that if the request relates to a child who has been evaluated by an individualized education program team under s. 115.782 and has not been recommended for special education, the school board shall render its decision within 30 days of the request. If the school board denies the request, the school board shall give its reasons for the denial.

(e) Any decision made by a school board or a designee of the school board in response to a request for program or curriculum modifications under par. (d) shall be reviewed by the school board upon request of the child's parent or guardian. The school board shall render its determination upon review in writing, if the child's parent or guardian so requests.

(f) At the beginning of each school term, the school board shall notify the pupils enrolled in the school district and their parents or guardians of the substance of pars. (d), (dm) and (e).

(2) (a) If the determination is made under sub. (1) (b) for a child to attend a technical college, the district board governing the technical college shall establish appropriate vocational and technical courses in accordance with s. 118.33 (3m) and the school board shall pay the technical college district board an amount calculated as follows:

1. Divide the number of credit hours of instruction scheduled by the technical college district for the pupil by 30.

2. Multiply the quotient under subd. 1. by the statewide average instructional cost for general education programs in the technical college system in the previous school year, as determined by the technical college system board.

3. Multiply the quotient under subd. 1. by any additional costs associated with direct student support services, as determined jointly by the state superintendent and the state director of the technical college system.

4. Add the product under subd. 2. to the product under subd. 3.

(c) Pupils attending a technical college under this subsection may receive general education subjects at the technical college. Payments by the school district under par. (a) shall be deemed costs of operation and maintenance.

(d) Transportation, or board and lodging under s. 121.57 (1) (a), for pupils attending a technical college under this subsection shall be provided by the school district, and state aids shall be paid therefor, on the same basis as is transportation for pupils attending high school.

(3) This section does not apply to:

(a) Any child who is excused by the school board because the child is temporarily not in proper physical or mental condition to attend a school program but who can be expected to return to a school program upon termination or abatement of the illness or condition. The school attendance officer may request the parent or guardian of the child to obtain a written statement from a licensed physician, dentist, chiropractor, optometrist or psychologist or Christian Science practitioner living and residing in this state, who is listed in the Christian Science Journal, as sufficient proof of the physical or mental condition of the child. An excuse under this paragraph shall be in writing and shall state the time period for which it is valid, not to exceed 30 days.

(b) Any child excused by the school board in accordance with the school board's written attendance policy under s. 118.16 (4) and with the written approval of the child's parent or guardian. The child's truancy, discipline or school achievement problems or disabilities as described in s. 115.76 (5) may not be used as the reason for an excuse under this paragraph. The excuse shall be in writing and shall state the time period for which it is effective, not to extend beyond the end of the current school year.

(c) Any child excused in writing by his or her parent or guardian before the absence. The school board shall require a child excused under this paragraph to complete any course work missed during the absence. A child may not be excused for more than 10 days in a school year under this paragraph.

(d) Any child excused in writing by his or her parent or guardian and by the principal of the school that the child attends for the purpose of serving as an election official under s. 7.30 (2) (am). A principal may not excuse a child under this paragraph unless the child has at least a 3.0 grade point average or the equivalent. The principal shall allow the child to take examinations and complete course work missed during the child's absences under this paragraph. The principal shall promptly notify the municipal clerk or the board of election commissioners of the municipality that appointed the child as an election official if the child ceases to be enrolled in school or if the child no longer has at least a 3.0 grade point average or the equivalent.

(4) Instruction in a home-based private educational program that meets all of the criteria under s. 118.165 (1) may be substituted for attendance at a public or private school.

(4m) No school board, board of control of a cooperative educational service agency or county children with disabilities education board, or person employed by a school board, cooperative educational service agency or county children with disabilities education board, may in any manner compel a pregnant girl to withdraw from her educational program.

(5) (a) 1. Except as provided under par. (b) or if a person has been found guilty of a misdemeanor under s. 948.45, whoever violates this section may be penalized as follows, if evidence has been provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m):

a. For the first offense, by a fine of not more than \$500 or imprisonment for not more than 30 days or both.

b. For a 2nd or subsequent offense, by a fine of not more than \$1,000 or imprisonment for not more than 90 days or both.

2. The court may require a person who is subject to subd. 1. to perform community service work for a public agency or a non-profit charitable organization in lieu of the penalties specified under subd. 1. Any organization or agency to which a defendant is assigned pursuant to an order under this subdivision acting in good faith has immunity from any civil liability in excess of \$25,000 for any act or omission by or impacting on the defendant.

(am) The court may order any person who violates this section to participate in counseling at the person's own expense or to attend school with his or her child, or both.

(b) 1. Paragraph (a) does not apply to a person who has under his or her control a child who has been sanctioned under s. 49.26 (1) (h).

2. In a prosecution under par. (a), if the defendant proves that he or she is unable to comply with the law because of the disobedience of the child, the action shall be dismissed and the child shall be referred to the court assigned to exercise jurisdiction under chs. 48 and 938.

**History:** 1971 c. 40, 125, 154; 1973 c. 89, 243, 319, 332; 1975 c. 39, 199; 1979 c. 221, 298, 300, 355; 1981 c. 20; 1983 a. 512; 1985 a. 29; 1987 a. 36, 285, 399; 1989 a. 31, 336; 1991 a. 39; 1993 a. 223, 399; 1995 a. 27 s. 3945, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 164, 205, 239; 2001 a. 109; 2005 a. 344.

**Cross Reference:** See also ch. TCS 9, Wis. adm. code.

Compelling Amish parents to send their children to high school infringed upon their religious liberties. *State v. Yoder*, 49 Wis. 2d 430, 182 N.W.2d 539 (1971). Affirmed, 406 U.S. 205 (1972).

A city is not liable for a failure to enforce the school attendance laws for damages resulting from an assault by truants. *Riemer v. Crayton*, 57 Wis. 2d 755 (1973).

A refusal, on religious grounds, to send children to school was a personal, philosophical choice by parents, rather than a protected religious expression. *State v. Kasuboski*, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

This section permits VTAE [now technical college] instructors to teach a limited number of courses to public school students, under certain circumstances, without department of public instruction certification. *Green Bay Education Association v. DPI*, 154 Wis. 2d 655, 453 N.W.2d 915 (Ct. App. 1990).

This section is not unconstitutionally vague. *State v. White*, 180 Wis. 2d 203, 509 N.W.2d 434 (Ct. App. 1993).

A dispositional order, based solely upon habitual truancy, cannot endure beyond the school term during which the juvenile reaches 18 years of age. *State v. Jeremiah C.*, 2003 WI App 40, 260 Wis. 2d 359, 659 N.W.2d 193, 02–1740.

The trial court erred in ruling that this section requires a conviction under sub. (5) (a) before sub. (5) (b) is triggered. The disobedience exception in sub. (5) (b) 2. was an affirmative defense to the charge here and should have been presented to the fact-finder during the trial for resolution. *State v. McGee*, 2005 WI App 97, 281 Wis. 2d 756, 698 N.W.2d 850, 04–1005.

The Amish and compulsory school attendance. 1971 WLR 832.

### 118.153 Children at risk of not graduating from high school. (1) In this section:

(a) "Children at risk" means pupils in grades 5 to 12 who are at risk of not graduating from high school because they are dropouts or are 2 or more of the following:

1m. One or more years behind their age group in the number of high school credits attained.

2. Two or more years behind their age group in basic skill levels.

2m. Habitual truants, as defined in s. 118.16 (1) (a).

3. Parents.

4. Adjudicated delinquents.

5. Eighth grade pupils whose score in each subject area on the examination administered under s. 118.30 (1m) (am) 1. was below the basic level, 8th grade pupils who failed the examination administered under s. 118.30 (1m) (am) 2., and 8th grade pupils who failed to be promoted to the 9th grade.

(b) "Dropout" means a child who ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under s. 118.15 (1) (b) to (d) or (3).

(2) (a) Every school board shall identify the children at risk who are enrolled in the school district and annually by August 15 develop a plan describing how the school board will meet their needs.

(b) If in the previous school year a school district had 30 or more dropouts or a dropout rate exceeding 5% of its total high school enrollment, the school board may apply to the state superintendent for aid under this section.

(3) (a) 1. Every school board that applies for aid under sub. (2) (b) shall make available to the children at risk enrolled in the school district a program for children at risk.

2. Upon request of a pupil who is a child at risk or the pupil's parent or guardian, a school board described under subd. 1. shall enroll the pupil in the program for children at risk. If the school board makes available more than one program for children at risk, the school board shall enroll the pupil in the program selected by the pupil's parent or guardian if the pupil meets the prerequisites for that program. If there is no space in that program for the pupil, the school board of the school district operating under ch. 119 shall place the pupil's name on a waiting list for that program and

offer the pupil another program for children at risk until space in the requested program becomes available.

(b) A program for children at risk shall be designed to allow the pupils enrolled to meet high school graduation requirements under s. 118.33. The school board of the school district operating under ch. 119 shall ensure that there are at least 30 pupils and no more than 250 pupils in each program and that a separate administrator or teacher is in charge of each program.

(c) 1. Each school board shall identify appropriate private, nonprofit, nonsectarian agencies located in the school district or within 5 miles of the boundaries of the school district to meet the requirements under pars. (a) and (b) for the children at risk enrolled in the school district.

2. The school board may contract with the agencies identified under subd. 1. for not more than 30% of the children at risk enrolled in the school district if the school board determines that the agencies can adequately serve such children.

3. The school board shall pay each contracting agency, for each full-time equivalent pupil served by the agency, an amount equal to at least 80% of the average per pupil cost for the school district.

(4) (a) Annually in August, a school board that applied for aid under this section in the previous school year shall submit a report to the state superintendent. The report shall include only information about the pupils enrolled in a program for children at risk in the previous school year that is necessary for the state superintendent to determine the number of pupils who achieved each of the objectives under par. (c).

(b) Upon receipt of a school board's annual report under par. (a) the state superintendent shall pay to the school district from the appropriation under s. 20.255 (2) (bc), for each pupil enrolled in a program for children at risk who achieved at least 3 of the objectives under par. (c) in the previous school year, additional state aid in an amount equal to 10% of the school district's average per pupil aids provided under s. 20.835 (7) (a), 1991 stats., and s. 20.255 (2) (ac) in the previous school year.

(c) 1. The pupil's attendance rate was at least 70%.

2. The pupil remained in school.

3. The pupil, if a high school senior, received a high school diploma.

4. The pupil earned at least 4.5 academic credits or a prorated number of credits if the pupil was enrolled in the program for less than the entire school year.

5. The pupil has demonstrated, on standardized tests or other appropriate measures, a gain in reading and mathematics commensurate with the duration of his or her enrollment in the program.

(e) If the appropriation under s. 20.255 (2) (bc) in any fiscal year is insufficient to pay the full amount of aid under par. (b), state aid payments shall be prorated among the school districts entitled to such aid.

(5) (a) In this subsection:

1. "Alternative school" means a public school that has at least 30 pupils and no more than 250 pupils, has a separate administrator or teacher in charge of the school and offers a nontraditional curriculum.

2. "School within a school" means a school that has at least 30 pupils and no more than 250 pupils, has a separate administrator or teacher in charge of the school and is housed in a space specifically dedicated to it in a public school.

(b) Subject to sub. (3) (c) 3., a school board receiving funds under this section shall provide a specific sum to each program for children at risk in which pupils enrolled in the school district are enrolled based on the ability of the program to meet the objectives under sub. (4) (c).

(c) A school board receiving funds under this section shall give preference in allocating those funds to programs for children at

risk provided by alternative schools, charter schools, schools within schools and agencies identified under sub. (3) (c) 1.

(6) By January 1, 2005, the legislative audit bureau shall audit programs funded under this section to determine the extent to which they meet the objectives under sub. (4) (c).

(7) The state superintendent shall promulgate rules to implement and administer this section. The rules shall not be overly restrictive in defining approved programs and shall not serve to exclude programs that have demonstrated success in meeting the needs of children at risk.

**History:** 1985 a. 29, 332; 1987 a. 27; 1989 a. 31, 336; 1991 a. 39, 196; 1993 a. 16, 341, 399, 491; 1995 a. 27 s. 9145 (1); 1997 a. 27, 113; 1999 a. 9, 123; 2003 a. 33; 2005 a. 25.

**Cross Reference:** See also ch. PI 25, Wis. adm. code.

### 118.155 Released time for religious instruction.

(1) Any school board shall, without approval of the state superintendent, permit pupils with written permission of a parent or guardian to be absent from school at least 60 minutes but not more than 180 minutes per week to obtain religious instruction outside the school during the required school period. The supervisor of such religious instruction shall report monthly, to the principal of the school regularly attended, the names of the pupils who attended such weekly religious instruction. The school board may deny the privilege of released time to pupils who absent themselves from such religious instruction after requesting the privilege. The time period, or periods, allotted for the pupil to be absent from school for the purpose of religious instruction shall be determined by the school board.

(2) Any transportation to religious instruction or from religious instruction to the public school shall be the responsibility of the parents or of the organization sponsoring the religious instruction.

(3) The school district shall be released from all liability for a pupil who is absent from school in accordance with sub. (1).

**History:** 1973 c. 161; 1995 a. 27 s. 9145 (1); 1997 a. 27.

The constitutionality of this section is upheld. *Holt v. Thompson*, 66 Wis. 2d 659, 225 N.W.2d 678 (1975).

### 118.16 School attendance enforcement. (1) In this section:

(a) "Habitual truant" means a pupil who is absent from school without an acceptable excuse under sub. (4) and s. 118.15 for part or all of 5 or more days on which school is held during a school semester.

(b) "School attendance officer" means an employee designated by the school board to deal with matters relating to school attendance and truancy. "School attendance officer" does not include an individual designated under sub. (2m) (a) to take into custody a child who is absent from school without an acceptable excuse under s. 118.15 unless that individual has also been designated by the school board to deal with matters relating to school attendance and truancy.

(c) "Truancy" means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of s. 118.15.

(1m) The period during which a pupil is absent from school due to a suspension or expulsion under s. 120.13 or 119.25 is neither an absence without an acceptable excuse for the purposes of sub. (1) (a) nor an absence without legal cause for the purposes of sub. (1) (c).

(2) The school attendance officer:

(a) Shall determine daily which pupils enrolled in the school district are absent from school and whether that absence is excused under s. 118.15.

(c) Except as provided under pars. (cg) and (cr), shall notify the parent or guardian of a child who has been truant of the child's

truancy and direct the parent or guardian to return the child to school no later than the next day on which school is in session or to provide an excuse under s. 118.15. The notice under this paragraph shall be given before the end of the 2nd school day after receiving a report of an unexcused absence. The notice may be made by personal contact, mail or telephone call of which a written record is kept, except that notice by personal contact or telephone call shall be attempted before notice by mail may be given.

(cg) Shall notify the parent or guardian of a child who is a habitual truant, by registered or certified mail, when the child initially becomes a habitual truant. The notice shall include all of the following:

1. A statement of the parent's or guardian's responsibility, under s. 118.15 (1) (a), to cause the child to attend school regularly.

2. A statement that the parent, guardian or child may request program or curriculum modifications for the child under s. 118.15 (1) (d) and that the child may be eligible for enrollment in a program for children at risk under s. 118.153 (3).

3. A request that the parent or guardian meet with appropriate school personnel to discuss the child's truancy. The notice shall include the name of the school personnel with whom the parent or guardian should meet, a date, time and place for the meeting and the name, address and telephone number of a person to contact to arrange a different date, time or place. The date for the meeting shall be within 5 school days after the date that the notice is sent, except that with the consent of the child's parent or guardian the date for the meeting may be extended for an additional 5 school days.

4. A statement of the penalties, under s. 118.15 (5), that may be imposed on the parent or guardian if he or she fails to cause the child to attend school regularly as required under s. 118.15 (1) (a).

(cr) After the notice required under par. (cg) has been given, shall notify the parent or guardian of a habitual truant of the habitual truant's unexcused absences as provided in the plan under s. 118.162 (4) (a). After the notice required under par. (cg) has been given, par. (c) does not apply.

(d) May visit any place of employment in the school district to ascertain whether any minors are employed there contrary to law. The officer shall require that school certificates and lists of minors who are employed there be produced for inspection, and shall report all cases of illegal employment to the proper school authorities and to the department of workforce development.

(e) Shall have access to information regarding the attendance of any child between the ages of 6 and 18 who is a resident of the school district or who claims or is claimed to be in attendance at a private school located in the school district.

**(2m)** (a) A school district administrator may designate any of the following individuals to take a child who resides in the school district and who is absent from school without an acceptable excuse under s. 118.15 into custody under s. 938.19 (1m):

1. An employee of the school district who is directly involved in the provision of educational programs to the truant child.

2. An employee of the school district who is directly involved in the provision of a modified program or curriculum under s. 118.15 (1) (d), a program for children at risk under s. 118.153 or an alternative educational program under s. 119.82 or any other alternative educational program to children who attend the school attended by the truant child, if the school district administrator believes that the program or curriculum may be appropriate for the truant child.

3. A school social worker employed by the school district who provides services to children attending the school attended by the truant child, if the school district administrator believes that the services provided by the social worker may be appropriate for the truant child.

4. An employee of a social services agency who is directly involved in the provision of social services to the truant child or the child's family.

5. A school attendance officer, but only if the school attendance officer meets the criteria specified in subs. 1., 2. or 3.

(b) A designation under par. (a) shall be in writing and shall specifically identify the child whom the individual is authorized to take into custody.

(c) A school district administrator may not designate an individual under par. (a) unless the individual agrees to the designation in writing.

(d) A school district administrator who makes a designation under par. (a) shall provide each individual so designated with an identification card of a form determined by the school board. The designee shall carry the identification card on his or her person at all times while the designee is on official duty under s. 938.19 (1m) and shall exhibit the identification card to any person to whom the designee represents himself or herself as a person authorized to take a child into custody under s. 938.19 (1m).

(e) A school district administrator who makes a designation under par. (a) or the individual designated under par. (a) shall immediately attempt to notify, by personal contact or telephone call, the child's parent, guardian and legal custodian that the designation has been made and that the child may be taken into custody under s. 938.19 (1m). The school district administrator, or the designee, is not required to notify a parent, guardian or legal custodian under this paragraph if the parent, guardian or legal custodian is the person who requested that the child be taken into custody under s. 938.19 (1m).

**(3)** All private schools shall keep a record containing the information required under ss. 115.30 (2) and 120.18. The record shall be open to the inspection of school attendance officers at all reasonable times. When called upon by any school attendance officer, the school shall furnish, on forms supplied by the school attendance officer, the information required under ss. 115.30 (2) and 120.18 in regard to any child between the ages of 6 and 18 who is a resident of the school district or who claims or is claimed to be in attendance at the school.

**(4)** (a) The school board shall establish a written attendance policy specifying the reasons for which pupils may be permitted to be absent from a public school under s. 118.15 and shall require the teachers employed in the school district to submit to the school attendance officer daily attendance reports on all pupils under their charge.

(b) No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school. The attendance policy under par. (a) shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension.

(c) The school board may establish policies which provide that as a consequence of a pupil's truancy the pupil may be assigned to detention or to a supervised, directed study program. The program need not be held during the regular school day. The policies under this paragraph shall specify the conditions under which credit may be given for work completed during the period of detention or assignment to a supervised, directed study program. A pupil shall be permitted to take any examinations missed during a period of assignment to a supervised, directed study program.

(cm) 1. The school board may establish policies which provide that a pupil of an age eligible for high school enrollment in the school district, as determined by the school board, may be assigned to a period of assessment as a consequence of the pupil's truancy or upon the pupil's return to school from placement in a correctional facility, mental health treatment facility, alcohol and other drug abuse treatment facility or other out-of-school placement. The policies shall specify the conditions under which a pupil may participate in the assessment without being in violation of s. 118.15 and the maximum length of time that a pupil may be assigned to an assessment period.

2. A school board may not assign a pupil to an assessment period without the written approval of the pupil's parent or guardian. A school board may not assign a pupil to an assessment period for longer than the time necessary to complete the assessment and place the pupil in an appropriate education program or 8 weeks, whichever is less. A school board may not assign a pupil to an assessment period more than once and may not assign a pupil to an assessment period if the school district has an alternative education program, as defined in s. 115.28 (7) (e) 1., available for the pupil that is appropriate for the pupil's needs. An assessment need not be conducted during the regular school day.

3. The goals of an assessment period are to develop an educational plan for the pupil, implement an appropriate transitional plan and facilitate the pupil's placement in an education program in which the pupil will be able to succeed. The school board shall provide pupils who are assigned to an assessment period with information on other education programs that the school district or other community providers have available for the pupil. The assessment may include any of the following new or previously completed activities:

- a. An assessment for problems with alcohol or other drugs.
- b. An assessment of individual educational needs.
- c. An assessment of whether the pupil is encountering problems in the community or at home that require intervention by a social worker.
- d. A vocational assessment, which may include career counseling.
- e. A medical assessment.

(d) The school board shall provide each pupil enrolled in the public schools in the district with a copy of the policies established under this subsection and shall file a copy of the policies in each school in the district. In addition, the school board shall make copies available upon request.

(e) Except as provided under s. 119.55, a school board may 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.

(5) Except as provided in sub. (5m), before any proceeding may be brought against a child under s. 938.13 (6) for habitual truancy or under s. 938.125 (2) or 938.17 (2) for a violation of an ordinance enacted under s. 118.163 (2) or against the child's parent or guardian under s. 118.15 for failure to cause the child to attend school regularly, the school attendance officer shall provide evidence that appropriate school personnel in the school or school district in which the child is enrolled have, within the school year during which the truancy occurred, done all of the following:

(a) Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian and received no response or were refused.

(b) Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under s. 118.15 (1) (d).

(c) Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level.

(d) Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

(5m) Subsection (5) (a) does not apply if a meeting under sub. (2) (cg) 3. is not held within 10 school days after the date that the notice under sub. (2) (cg) is sent. Subsection (5) (b), (c) and (d) does not apply if the school attendance officer provides evidence

that appropriate school personnel were unable to carry out the activity due to the child's absences from school.

(6) (a) If the school attendance officer receives evidence that activities under sub. (5) have been completed or were not required to be completed as provided in sub. (5m), the school attendance officer may do any of the following:

1. File information on any child who continues to be truant with the court assigned to exercise jurisdiction under chs. 48 and 938 in accordance with s. 938.24. Filing information on a child under this subdivision does not preclude concurrent prosecution of the child's parent or guardian under s. 118.15 (5).

2. Refer the child to a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the child's county of residence and has authorized the school attendance officer to refer children to the teen court program and the school attendance officer determines that participation in the teen court program will likely benefit the child and the community.

b. The child and the child's parent, guardian and legal custodian consent to the child's participation in the teen court program.

c. The child has not successfully completed participation in a teen court program during the 2 years before the date on which the school attendance officer received evidence that activities under sub. (5) have been completed or were not completed due to the child's absence from school as provided in sub. (5m).

(b) If a child who is referred to a teen court program under par. (a) 2. is not eligible for participation in the teen court program or does not successfully complete participation in the teen court program, the person administering the teen court program shall file information on the child with the court assigned to exercise jurisdiction under chs. 48 and 938 in accordance with s. 938.24. Filing information on a child under this paragraph does not preclude concurrent prosecution of the child's parent or guardian under s. 118.15 (5).

(7) Any school district administrator, principal, teacher or school attendance officer who violates this section shall forfeit not less than \$5 nor more than \$25.

**History:** 1971 c. 164 s. 85; 1975 c. 39; 1979 c. 221, 298; 1985 a. 211; 1987 a. 285; 1993 a. 16, 56, 334, 339, 491; 1995 a. 27 ss. 3947, 9130 (4), 9145 (1); 1995 a. 77; 1997 a. 3, 27, 205, 239; 1999 a. 9; 2001 a. 107; 2005 a. 122.

**NOTE:** 1993 Wis. Act 339, which created sub. (4) (cm), contains explanatory notes.

A court must consider evidence under sub. (5) prior to entering a finding of contempt based on truancy from school. *T. J. N. v. Winnebago County Social Services Dept.* 141 Wis. 2d 838, 416 N.W.2d 632 (Ct. App. 1987).

Sub. (5) does not limit a court's discretion in setting school attendance requirements in a dispositional order for a delinquent juvenile and in imposing sanctions if the order is violated. By its terms, sub. (5) is limited to children who are habitual truants and therefore in need of protection and services. *State v. Jason R.N.* 201 Wis. 2d 646, 549 N.W.2d 752 (Ct. App. 1996), 95–1728.

When under school board policy a suspension is not an excused absence, an absence as a result of the suspension is not an "acceptable excuse" under sub. (1) (a) or "legal cause" under sub. (1) (c) and may result in a finding of habitual truancy. *State v. Isaac*, 220 Wis. 2d 251, 582 N.W.2d 476 (Ct. App. 1998), 97–1611.

**118.162 Truancy committee and plan. (1)** At least once every 4 years, in each county, the school district administrator of the school district which contains the county seat designated under s. 59.05, or his or her designee, shall convene a committee to review and make recommendations to the school boards of all of the school districts in the county on revisions to the school districts' truancy plans under sub. (4m). The committee shall consist of the following members:

(a) A representative from each school district in the county, designated by the school board of the school district that he or she represents, who may be a school board member, school administrator, teacher, pupil services professional or parent of a child enrolled in the school district. If the territory of a school district lies in more than one county, the school district shall have a representative on the committee for the county in which the largest portion of the school district's equalized valuation is located.

(b) A representative of the office of the district attorney, designated by the district attorney.

(c) A representative of the sheriff's department, designated by the sheriff.

(d) A representative of the local law enforcement agency, other than the sheriff's department, with jurisdiction over the county seat, designated by the chief administrative officer of the law enforcement agency.

(e) A representative of the circuit court for the county, designated by the chief judge of the judicial administrative district.

(f) A representative of the county department of social services under s. 46.22, designated by the county social services director, or, if the duties of the department under s. 46.22 have been transferred to a department under s. 46.23, a representative of the county department of human services under s. 46.23, designated by the county human services director.

(g) A representative of the juvenile court intake unit, designated by the county social services director, or, if the duties of the department under s. 46.22 have been transferred to a department under s. 46.23, designated by the county human services director, or designated by the chief judge of the judicial administrative district.

(h) If a county department of human services has not been established under s. 46.23, a representative of a county department established under s. 51.42 or 51.437, designated by the director of the department established under s. 51.42 or 51.437.

(i) Any other member as determined by the committee.

(j) A parent of a pupil enrolled in a private school, who resides in a school district in the county, designated by the county board.

(k) A parent of a pupil enrolled in a public school, who resides in a school district in the county, designated by the county board.

(L) A parent of a pupil enrolled in a home-based private educational program, who resides in a school district in the county, designated by the county board.

(2) The district attorney representative on the committee shall participate in reviewing and developing any recommendations regarding revisions to the portions of the school districts' plans under sub. (4) (e).

(3) The committee shall write a report to accompany the recommendations under sub. (1). The report shall include a description of the factors that contribute to truancy in the county and a description of any state statutes, municipal ordinances or school, social services, law enforcement, district attorney, court or other policies that contribute to or inhibit the response to truancy in the county. A copy of the report shall be submitted to each of the entities identified in sub. (1) (b) to (h) and any other entity designating members on the committee under sub. (1) (i).

(4) Not later than September 1, 1989, each school board shall adopt a truancy plan which shall include all of the following:

(a) Procedures to be followed for notifying the parents or guardians of the unexcused absences of habitual truants under s. 118.16 (2) (cr) and for meeting and conferring with such parents or guardians.

(b) Plans and procedures for identifying truant children of all ages and returning them to school, including the identity of school personnel to whom a truant child shall be returned.

(c) Methods to increase and maintain public awareness of and involvement in responding to truancy within the school district.

(d) The immediate response to be made by school personnel when a truant child is returned to school.

(e) The types of truancy cases to be referred to the district attorney for the filing of information under s. 938.24 or prosecution under s. 118.15 (5) and the time periods within which the district attorney will respond to and take action on the referrals.

(f) Plans and procedures to coordinate the responses to the problems of habitual truants, as defined under s. 118.16 (1) (a), with public and private social services agencies.

(g) Methods to involve the truant child's parent or guardian in dealing with and solving the child's truancy problem.

(4m) At least once every 2 years, each school board shall review and, if appropriate, revise the truancy plan adopted by the school board under sub. (4).

History: 1987 a. 285; 1995 a. 77, 201; 1997 a. 239.

### 118.163 Municipal truancy and school dropout ordinances. (1) In this section:

(a) "Dropout" has the meaning given in s. 118.153 (1) (b).

(b) "Habitual truant" has the meaning given in s. 118.16 (1) (a).

(c) "Operating privilege" has the meaning given in s. 340.01 (40).

(d) "Truant" means a pupil who is absent from school without an acceptable excuse under ss. 118.15 and 118.16 (4) for part or all of any day on which school is held during a school semester.

(1m) A county, city, village or town may enact an ordinance prohibiting a person under 18 years of age from being a truant. The ordinance shall provide which of the following dispositions are available to the court:

(a) An order for the person to attend school.

(b) A forfeiture of not more than \$50 plus costs for a first violation, or a forfeiture of not more than \$100 plus costs for any 2nd or subsequent violation committed within 12 months of a previous violation, subject to s. 938.37 and subject to a maximum cumulative forfeiture amount of not more than \$500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.

(c) An order for the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center as described in s. 938.342 (1d) (c).

(2) A county, city, village or town may enact an ordinance prohibiting a person under 18 years of age from being a habitual truant. The ordinance shall provide which of the following dispositions are available to the court:

(a) Suspension of the person's operating privilege for not less than 30 days nor more than one year. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with a notice stating the reason for and the duration of the suspension.

(b) An order for the person to participate in counseling or a supervised work program or other community service work as described in s. 938.34 (5g). The costs of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department of human services or social services, community agency, public agency or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned pursuant to an order under this paragraph acting in good faith has immunity from any civil liability in excess of \$25,000 for any act or omission by or impacting on that person.

(c) An order for the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

(d) An order for the person to attend an educational program as described in s. 938.34 (7d).

(e) An order for the department of workforce development to revoke, under s. 103.72, a permit under s. 103.70 authorizing the employment of the person.

(f) An order for the person to be placed in a teen court program as described in s. 938.342 (1g) (f).

(g) An order for the person to attend school.

(h) A forfeiture of not more than \$500 plus costs, subject to s. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardian of the person, or both.

(i) Any other reasonable conditions consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.

(j) An order placing the person under formal or informal supervision, as described in s. 938.34 (2), for up to one year.

(k) An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both.

(L) An order for the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center as described in s. 938.342 (1g) (k).

**(2m)** (a) A county, city, village or town may enact an ordinance permitting a court to suspend the operating privilege of a person who is at least 16 years of age but less than 18 years of age and is a dropout. The ordinance shall provide that the court may suspend the person's operating privilege until the person reaches the age of 18. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with a notice stating the reason for and the duration of the suspension.

(b) A court may order a school district to provide to the court a list of all persons who are known to the school district to be dropouts and who reside within the county in which the circuit court is located or the municipality in which the municipal court is located. Upon request, the department of transportation shall assist the court to determine which dropouts have operating privileges.

**(3)** An ordinance enacted by a county under sub. (1m), (2) or (2m) is applicable and may be enforced in that part of any city or village located in the county and in any town located in the county regardless of whether the city, village or town has enacted an ordinance under sub. (1m), (2) or (2m).

**(4)** A person who is under 17 years of age on the date of disposition is subject to s. 938.342.

**History:** 1987 a. 285; 1991 a. 39; 1993 a. 363; 1995 a. 27 s. 9130 (4); 1995 a. 77, 352; 1997 a. 3, 35, 239; 2001 a. 16.

**118.164 Removal of pupils from the class.** **(1)** In this section, "teacher" means a person holding a license or permit issued by the state superintendent whose employment by a school district requires that he or she hold that license or permit.

**(2)** Subject to 20 USC 1415 (k) and beginning August 1, 1999, a teacher may remove a pupil from the teacher's class if the pupil violates the code of classroom conduct adopted under s. 120.13 (1) (a) or is dangerous, unruly or disruptive or exhibits behavior that interferes with the ability of the teacher to teach effectively, as specified in the code of classroom conduct. The teacher shall send the pupil to the school principal or his or her designee and notify the school principal or his or her designee immediately of the reasons for the removal. In addition, the teacher shall provide to the principal or his or her designee within 24 hours after the pupil's removal from the class a written explanation of the reasons for the removal.

**(3)** (a) The school principal or his or her designee shall place the pupil in one of the following:

1. An alternative education program, as defined in s. 115.28 (7) (e) 1.

2. Another class in the school or another appropriate place in the school, as determined by the school principal or his or her designee.

3. Another instructional setting.

4. The class from which the pupil was removed if, after weighing the interests of the removed pupil, the other pupils in the class and the teacher, the school principal or his or her designee determines that readmission to the class is the best or only alternative.

(b) This subsection does not prohibit the teacher who removed the pupil from the class or the school board, school district administrator, school principal or their designees from disciplining the pupil.

**History:** 1997 a. 335.

**118.165 Private schools.** **(1)** An institution is a private school if its educational program meets all of the following criteria:

(a) The primary purpose of the program is to provide private or religious-based education.

(b) The program is privately controlled.

(c) The program provides at least 875 hours of instruction each school year.

(d) The program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health. This subsection does not require the program to include in its curriculum any concept, topic or practice in conflict with the program's religious doctrines or to exclude from its curriculum any concept, topic or practice consistent with the program's religious doctrines.

(e) The program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement under s. 118.15 (1) (a).

(f) The pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation, or the institution is licensed as a child welfare agency under s. 48.60 (1).

**(2)** An institution may request the state superintendent to approve the institution's educational program as a private school. The state superintendent shall base his or her approval solely on the criteria under sub. (1).

**History:** 1983 a. 512; 1989 a. 336; 1995 a. 27; 1997 a. 27.

**118.167 Private school determination by state superintendent.** If an association that regulates or accredits private educational institutions in this state submits an affidavit to the state superintendent attesting that the institution meets or exceeds all of the criteria under s. 118.165 and the state superintendent finds that the institution does meet or exceed all of the criteria under s. 118.165, the state superintendent shall determine that the institution is a private school. If at any time the state superintendent finds that an institution determined to be a private school under this section no longer meets the criteria under s. 118.165, the state superintendent may withdraw the determination.

**History:** 1983 a. 512; 1995 a. 27; 1997 a. 27.

**118.169 Pupil identification numbers.** A school board, and the governing body of a private school, may assign to each pupil enrolled in the school district or private school a unique identification number. The school board or governing body shall not assign to any pupil an identification number that is identical to or incorporates the pupil's social security number. This section does not prohibit a school board or governing body from requiring a pupil to disclose his or her social security number, nor from using a student's social security number if such use is required by a federal or state agency or private organization in order for the



school district or private school to participate in a particular program.

**History:** 1997 a. 128.

**118.17 Indigent children.** The principal or teacher in charge of any public school shall report to the county department under s. 46.215, 46.22 or 46.23 for the county wherein the school is situated the name and address of any child in the school whose parent, guardian or other person having control, charge or custody of the child is without sufficient means to furnish the child with food or clothing necessary to enable the child to attend school.

**History:** 1985 a. 29; 1995 a. 27.

**Cross-reference:** Section 120.12 (11) provides for free books and school supplies for indigent children.

**118.175 Pupils without parents or guardians; report required. (1)** This section does not apply to a pupil who has a legal custodian, as defined in s. 48.02 (11) or 938.02 (11), or who is cared for by a kinship care relative, as defined in s. 48.57 (3m) (a) 2.

**(2)** If a pupil is a child who is without a parent or guardian, any school teacher, school administrator, school counselor or school social worker who knows that the child is without a parent or guardian shall report that fact as soon as possible to the county department under s. 46.22 or 46.23 or, in a county having a population of 500,000 or more, to the department of health and family services.

**History:** 1999 a. 9, 133.

**118.18 Teacher reports.** Every teacher shall record the names, ages and studies of all pupils under his or her charge and their daily attendance and such other facts or matters relating to the school as the state superintendent or school board requires.

**History:** 1979 c. 301; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**118.19 Teacher certificates and licenses. (1)** Any person seeking to teach in a public school, including a charter school, or in a school or institution operated by a county or the state shall first procure a license or permit from the department.

**(1m)** (a) The department of public instruction may not issue or renew a license or permit or revalidate a license that has no expiration date unless the applicant provides the department of public instruction with his or her social security number. The department of public instruction may not disclose the social security number except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(b) The department of public instruction may not issue or renew a license or permit or revalidate a license that has no expiration date if the department of revenue certifies under s. 73.0301 that the applicant, licensee or permit holder is liable for delinquent taxes.

**(1r)** (a) As provided in the memorandum of understanding under s. 49.857, the department of public instruction may not issue or renew a license or permit or revalidate a license that has no expiration date unless the applicant provides the department of public instruction with his or her social security number. The department of public instruction may not disclose the social security number except to the department of workforce development for the sole purpose of administering s. 49.22.

(b) As provided in the memorandum of understanding under s. 49.857, the department may not issue or renew a license or permit or revalidate a license that has no expiration date if the applicant, licensee or permit holder is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the applicant, licensee or permit holder fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

**(1s)** (a) Notwithstanding subs. (1m) and (1r), if an applicant does not have a social security number, the applicant, as a condition of applying for, or applying to renew or revalidate, a license under this section shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number.

(b) The teaching license of a person who submits a false statement under par. (a) is invalid.

**(2)** Until the end of the 1971–1972 school year, no certificate or license to teach in any public school may be issued unless the applicant has completed, beyond the work of the high school, 2 years of school work which were devoted to pedagogical instruction and training. Any teacher who has taught in any public school in the 1937–1938 school year or prior thereto may continue to teach in the public schools without complying with this subsection.

**(3)** (a) No license to teach in any public school may be issued unless the applicant possesses a bachelor's degree including such professional training as the department by rule requires, except as permitted under par. (b) and ss. 115.28 (17) (a) and 118.192. Notwithstanding s. 36.11 (16), no teacher preparatory program in this state may be approved by the state superintendent under s. 115.28 (7) (a), unless each student in the program is required to complete student teaching consisting of full days for a full semester following the daily schedule and semester calendar of the cooperating school. No license to teach in any public school may be granted to an applicant who completed a professional training program outside this state unless the applicant completed student teaching consisting of full days for a full semester following the daily schedule and semester calendar of the cooperating school or the equivalent, as determined by the state superintendent. The state superintendent may grant exceptions to the student teaching requirements under this paragraph when the midyear calendars of the institution offering the teacher preparatory program and the cooperating school differ from each other and would prevent students from attending classes at the institution in accordance with the institution's calendar. The state superintendent shall promulgate rules to implement this subsection.

(b) The state superintendent shall permanently certify any applicant to teach Wisconsin native American languages and culture who has successfully completed the university of Wisconsin–Milwaukee school of education approved Wisconsin native American languages and culture project certification program at any time between January 1, 1974, and December 31, 1977. School districts shall not assign individuals certified under this paragraph to teach courses other than Wisconsin native American languages and culture, unless they qualify under par. (a).

**(4)** (a) Notwithstanding subch. II of ch. 111, the state superintendent may not grant a license, for 6 years following the date of the conviction, to any person who has been convicted of any Class A, B, C, or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, or of an equivalent crime in another state or country, for a violation that occurs on or after September 12, 1991, or any Class E, F, G, or H felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs on or after February 1, 2003. The state superintendent may grant the license only if the person establishes by clear and convincing evidence that he or she is entitled to the license.

(b) Notwithstanding par. (a), the state superintendent shall grant a license to a person convicted of a crime described under par. (a), prior to the expiration of the 6-year period following the conviction, if the conviction is reversed, set aside or vacated.

**(4m)** The state superintendent may not issue or renew a license to teach the visually impaired unless the applicant demonstrates, based on criteria established by the state superintendent by rule, that he or she is proficient in reading and writing braille and in teaching braille. In promulgating rules under this subsection,

the state superintendent shall take into consideration the standard used by the librarian of congress for certifying braille transcribers.

(5) A person is not required to be licensed as an alternative education program teacher under s. 115.28 (7) (e) 2. to teach in an alternative education program, as defined in s. 115.28 (7) (e) 1.

(6) In granting certificates or licenses for the teaching of courses in economics, social studies or agriculture, adequate instruction in cooperative marketing and consumers' cooperatives shall be required. In granting certificates or licenses for the teaching of courses in science or social studies, adequate instruction in the conservation of natural resources shall be required.

(7) No certificate or license to teach industrial arts subjects may be issued unless the applicant has had 3 years of practical experience beyond apprenticeship or 4 years of institutional training in such subjects. For purposes of salary schedules and promotion, any person teaching an industrial arts subject on January 1, 1936, who had 5 years of practical or teaching experience in such subject shall be deemed to have the equivalent of a bachelor's degree.

(8) The state superintendent may not grant to any person a license to teach unless the person has received instruction in the study of minority group relations, including instruction in the history, culture and tribal sovereignty of the federally recognized American Indian tribes and bands located in this state.

(9) (a) Except as provided in par. (b), the state superintendent may not issue an initial teaching license, school district administrator's license or school administrator's license unless the applicant has demonstrated competency in all of the following:

1. Resolving conflicts between pupils and between pupils and school staff.
2. Assisting pupils in learning methods of resolving conflicts between pupils and between pupils and school staff, including training in the use of peer mediation to resolve conflicts between pupils.
3. Dealing with crises, including violent, disruptive, potentially violent or potentially disruptive situations, that may arise in school or at activities supervised by a school as a result of conflicts between pupils or between pupils and other persons.

(b) The state superintendent may waive the requirements under par. (a) if the applicant demonstrates competency in the subjects under par. (a) 1. to 3. within 12 months after the date on which the license is issued.

(10) (a) In this subsection, "educational agency" has the meaning given in s. 115.31 (1) (b).

(b) With the assistance of the department of justice, the state superintendent shall do all of the following:

1. Conduct a background investigation of each applicant for issuance or renewal of a license or permit.
2. Over a 5-year period, conduct a background investigation of each person who holds a license, issued by the state superintendent, that has no expiration date and who is employed by an educational agency.

(c) If the person under par. (b) is a nonresident, or if the state superintendent determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the state superintendent shall require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints, or by other technologies approved by law enforcement agencies. The department of justice may provide for the submission of the fingerprint cards or fingerprints by other technologies to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(d) Upon request, an educational agency shall provide the state superintendent with all of the following information about each person employed by the educational agency who holds a license, issued by the state superintendent, that has no expiration date:

1. The person's name.
2. The person's social security number or the license identification number given by the department when the person's original license was issued.
3. Other identifying information, including the person's birthdate, sex, race and any identifying physical characteristics.

(e) The state superintendent may issue or renew a license or permit conditioned upon the receipt of a satisfactory background investigation.

(f) The state superintendent shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation. Except as provided in par. (g), such information is not subject to inspection or copying under s. 19.35.

(g) At the request under s. 49.22 (2m) of the department of workforce development or a county child support agency under s. 59.53 (5), the state superintendent shall release the name and address of the applicant or licensee, the name and address of the applicant's or licensee's employer and financial information, if any, related to the applicant or licensee obtained under this subsection to the department of workforce development or the county child support agency.

(11) The department may promulgate rules establishing requirements for licensure as a school principal. A school principal license shall authorize the individual to serve as a school principal at any grade level.

(12) Beginning on July 1, 1998, the department may not issue or renew a license that authorizes the holder to teach reading or language arts to pupils in any prekindergarten class or in any of the grades from kindergarten to 6 unless the applicant has successfully completed instruction preparing the applicant to teach reading and language arts using appropriate instructional methods, including phonics. The phonics instruction need not be provided as a separate course. In this subsection, "phonics" means a method of teaching beginners to read and pronounce words by learning the phonetic value of letters, letter groups and syllables.

**History:** 1971 c. 154; 1975 c. 39, 95; 1979 c. 346; 1981 c. 314 s. 146; 1985 a. 29, 207; 1989 a. 31; 1991 a. 42, 108, 164, 315; 1993 a. 16, 334, 339, 454, 491; 1995 a. 27 ss. 395.1m, 9145 (1); 1995 a. 299; 1997 a. 27, 113, 191, 237; 1999 a. 9; 2001 a. 109; 2005 a. 121.

**Cross Reference:** See also chs. PI 3 and 34, Wis. adm. code.

**118.192 Professional teaching permits.** (1) The state superintendent shall establish an alternative teacher training program for music, art, foreign language, computer science, mathematics and science teachers. The program shall consist of approximately 100 hours of formal instruction.

(2) An individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area that is current and compatible with modern curricula may apply to the state superintendent for enrollment in the alternative teacher training program. The state superintendent shall charge a fee sufficient to cover the costs of the program.

(3) The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the program under sub. (2). The permit authorizes the person to teach the subject area specified by the state superintendent in grades kindergarten to 12. The initial permit shall be valid for 2 years. During the initial permit period, the person shall be supervised by a person who holds a regular teaching license. The permit is renewable for 5-year periods.

(4) A school board that employs a person who holds a professional teaching permit shall ensure that no regularly licensed

teacher is removed from his or her position as a result of the employment of persons holding permits.

**History:** 1991 a. 108; 1995 a. 27 ss. 3952, 9145 (1); 1997 a. 27, 237.

**118.195 Discrimination against handicapped teachers prohibited.** (1) No person otherwise qualified may be denied a certificate or license from the state superintendent under s. 118.19 (1) because the person is totally or partially blind, deaf or physically handicapped nor may any school district refuse to employ a teacher on such grounds, if such handicapped teacher is able to carry out the duties of the position which the person seeks.

(2) Any school board may request the state superintendent for advice and assistance in interpreting this section.

**History:** 1993 a. 492; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**118.20 Teacher discrimination prohibited.** (1) No discrimination because of sex, except where sex is a bona fide occupational qualification as defined in s. 111.36 (2), race, nationality or political or religious affiliation may be practiced in the employment of teachers or administrative personnel in public schools or in their assignment or reassignment. No questions of any nature or form relative to sex, except where sex is a bona fide occupational qualification as defined in s. 111.36 (2), race, nationality or political or religious affiliation may be asked applicants for teaching or administrative positions in the public schools either by public school officials or employees or by teachers agencies or placement bureaus.

(2) The state superintendent or a person designated by the state superintendent may receive and investigate complaints charging discrimination in employment, assignment or reassignment of teachers or administrative personnel in the public schools and the state superintendent or designee may hold hearings, subpoena witnesses and take testimony to effectuate the purposes of this section.

(3) If the state superintendent finds probable cause to believe that any discrimination prohibited by this section has been or is being practiced, the state superintendent shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure to eliminate the discrimination, the state superintendent shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed, and requiring the public school official, employee, teacher agency or placement bureau named, hereinafter called the “respondent” to answer the complaint at a hearing before the state superintendent. The notice shall specify a time of hearing not less than 10 days after service of the complaint, and a place of hearing within the county in which the discrimination is alleged to have occurred.

(4) After hearing, if the state superintendent finds that the respondent has engaged in discrimination prohibited by this section the state superintendent shall make written findings and recommend such action by the respondent as shall satisfy the purposes of this section and shall serve a certified copy of the findings and recommendations on the respondent together with an order requiring the respondent to comply with the recommendations. Any person aggrieved by noncompliance with the order shall be entitled to have the order enforced specifically by suit in equity. If the state superintendent finds that the respondent has not engaged in the alleged discrimination, the state superintendent shall serve a certified copy of the state superintendent’s findings on the complainant together with an order dismissing the complaint.

(5) If any public school official, employee, teachers agency or placement bureau violates sub. (1) or fails or refuses to obey any lawful order made by the state superintendent pursuant to this section, such person shall forfeit and pay into the state treasury not less than \$25 nor more than \$50, or be imprisoned not less than 5 nor more than 30 days. Such violation or failure or refusal to obey an order shall be grounds for the removal of any school district administrator, member of a school board or other public school

official. Findings and orders of the state superintendent under this section shall be subject to judicial review under ch. 227.

(6) Upon request of the state superintendent, the attorney general or district attorney of the county in which any investigation, hearing or trial under this section is pending, shall aid and prosecute under supervision of the state superintendent, all necessary actions or proceedings for the enforcement of this section and for the punishment of all violations thereof.

(7) In administering this section the state superintendent shall have authority to make, amend and rescind rules necessary to carry out the purposes of this section.

**History:** 1975 c. 94; 1977 c. 286 s. 4; 1981 c. 334 s. 25 (2); 1993 a. 492; 1995 a. 27 ss. 3954, 3955, 9145 (1); 1997 a. 27.

Section 118.20 is not the exclusive remedy of a wronged teacher; it is supplementary to the fair employment act, ch. 111. Kurtz v. City of Waukesha, 91 Wis. 2d 103, 280 N.W.2d 757 (1979).

A public school district did not violate the equal protection clause of the U.S. constitution by refusing to bus the students of a charter school created under sub. (2r) located within its geographical boundaries. Racine Charter One, Inc. v. Racine Unified School District, 424 F.3d 677 (2005).

**118.21 Teacher contracts.** (1) The school board shall contract in writing with qualified teachers. The contract, with a copy of the teacher’s authority to teach attached, shall be filed with the school district clerk. Such contract, in addition to fixing the teacher’s wage, may provide for compensating the teacher for necessary travel expense. A teaching contract with any person not legally authorized to teach the named subject or at the named school shall be void. All teaching contracts shall terminate if, and when, the authority to teach terminates.

(2) Any person who contracts to teach in any public school shall file in the office of the school district administrator, within 10 days after entering into such contract, a statement showing the date of expiration and the grade and character of certificate or license held. In any school district not having a school district administrator, the statement shall be filed with the school district clerk. Teachers employed by a cooperative educational service agency shall file the statement in the office of the agency coordinator. No order or warrant may be issued by the school district clerk in payment of the salary of any teacher, unless the teacher has complied with this subsection.

(3) School boards may provide in the contracts of teachers of agricultural and homemaking courses for payment out of school district funds for services performed outside the school district and connected with the performance of their regular teaching duties, and for travel expenses connected with such services.

(4) School boards may give to any teacher, without deduction from the teacher’s wages, the whole or part of any time spent by the teacher in attending a teachers’ educational convention, upon the teacher’s filing with the school district clerk a certificate of attendance at the convention, signed by the person or secretary of the association conducting the convention.

**History:** 1979 c. 301; 1993 a. 492.

**Cross-reference:** See s. 118.22 (2) for requirement that majority vote of full board membership is required for employment of a teacher.

A collective bargaining provision that releases only teacher members of a majority union from in-service days to attend, with pay, a state convention of the union is discriminatory, but the school board can deny compensation to minority union members who attend a regional convention of their union if they do so in good faith. Board of Education v. WERC, 52 Wis. 2d 625, 191 N.W.2d 242 (1971).

A teacher’s lack of legal authority to teach assigned courses, although known to the school board at time of hiring and subsequent assignments, was sufficient ground for dismissal despite the fact that school superintendent repeatedly assured the teacher that the certification problem was an administrative omission that would be cured by the board. Grams v. Melrose–Mindoro Jr. School Dist. No. 1, 78 Wis. 2d 569, 254 N.W.2d 730 (1977).

An individual teacher’s contract under ss. 118.21 and 118.22 is subservient to a collective bargaining contract under s. 111.70. 60 Atty. Gen. 342.

School boards have authority to contract with teachers to provide for an increment or sum in addition to their regular salary in return for the teacher choosing an early retirement option. 63 Atty. Gen. 16.

Even though a teacher was properly dismissed for an admitted violation of school rules, she was entitled to a due process hearing on other charges affecting her reputation as a teacher. Carpenter v. Greenfield School Dist. No. 6, 358 F.Supp. 220 (1973).

**118.22 Renewal of teacher contracts.** (1) In this section:

(a) “Board” means a school board, technical college district board, board of control of a cooperative educational service agency or county children with disabilities education board, but does not include any board of school directors in a city of the 1st class.

(b) “Teacher” means any person who holds a teacher’s certificate or license issued by the state superintendent or a classification status under the technical college system board and whose legal employment requires such certificate, license or classification status, but does not include part–time teachers or teachers employed by any board of school directors in a city of the 1st class.

(2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher’s contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew the teacher’s contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher’s contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher’s contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew the teacher’s contract.

(4) A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.

**History:** 1971 c. 154; 1981 c. 223; 1983 a. 189; 1993 a. 399, 492; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164.

Notice of intent not to renew that part of a contract providing extra pay for extra work as a coach is not necessary. *Richards v. Sheboygan Board of Education*, 58 Wis. 2d 444, 206 N.W.2d 597 (1973).

Under the facts of the case, the failure to timely provide notice of the right to a private conference under sub. (3) did not provide sufficient grounds to issue a writ of mandamus. *Rawhouser v. CESA No. 4*, 75 Wis. 2d 52, 248 N.W.2d 442 (1977).

In the absence of evidence of a school board’s bias, the trial court had no jurisdiction to hold a de novo hearing regarding the competence of a teacher facing nonrenewal under sub. (3). *Naus v. Sheboygan Falls Joint School District No. 1*, 76 Wis. 2d 104, 250 N.W.2d 725 (1977).

Arbitration was proper under a “discharge and nonrenewal” clause in a collective bargaining agreement when the school board did not offer teacher a second contract after rejecting a contract that was signed and returned by the teacher with the title “probationary contract” crossed out. *Jefferson Joint School Dist. No. 10 v. Jefferson Education Association* 78 Wis. 2d 94, 253 N.W.2d 536 (1977).

Under sub. (2), a board has the exclusive right to hire and fire a teacher. Due process does not require that the board be an impartial decisionmaker. *Hortonville Education Association v. Hortonville Joint School District No. 1*, 87 Wis. 2d 347, 274 N.W.2d 697 (1979).

An employment contract that recites that a teacher’s employment will not be renewed cannot be construed as a waiver of rights granted by this section. There is a presumption of good faith applicable to a board’s decisions. *Faust v. Ladysmith–Hawkins School Systems*, 88 Wis. 2d 525, 277 N.W.2d 303, 281 N.W.2d 611 (1979).

The layoff of a teacher is not the equivalent of a “refusal to renew” when a collective bargaining agreement under s. 111.70 contains layoff provisions incorporated in the teacher’s contract. *Mack v. Joint School District No. 3, Hales Corners*, 92 Wis. 2d 476, 285 N.W.2d 604 (1979).

Arbitrators appointed pursuant to the grievance procedure contained in a collective bargaining agreement properly held a de novo factual hearing to determine whether just cause existed for the school board to terminate a teacher. *Fortney v. School District of West Salem*, 108 Wis. 2d 167, 321 N.W.2d 255 (1982).

A teacher who forgot to accept an employment offer under s. 118.22 (2) and who was consequently terminated did not voluntarily terminate employment under s. 108.04 (7). *Nelson v. LIRC*, 123 Wis. 2d 221, 365 N.W.2d 629 (Ct. App. 1985).

Sub. (2) requires written notice of nonrenewal. A district must follow the explicit written notice requirement. *Sterlinske v. School District of Bruce*, 211 Wis. 2d 608, 565 N.W.2d 273 (Ct. App. 1997), 96–2624.

A “private conference” under sub. (3) on nonrenewal of teacher’s contract is a “meeting” within s. 19.82 (2). 66 Atty. Gen. 211.

Civil rights; academic freedom; refusal to hire a nontenure teacher for a constitutionally impermissible reason. 1970 WLR 162.

Fairness of a hearing before a school board on nonrenewal of a teacher’s contract. 1971 WLR 354.

**118.23 Populous counties; teacher tenure. (1)** In this section “teacher” means any person who holds a teacher’s certificate or license and whose legal employment requires such certificate or license, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person and who is employed by a school board, board of trustees or governing body of any school operating under chs. 115 to 121 and lying entirely and exclusively in a county having a population of 500,000 or more. “Teacher” does not include any superintendent or assistant superintendent; any teacher having civil service status under ss. 63.01 to 63.17; any teacher in a public school in a 1st class city; or any person who is employed by a school board during time of war as a substitute for a teacher on leave while on full–time duty in the U.S. armed forces or any reserve or auxiliary thereof and who is notified in writing at the time of employment that the position is of a temporary nature.

(2) All teachers shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of the 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). All principals shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of a 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). Upon accepting employment in another school system or school to which this section applies, a teacher who has acquired permanent employment under this section shall be on probation therein for 2 years. After continuous and successful probation for 2 years and gaining the 3rd contract in such school system or school, employment therein shall be permanent except as provided in sub. (3). A person who acquired tenure as a teacher under this section shall not be deprived of tenure as a teacher by reason of the person’s employment as a principal.

(3) No teacher who has become permanently employed under this section may be refused employment, dismissed, removed or discharged, except for inefficiency or immorality, for willful and persistent violation of reasonable regulations of the governing body of the school system or school or for other good cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system or school in which the teacher is employed. Upon the teacher’s written request and no less than 10 nor more than 30 days after receipt of notice by the teacher, the charges shall be heard and determined by the governing body of the school system or school by which the teacher is employed. Hearings shall be public when requested by the teacher and all proceedings thereat shall be taken by a court reporter. All parties shall be entitled to be represented by counsel at the hearing. The action of the governing body is final.

(4) If necessary to decrease the number of permanently employed teachers by reason of a substantial decrease of pupil population within the school district, the governing body of the school system or school may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers. No permanently employed teacher may be prevented from securing other employment during the period that the teacher is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for pre-

vious years of service. No new permanent or substitute appointments may be made while there are laid off permanent teachers available who are qualified to fill the vacancies.

(5) A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.

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

**History:** 1971 c. 154; 1979 c. 89; 1981 c. 223; 1983 a. 391; 1993 a. 492; 1995 a. 111.

Layoff and reinstatement provisions in this section are to be applied separately to classroom teachers and principals. 70 Atty. Gen. 6.

**118.235 Lunch period for teachers.** Every school board shall grant daily a duty-free lunch period to each of its teachers, except that a school district may contract with any teacher employed by it for services during such period. Such period shall be not less than 30 minutes and shall be provided at or near the time of the regular school lunch period.

**118.24 School district administrator. (1)** A school board may employ a school district administrator, a business manager and school principals and assistants to such persons. The term of each employment contract may not exceed 2 years. A contract for a term of 2 years may provide for one or more extensions of one year each.

(2) (a) Under the direction of the employing school board, the school district administrator shall have general supervision and management of the professional work of the schools and the promotion of pupils.

(b) The school district administrator shall not be a member of the school board and shall not engage in any pursuit which interferes with the proper discharge of the duties.

(c) The school district administrator shall make written recommendations to the school board on teachers, courses of study, discipline and such other matters as the administrator thinks advisable and shall perform such other duties as the school board requires.

(d) The school district administrator may act as principal or teacher in any school under the administrator's supervision.

(f) The school district administrator shall ensure that the administrative and pupil service staff in the district cooperate with the county department under s. 51.42 in the dissemination of information regarding the availability of alcohol and drug abuse services and to jointly establish procedures for the referral to appropriate agencies of students experiencing problems resulting from the use of alcohol or other drugs.

(3) The principal shall perform such administrative and instructional leadership responsibilities as are assigned by the district administrator under the rules and regulations of the school board.

(4) A business administrator shall perform such fiscal and business management and other administrative duties as are assigned by the district administrator subject to the rules, regulations and approval of the school board.

(5) School principals and business administrators, and assistants thereto, may, upon authorization from the school board or district administrator, attend conventions for the purpose of promoting and stimulating their professional growth and for improving the schools of the district and the state. For such approved attendance they may be reimbursed for actual and necessary expenses incurred for travel, board, lodging and attendance at such conventions upon proper filing of proof of attendance and of such necessary expenditures.

(6) The employment contract of any person described under sub. (1) shall be in writing and filed with the school district clerk. At least 4 months prior to the expiration of the employment contract, the employing school board shall give notice in writing of either renewal of the contract or of refusal to renew such person's contract. If no such notice is given, the contract then in force shall continue in force for 2 years. Any such person who receives notice of renewal or who does not receive notice of renewal or refusal to renew the person's contract at least 4 months before the contract expiration shall accept or reject the contract in writing on or before a date 3 months prior to the contract expiration. No such person may be employed or dismissed except by a majority vote of the full membership of the school board. Nothing in this section prevents the modification or termination of an employment contract by mutual agreement of the parties. No school board may enter into a contract of employment with any such person for a period of time as to which such person is then under a contract of employment with another school board.

(7) Prior to giving notice of refusal to renew the contract of any person described under sub. (1), the employing board shall give such person preliminary notice in writing by registered mail at least 5 months prior to the expiration of such contract that the board is considering nonrenewal of the contract, and that if such person files a written request with the board within 7 days after receiving such notice, the person has the right to a hearing before the board prior to being given written notice of refusal to renew the contract. The written request for a hearing shall include a statement requesting either a private hearing or a public hearing before the board. Section 118.22 does not apply to such a proceeding. If a hearing concerning nonrenewal of the contract is requested, the reasons upon which the board is considering nonrenewal may also be requested and the board shall furnish such reasons before the hearing in writing.

(8) Personnel administrators and supervisors, curriculum administrators and assistants to such administrative personnel, when employed by the school board of any school district to perform administrative duties only, may be employed for a term that does not exceed 2 years. A contract for a term of 2 years may provide for one or more extensions of one year each. Subsections (5) to (7) are applicable to such persons when they are employed to perform administrative duties only.

(9) Nothing in this section shall be construed:

(a) To prohibit the school board of any district from hiring part-time administrative personnel; or

(b) To prohibit the employment relations commission from making a determination that persons hired as part-time administrative personnel shall be included in the collective bargaining unit of persons hired as teachers and shall be covered by the terms of a collective bargaining agreement which exists pursuant to s. 111.70.

**History:** 1975 c. 379, 421; 1979 c. 331; 1983 a. 317; 1985 a. 176; 1993 a. 16; 1995 a. 27, 50.

The school board and district under sub. (3) can require a principal to perform administrative responsibilities as long as their performance does not modify the terms of an employment contract. *Kabes v. School District of River Falls*, 2004 WI App 55, 270 Wis. 2d 502, 677 N.W.2d 667, 03-0522.

The statutes do not support the existence of a school principal's property interest in performing specific duties. *Ulichny v. Merton Community School District*, 93 F. Supp. 2d 1011 (2000). Affirmed, 249 F.3d 686 (2001).

Due process does not require that an outside decisionmaker conduct the hearing provided for under sub. (7). *Beischel v. Stone Bank School District*, 362 F.3d 430 (2004).

**118.245 Limitation on salary and fringe benefit costs for professional employees. (1)** In this section:

(a) "Nonrepresented professional employee" means an employee who is a professional employee as defined in s. 111.70 (1) (L), who is employed to perform services for a school district and whose position is not included in a collective bargaining unit for which a representative is recognized or certified under subch. IV of ch. 111.

(b) “Represented professional employee” has the meaning given for “school district professional employee” in s. 111.70 (1) (ne).

(3) No school district may provide to its nonrepresented professional employees for any 12-month period ending on June 30 an average increase for all such employees in the total cost to the school district of compensation and fringe benefits for such employees having an average cost per employee exceeding 3.8% of the average total cost per employee of compensation and fringe benefits provided by the school district to its nonrepresented professional employees for the preceding 12-month period ending on June 30 or the average total percentage increased cost per employee of compensation and fringe benefits provided to its represented professional employees during the 12-month period ending on June 30 preceding the date that the increase becomes effective, whichever is greater. For purposes of this subsection, the average total percentage increased cost per employee of the compensation provided by a school district to its represented professional employees shall be determined in accordance with the method prescribed by the employment relations commission under s. 111.70 (4) (cm) 8s.

(4) For purposes of determination of the increased cost of any fringe benefits or compensation provided to a nonrepresented professional employee or represented professional employee, any cost increase that is incurred on any day other than the beginning of a 12-month period under sub. (3) shall be calculated as if the cost increase were incurred as of the beginning of the 12-month period.

**History:** 1993 a. 16; 1995 a. 27; 1999 a. 9.

**118.25 Health examinations.** (1) In this section “school employee” means a person employed by a school board who comes in contact with children or who handles or prepares food for children while they are under the supervision of school authorities.

(2) (a) As a condition of employment, the school board, except in 1st class cities, shall require a physical examination, including a chest X-ray or tuberculin test, of every school employee of the school district. Freedom from tuberculosis in a communicable form is a condition of employment. In the case of a new school employee, the school board may permit the school employee to submit proof of an examination, chest X-ray or tuberculin test complying with this section which was taken within the past 90 days in lieu of requiring such examination, X-ray or test. If the reaction to the tuberculin test is positive, a chest X-ray shall be required. Additional physical examinations shall be required thereafter at intervals determined by the school board. The school employee shall be examined by a physician in the employ of or under contract with the school district, but if a physician is not employed or under contract, the examination shall be made by a physician selected by the school employee.

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

(c) The physician making a physical examination shall prepare a report of the examination upon a standard form prepared by the department of health and family services and the department. Such report shall be retained in the physician’s files and the physi-

cian shall make confidential recommendations therefrom to the school board and to the school employee on a form prepared by the department of health and family services and the department. The recommendation form shall contain space for a certificate that the person is free from tuberculosis in a communicable form. The cost of such examinations, including X-rays and tuberculin tests, shall be paid out of school district funds.

(3) In counties having a population of less than 500,000, the school board may require periodic health examinations of pupils by physicians, under the supervision of local health departments and the department of health and family services, and may pay the cost of the examinations out of school district funds.

(4) If a health or physical examination made under this section includes the testing of vision, such test may be made by an optometrist. Forms used for reporting such vision tests shall so indicate.

(5) As a condition of employment, special teachers, school psychologists, school social workers, cooperative educational service agency personnel and other personnel working in public schools shall have physical examinations under sub. (2). The employing school district or agency shall pay the cost of such examinations.

(6) As a condition of employment, employees of the state superintendent whose work brings them into contact with school children or with school employees shall have physical examinations under sub. (2).

**History:** 1979 c. 221, 301; 1993 a. 27, 492; 1995 a. 27 ss. 9126 (19), 9145 (1); 1997 a. 27.

**118.255 Health treatment services for children with special physical or mental health treatment needs.** (1)

(a) Under this section “physical or mental health treatment services” means treatment for physical or orthopedic disability, developmental disability, emotional disturbance, hearing impairment, visual disability, speech or language disability; and includes itinerant services such as evaluative and diagnostic services.

(b) Words and phrases used in this section which are identical to words and phrases defined in s. 115.76 shall be given the meaning contained in s. 115.76.

(2) (a) If a school board, cooperative educational service agency or county children with disabilities education board provides physical or mental health treatment services to its pupils, it may also provide such services within the private school facilities to those private school pupils who are referred to the public school board, cooperative educational service agency or county children with disabilities education board by the administrator of a private school for evaluation for possible servicing. There shall be no charge for health treatment services provided to any pupils unless public school students or their parents are charged for similar services. For purposes of state aid, as it is provided under s. 115.88 to the public school district, for the health treatment service program, private school pupils receiving such health treatment services shall be counted among the pupils of the public school district receiving such services, although each child may receive health treatment services within the child’s own school facilities, whether public or private.

(b) A school board, cooperative educational service agency, or county children with disabilities education board providing services under this section may enter into agreements with the administrator of a private school on the scheduling, space and other necessary arrangements for performance of such health treatment services. A school board, cooperative educational service agency or county children with disabilities education board shall not pay any private school for any services or facilities provided under this section. Control of the health treatment services program shall rest with the public school board, cooperative educational service agency or county children with disabilities education board.

(c) A school board, cooperative educational service agency or county children with disabilities education board may provide health treatment services only within private school facilities

located within the boundaries of the school district, cooperative educational service agency or county.

(3) The school board, cooperative educational service agency or county children with disabilities education board maintaining health treatment services shall report annually to the department, and at such other times as the department directs, such information as the department requires.

(4) If the state superintendent is satisfied that the health treatment services program has been maintained during the preceding school year in accordance with law, the state superintendent shall certify to the department of administration in favor of each school board, cooperative educational service agency and county children with disabilities education board maintaining such health treatment services, an amount equal to the amount expended for items listed in s. 115.88 (1m) by the school board, cooperative educational service agency and county children with disabilities education board during the preceding year for these health treatment services as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).

**History:** 1973 c. 307; 1977 c. 83; 1981 c. 317; 1983 a. 27; 1983 a. 189 s. 329 (17m); 1983 a. 512; 1987 a. 27, 338; 1993 a. 492; 1995 a. 27; 1997 a. 27, 164; 1999 a. 9.

This section authorizes local school districts to provide health and welfare services, but not educational services, to students attending private schools; it may be unconstitutional to the extent that any of the services authorized thereby are rendered in church-affiliated private schools. 64 Atty. Gen. 75.

#### 118.257 Liability for referral to police. (1) In this section:

(a) “Controlled substance” has the meaning specified in s. 961.01 (4).

(am) “Controlled substance analog” has the meaning given in s. 961.01 (4m).

(at) “Delivery” has the meaning given in s. 961.01 (6).

(b) “Distribute” has the meaning specified in s. 961.01 (9).

(c) “Pupil services professional” means a school counselor, school social worker, school psychologist or school nurse.

(d) “School” means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(2) A school administrator, principal, pupil services professional or teacher employed by a school board is not liable for referring a pupil enrolled in the school district to law enforcement authorities, or for removing a pupil from the school premises or from participation in a school-sponsored activity, for suspicion of possession, distribution, delivery or consumption of an alcohol beverage or a controlled substance or controlled substance analog.

**History:** 1979 c. 331; 1981 c. 79 s. 17; 1983 a. 373; 1987 a. 170; 1995 a. 448.

#### 118.258 Electronic communication devices prohibited. (1) Each school board may adopt rules prohibiting a pupil from using or possessing an electronic communication device while on premises owned or rented by or under the control of a public school.

(2) Annually, if the school board adopts rules under sub. (1), it shall provide each pupil enrolled in the school district with a copy of the rules.

**History:** 1989 a. 121; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2005 a. 220.

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

**History:** 1977 c. 285; 1979 c. 323 s. 33; 1995 a. 158; 1997 a. 27.

VTAE [technical college] districts are school districts under this section. Binder v. Madison, 72 Wis. 2d 613, 241 N.W.2d 613 (1976).

**118.27 Gifts and grants.** The school board of a district may receive, accept and use gifts or grants of furniture, books, equipment, supplies, moneys, securities or other property, real or per-

sonal, used or useful for school research and educational purposes. All moneys received as gifts or grants shall be placed in the school district treasury but shall be considered segregated trust funds. Whenever a school board receives gifts or grants under this section, it shall make such use thereof, 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 school board may determine the use of or invest the same in accordance with the law applicable to trust investments. In the use, control or investment of such gifts or grants, the school board may exercise the rights and powers generally conferred upon trustees.

Except for moneys transferred under s. 66.30 (2m) (e) [now 36.11 (19) (e)], a district must act as trustee of moneys received under this section. 74 Atty. Gen. 45.

**118.28 Community action agencies.** The school board of a school district may appropriate funds for promoting and assisting any community action agency under s. 49.37, 1997 stats.

**History:** 1977 c. 29; 1983 a. 27 s. 2200 (20); 1995 a. 27; 1999 a. 185.

**118.29 Administration of drugs to pupils and emergency care. (1) DEFINITIONS.** In this section:

(a) “Administer” means the direct application of a drug or prescription drug, whether by injection, ingestion or other means, to the human body.

(b) “Drug” has the meaning specified in s. 450.01 (10).

(bm) “Epinephrine auto-injector” means a device used for the automatic injection of epinephrine into the human body.

(c) “Health care professional” means a person licensed as an emergency medical technician under s. 146.50, a person certified as a first responder under s. 146.50 (8) or any person licensed, certified, permitted or registered under chs. 441 or 446 to 449.

(d) “High degree of negligence” means criminal negligence, as defined in s. 939.25 (1).

(e) “Practitioner” means any physician, dentist, optometrist, physician assistant, advanced practice nurse prescriber, or podiatrist licensed in any state.

(f) “Prescription drug” has the meaning specified in s. 450.01 (20).

(2) **AUTHORITY TO ADMINISTER DRUGS; CIVIL LIABILITY EXEMPTION.** (a) Notwithstanding chs. 441, 447, 448 and 450, a school bus operator validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating, any school employee or volunteer, county children with disabilities education board employee or volunteer or cooperative educational service agency employee or volunteer authorized in writing by the administrator of the school district, the board or the agency, respectively, or by a school principal, and any private school employee or volunteer authorized in writing by a private school administrator or private school principal:

1. May administer any drug which may lawfully be sold over the counter without a prescription to a pupil in compliance with the written instructions of the pupil’s parent or guardian if the pupil’s parent or guardian consents in writing.

2. May administer a prescription drug to a pupil in compliance with the written instructions of a practitioner if the pupil’s parent or guardian consents in writing.

2m. Except for epinephrine administered under subd. 2., may use an epinephrine auto-injector to administer epinephrine to any pupil who appears to be experiencing a severe allergic reaction if, as soon as practicable, the school bus operator, employee or volunteer reports the allergic reaction by dialing the telephone number “911” or, in an area in which the telephone number “911” is not available, the telephone number for an emergency medical service provider.

2r. Except for glucagon administered under subd. 2., may administer glucagon to any pupil who appears to be experiencing a severe hypoglycemic event if, as soon as practicable, the school bus operator, employee, or volunteer reports the event to an emergency medical service provider.

3. Is immune from civil liability for his or her acts or omissions in administering a drug or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the act or omission constitutes a high degree of negligence. This subdivision does not apply to health care professionals.

(b) Any school district administrator, county children with disabilities education board administrator, cooperative educational service agency administrator, public or private school principal or private school administrator who authorizes an employee or volunteer to administer a drug or prescription drug to a pupil under par. (a) is immune from civil liability for the act of authorization unless it constitutes a high degree of negligence.

(3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION. Any school bus operator validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating and any public or private school employee or volunteer, county children with disabilities education board employee or volunteer or cooperative educational service agency employee or volunteer, other than a health care professional, who in good faith renders emergency care to a pupil of a public or private school is immune from civil liability for his or her acts or omissions in rendering such emergency care. The immunity from civil liability provided under this subsection is in addition to and not in lieu of that provided under s. 895.48 (1).

(4) WRITTEN POLICIES. Any school board, county children with disabilities education board, cooperative educational service agency or governing body of a private school whose employees or volunteers may be authorized to administer drugs or prescription drugs to pupils under this section shall adopt a written policy governing the administration of drugs and prescription drugs to pupils. In developing the policy, the school board, board, agency or governing body shall seek the assistance of one or more appropriate health care professionals who are employees of the school board, board, agency or governing body or are providing services or consultation under s. 121.02 (1) (g). The policy shall include procedures for obtaining and filing in the school or other appropriate facility the written instructions and consent required under sub. (2) (a), for the periodic review of such written instructions, for the storing of drugs and prescription drugs, for record keeping and for the appropriate instruction of persons who may be authorized to administer drugs or prescription drugs to pupils under this section.

(5) EXEMPTION. No employee except a health care professional may be required to administer a drug or prescription drug to a pupil under this section by any means other than ingestion.

**History:** 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 399; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164; 1999 a. 56, 126; 2001 a. 16, 83.

#### 118.291 Asthmatic pupils; possession and use of inhalers. (1g) In this section:

(a) "Asthma" means a chronic inflammatory disease of the airways, characterized by airway obstruction, which is at least partially reversible and which manifests as increased bronchial responsiveness to a variety of stimuli.

(b) "School" includes a public and a private school.

(1r) While in school, at a school-sponsored activity or under the supervision of a school authority, an asthmatic pupil may possess and use a metered dose inhaler or dry powder inhaler if all of the following are true:

(a) The pupil uses the inhaler before exercise to prevent the onset of asthmatic symptoms or uses the inhaler to alleviate asthmatic symptoms.

(b) The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian.

(c) The pupil has provided the school principal with a copy of the approval or approvals under par. (b).

(2) (a) No school district, school board or school district employee is civilly liable for injury to a pupil caused by a school

district employee who prohibits a pupil from using an inhaler because of the employee's good faith belief that the requirements of sub. (1r) had not been satisfied or who allows a pupil to use an inhaler because of the employee's good faith belief that the requirements of sub. (1r) had been satisfied.

(b) No private school or private school employee is civilly liable for injury to a pupil caused by a private school employee who prohibits a pupil from using an inhaler because of the employee's good faith belief that the requirements of sub. (1r) had not been satisfied or who allows a pupil to use an inhaler because of the employee's good faith belief that the requirements of sub. (1r) had been satisfied.

**History:** 1997 a. 77; 2005 a. 398.

#### 118.295 Suicide intervention; civil liability exemption.

Any school board, private school, county children with disabilities education board or cooperative educational service agency, and any officer, employee or volunteer thereof, who in good faith attempts to prevent suicide by a pupil is immune from civil liability for his or her acts or omissions in respect to the suicide or attempted suicide. The civil liability immunity provided in this section is in addition to and not in lieu of that provided under s. 895.48 (1).

**History:** 1985 a. 29; 1987 a. 14; 1997 a. 164.

118.30 Pupil assessment. (1) The state superintendent shall adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th and 10th grades.

(1g) (a) 1. By August 1, 1998, each school board shall adopt pupil academic standards in mathematics, science, reading and writing, geography and history. If the governor has issued pupil academic standards as an executive order under s. 14.23, the school board may adopt those standards.

2. By January 1, 2000, or by January 1 of the 1st school year of operation, whichever is later, each operator of a charter school under s. 118.40 (2r) shall adopt pupil academic standards in mathematics, science, reading and writing, geography and history. The operator of the charter school may adopt the pupil academic standards issued by the governor as executive order no. 326, dated January 13, 1998.

(c) Each school board operating elementary grades and each operator of a charter school under s. 118.40 (2r) that operates elementary grades may develop or adopt its own examination designed to measure pupil attainment of knowledge and concepts in the 4th grade and may develop or adopt its own examination designed to measure pupil attainment of knowledge and concepts in the 8th grade. If the school board or operator of the charter school develops or adopts an examination under this paragraph, it shall notify the department.

(1m) Except as otherwise provided in this section, annually each school board shall do all of the following:

(a) 1. Except as provided in sub. (6), administer the 4th grade examination adopted or approved by the state superintendent under sub. (1) to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 4th grade.

2. Beginning on July 1, 2002, if the school board has developed or adopted its own 4th grade examination, administer that examination to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 4th grade.

(am) 1. Except as provided in sub. (6), administer the 8th grade examination adopted or approved by the state superintendent under sub. (1) to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 8th grade.

2. Beginning on July 1, 2002, if the school board has developed or adopted its own 8th grade examination, administer that



examination to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 8th grade.

(b) Administer the 10th grade examination to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 10th grade.

**(1r)** Annually each operator of a charter school under s. 118.40 (2r) shall do all of the following:

(a) 1. Except as provided in sub. (6), administer the 4th grade examination adopted or approved by the state superintendent under sub. (1) to all pupils enrolled in the charter school in the 4th grade.

2. Beginning on July 1, 2002, if the operator of the charter school has developed or adopted its own 4th grade examination, administer that examination to all pupils enrolled in the charter school in the 4th grade.

(am) 1. Except as provided in sub. (6), administer the 8th grade examination adopted or approved by the state superintendent under sub. (1) to all pupils enrolled in the charter school in the 8th grade.

2. Beginning on July 1, 2002, if the operator of the charter school has developed or adopted its own 8th grade examination, administer that examination to all pupils enrolled in the charter school in the 8th grade.

(b) Administer the 10th grade examination to all pupils enrolled in the charter school in the 10th grade.

**(2)** (a) To the extent possible, all examinations under this section shall be free of bias.

(b) 1. If a pupil is enrolled in a special education program under subch. V of ch. 115, the school board or operator of the charter school under s. 118.40 (2r) shall comply with s. 115.77 (1m) (bg).

2. According to criteria established by the state superintendent by rule, the school board or operator of the charter school under s. 118.40 (2r) may determine not to administer an examination under this section to a limited-English proficient pupil, as defined under s. 115.955 (7), may permit the pupil to be examined in his or her native language or may modify the format and administration of an examination for such pupils.

3. Upon the request of a pupil's parent or guardian, the school board shall excuse the pupil from taking an examination administered under sub. (1m).

4. Upon the request of a pupil's parent or guardian, the operator of a charter school under s. 118.40 (2r) shall excuse the pupil from taking an examination administered under sub. (1r).

(c) The results of examinations administered under this section to pupils enrolled in public schools, including charter schools, may not be used to evaluate teacher performance, to discharge, suspend or formally discipline a teacher or as the reason for the nonrenewal of a teacher's contract.

(d) The results of examinations under this section may not be used in determining general or categorical aids to school districts.

**(3)** (a) The state superintendent shall allow a person to view an examination required to be administered under this section if the person submits to the state superintendent a written request to do so within 90 days after the date of administration of the examination. This paragraph does not apply while an examination is being developed or validated.

(b) The state superintendent shall promulgate rules establishing procedures to administer par. (a). To the extent feasible, the rules shall protect the security and confidentiality of the examinations required to be administered under this section.

**(4)** The department shall study the utility of administering technology-based performance assessments to pupils.

**(6)** A school board and an operator of a charter school under s. 118.40 (2r) is not required to administer the 4th and 8th grade examinations adopted or approved by the state superintendent under sub. (1) if the school board or the operator of the charter

school administers its own 4th and 8th grade examinations, the school board or operator of the charter school provides the state superintendent with statistical correlations of those examinations with the examinations adopted or approved by the state superintendent under sub. (1), and the federal department of education approves.

**History:** 1991 a. 269; 1993 a. 16, 367; 1995 a. 27 ss. 3971b to 3971yd, 9145 (1); 1997 a. 27, 164, 237; 1999 a. 9, 19, 32, 185, 186; 2001 a. 16, 109; 2003 a. 33.

**Cross Reference:** See also ch. PI 28, Wis. adm. code.

**118.31 Corporal punishment. (1)** In this section, "corporal punishment" means the intentional infliction of physical pain which is used as a means of discipline. "Corporal punishment" includes, but is not limited to, paddling, slapping or prolonged maintenance of physically painful positions, when used as a means of discipline. "Corporal punishment" does not include actions consistent with an individualized education program developed under s. 115.787 or reasonable physical activities associated with athletic training.

**(2)** Except as provided in sub. (3), no official, employee or agent of a school board may subject a pupil enrolled in the school district to corporal punishment.

**(3)** Subsection (2) does not prohibit an official, employee or agent of a school board from:

(a) Using reasonable and necessary force to quell a disturbance or prevent an act that threatens physical injury to any person.

(b) Using reasonable and necessary force to obtain possession of a weapon or other dangerous object within a pupil's control.

(c) Using reasonable and necessary force for the purpose of self-defense or the defense of others under s. 939.48.

(d) Using reasonable and necessary force for the protection of property under s. 939.49.

(e) Using reasonable and necessary force to remove a disruptive pupil from a school premises or motor vehicle, as defined in s. 125.09 (2) (a) 1. and 4., or from school-sponsored activities.

(f) Using reasonable and necessary force to prevent a pupil from inflicting harm on himself or herself.

(g) Using reasonable and necessary force to protect the safety of others.

(h) Using incidental, minor or reasonable physical contact designed to maintain order and control.

**(4)** Each school board shall adopt a policy that allows any official, employee or agent of the school board to use reasonable and necessary force for the purposes of sub. (3) (a) to (h). In determining whether or not a person was acting within the exceptions in sub. (3), deference shall be given to reasonable, good faith judgments made by an official, employee or agent of a school board.

**(5)** Except as provided in s. 939.61 (1), this section does not create a separate basis for civil liability of a school board or their officials, employees or agents for damages arising out of claims involving allegations of improper or unnecessary use of force by school employees against students.

**(6)** Nothing in this section shall prohibit, permit or otherwise affect any action taken by an official, employee or agent of a school board with regard to a person who is not a pupil enrolled in the school district.

**(7)** Nothing in this section abrogates or restricts any statutory or common law defense to prosecution for any crime.

**History:** 1987 a. 303; 1989 a. 26; 1991 a. 164; 1993 a. 334; 1997 a. 164; 1999 a. 127.

**NOTE:** This section was created by 1987 Wis. Act 303. Section 1 of that act is entitled "Legislative findings and purpose".

**118.32 Strip search by school employee.** Any official, employee or agent of any school or school district is prohibited under s. 948.50 from conducting a strip search of any pupil.

**History:** 1983 a. 489; 1987 a. 332 s. 64.

**118.325 Locker searches.** An official, employee or agent of a school or school district may search a pupil's locker as determined necessary or appropriate without the consent of the pupil,

without notifying the pupil and without obtaining a search warrant if the school board has adopted a written policy specifying that the school board retains ownership and possessory control of all pupil lockers and designating the positions of the officials, employees or agents who may conduct searches, and has distributed a copy of the policy to pupils enrolled in the school district.

**History:** 1997 a. 329.

**118.33 High school graduation standards; criteria for promotion.** (1) (a) Except as provided in par. (d), a school board may not grant a high school diploma to any pupil unless the pupil has earned:

1. In the high school grades, at least 4 credits of English including writing composition, 3 credits of social studies including state and local government, 2 credits of mathematics, 2 credits of science and 1.5 credits of physical education.

2. In grades 7 to 12, at least 0.5 credit of health education.

(am) The state superintendent shall encourage school boards to require an additional 8.5 credits selected from any combination of vocational education, foreign languages, fine arts and other courses.

(b) A school board may not grant a high school diploma to any pupil unless, during the high school grades, the pupil has been enrolled in a class or has participated in an activity approved by the school board during each class period of each school day, or the pupil has been enrolled in an alternative education program, as defined in s. 115.28 (7) (e) 1. Nothing in this paragraph prohibits a school board from establishing a program that allows a pupil enrolled in the high school grades who has demonstrated a high level of maturity and personal responsibility to leave the school premises for up to one class period each day if the pupil does not have a class scheduled during that class period.

(c) A school board may require a pupil to participate in community service activities in order to receive a high school diploma.

(d) A school board may grant a high school diploma to a pupil who has not satisfied the requirements under par. (a) if all of the following apply:

1. The pupil was enrolled in an alternative education program, as defined in s. 115.28 (7) (e) 1.

2. The school board determines that the pupil has demonstrated a level of proficiency in the subjects listed in par. (a) equivalent to that which he or she would have attained if he or she had satisfied the requirements under par. (a).

(f) 1. By September 1, 2004, each school board operating high school grades shall develop a written policy specifying criteria for granting a high school diploma that are in addition to the requirements under par. (a). The criteria shall include the pupil's academic performance, and the recommendations of teachers. Except as provided in subd. 2., the criteria apply to pupils enrolled in charter schools located in the school district.

2. By September 1, 2004, each operator of a charter school under s. 118.40 (2r) that operates high school grades shall develop a policy specifying criteria for granting a high school diploma. The criteria shall include the pupil's academic performance, and the recommendations of teachers.

3. Beginning on September 1, 2005, neither a school board nor an operator of a charter school under s. 118.40 (2r) may grant a high school diploma to any pupil unless the pupil has satisfied the criteria specified in the school board's or charter school's policy under subd. 1. or 2.

(2) The state superintendent shall:

(c) Establish course requirements under sub. (1) (a) and approve any school board's high school graduation standards policy that is equivalent to the requirements under sub. (1).

(m) Adopt policies to accommodate pupils with exceptional educational interests, needs or requirements, not limited to children with disabilities, as defined under s. 115.76 (5).

(3) By September 1, 1986, each school board operating high school grades shall submit to the state superintendent a report describing the school board's policies and guidelines on high school graduation standards, including a list of courses required under sub. (1) (a) and the number of hours in each school term required to earn one credit under sub. (1) (a), and thereafter shall notify the state superintendent whenever changes are made in such policies or guidelines. The department shall make reasonable efforts to combine the reports required under this subsection with other required school board reports.

(3m) A course taken at a technical college by a child attending the school part-time or in lieu of high school under s. 118.15 (1) (b), or attending the school under s. 118.15 (1) (cm), does not fulfill any of the high school graduation requirements under sub. (1) (a) unless the state superintendent has approved the course for that purpose. If a pupil satisfies all of the high school graduation requirements under sub. (1), the school board shall grant a high school diploma to the pupil regardless of whether the pupil satisfied all or a portion of the requirements while attending an institution of higher education under s. 118.55 or a technical college.

(4) (a) The state superintendent shall establish procedures for school boards to certify to the state superintendent whether they are in compliance with the requirements under sub. (1) and the rules promulgated under sub. (2).

(b) The state superintendent may periodically review school district high school graduation standards and shall notify any school board not in compliance with the requirements under sub. (1) or the rules promulgated under sub. (2), identifying the changes necessary.

(5) The department shall include in its biennial report under s. 15.04 (1) (d) information on the status of statewide high school graduation standards.

(6) (a) 1. Each school board shall adopt a written policy specifying the criteria for promoting a pupil from the 4th grade to the 5th grade and from the 8th grade to the 9th grade. The criteria shall include the pupil's score on the examination administered under s. 118.30 (1m) (a) or (am), unless the pupil has been excused from taking the examination under s. 118.30 (2) (b); the pupil's academic performance; the recommendations of teachers, which shall be based solely on the pupil's academic performance; and any other academic criteria specified by the school board. Except as provided in par. (b) 1., the criteria apply to pupils enrolled in charter schools located in the school district.

2. Except as provided in par. (b) 2., beginning on September 1, 2002, a school board may not promote a 4th grade pupil enrolled in the school district, including a pupil enrolled in a charter school located in the school district, to the 5th grade, and may not promote an 8th grade pupil enrolled in the school district, including a pupil enrolled in a charter school located in the school district, to the 9th grade, unless the pupil satisfies the criteria for promotion specified in the school board's policy adopted under subd. 1.

(b) 1. Each operator of a charter school under s. 118.40 (2r) shall adopt a written policy specifying the criteria for promoting a pupil from the 4th grade to the 5th grade and from the 8th grade to the 9th grade. The criteria shall include the pupil's score on the examination administered under s. 118.30 (1r) (a) or (am), unless the pupil has been excused from taking the examination under s. 118.30 (2) (b); the pupil's academic performance; the recommendations of teachers, which shall be based solely on the pupil's academic performance; and any other academic criteria specified by the operator of the charter school.

2. Beginning on September 1, 2002, an operator of a charter school under s. 118.40 (2r) may not promote a 4th grade pupil to the 5th grade, and may not promote an 8th grade pupil to the 9th

grade, unless the pupil satisfies the criteria for promotion specified in the charter school operator's policy under subd. 1.

**History:** 1983 a. 411; 1985 a. 29; 1991 a. 39, 269; 1993 a. 223, 339, 340, 399, 491; 1995 a. 27 s. 9145 (1); 1997 a. 27, 113, 164; 1999 a. 9, 84, 185; 2001 a. 38, 109; 2003 a. 33.

**NOTE:** 1983 Wisconsin Act 411, which created this section, has "Legislative declaration" in section 1.

**NOTE:** 1993 Wis. Act 339, which created sub. (1) (d), contains explanatory notes.

**Cross Reference:** See also ch. PI 18, Wis. adm. code.

**118.34 Technical preparation programs. (1)** In cooperation with a technical college district board, each school board shall establish a technical preparation program in each public high school located in the school district. The program shall consist of a sequence of courses, approved by the technical college system board under s. 38.04 (26), designed to allow high school pupils to gain advanced standing in the technical college district's associate degree program upon graduation from high school.

**(2)** (a) The technical college district director shall appoint a technical preparation council to coordinate the establishment of the technical preparation programs. The council shall consist of 12 members.

(b) The technical college district board and the school boards of school districts that operate high schools located in the technical college district shall establish a consortium to implement the technical preparation programs.

**(3)** The department and the technical college system board shall provide technical assistance to school boards to develop technical preparation programs in each high school. Annually, the school board shall evaluate its program and report the results to the state superintendent and the technical college system board.

**History:** 1991 a. 39; 1993 a. 16, 399, 491; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9; 2003 a. 33.

**Cross Reference:** See also ch. TCS 9, Wis. adm. code.

**118.35 Programs for gifted and talented pupils. (1)** In this section, "gifted and talented pupils" means pupils enrolled in public schools who give evidence of high performance capability in intellectual, creative, artistic, leadership or specific academic areas and who need services or activities not ordinarily provided in a regular school program in order to fully develop such capabilities.

**(2)** The state superintendent shall by rule establish guidelines for the identification of gifted and talented pupils.

**(3)** Each school board shall ensure that all gifted and talented pupils enrolled in the school district have access to a program for gifted and talented pupils.

**(4)** From the appropriation under s. 20.255 (2) (fy), the department shall award grants to cooperative educational service agencies and the school district operating under ch. 119 for the purpose of providing advanced curriculum and assessments for gifted and talented middle school pupils.

**History:** 1985 a. 29; 1995 a. 27 s. 9145 (1); 1997 a. 27, 240; 2005 a. 25.

**118.38 Waivers of laws and rules. (1)** (a) A school board may request the department to waive any school board or school district requirement in chs. 115 to 121 or in the administrative rules promulgated by the department under the authority of those chapters, except for statutes or rules related to any of the following:

1. The health or safety of pupils.
2. Pupil discrimination under s. 118.13.
3. The pupil assessment program under s. 118.30 and the standardized reading test required under s. 121.02 (1) (r).
4. Pupil records under s. 118.125.
5. The collection of data by the department.
6. The uniform financial fund accounting system under ss. 115.28 (13) and 115.30 (1) and audits of school district accounts under s. 120.14.

7. Licensure or certification under s. 115.28 (7) or (7m) other than the licensure of the school district administrator or business manager.

8. The commencement of the school term under s. 118.045.

(b) Before requesting a waiver, the school board shall hold a public hearing in the school district on the request.

**(1m)** The school board shall specify in its request for a waiver its reason for requesting the waiver.

**(2)** In determining whether to grant the waiver, the department shall consider all of the following factors and may consider additional factors:

(a) Whether the requirement impedes progress toward achieving a local improvement plan developed under sec. 309 (a) (3) of P.L. 103–227.

(b) If the school board has adopted educational goals for the school district, whether the requirement impedes progress toward achieving the goals.

**(3)** A waiver is effective for 4 years. The department shall renew the waiver for additional 4-year periods if the school board has evaluated the educational and financial effects of the waiver over the previous 4-year period, except that the department is not required to renew a waiver if the department determines that the school district is not making adequate progress toward improving pupil academic performance.

**(4)** By July 1, 2000, the department shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3). The report shall specify the number of waivers requested under this section, a description of each waiver request, the reason given for each waiver request and the educational and financial effects on the school district of each waiver that was granted.

**History:** 1995 a. 27; 1997 a. 27; 2001 a. 16.

**118.40 Charter schools. (1)** NOTICE TO STATE SUPERINTENDENT. Whenever a school board intends to establish a charter school, it shall notify the state superintendent of its intention. Whenever one of the entities under sub. (2r) (b) intends to establish a charter school, it shall notify the state superintendent of its intention by February 1 of the previous school year. A notice under this subsection shall include a description of the proposed school.

**(1m)** PETITION. (a) A written petition requesting the school board to establish a charter school under this section may be filed with the school district clerk. The petition shall be signed by at least 10% of the teachers employed by the school district or by at least 50% of the teachers employed at one school of the school district.

(b) The petition shall include all of the following:

1. The name of the person who is seeking to establish the charter school.

2. The name of the person who will be in charge of the charter school and the manner in which administrative services will be provided.

3. A description of the educational program of the school.

4. The methods the school will use to enable pupils to attain the educational goals under s. 118.01.

5. The method by which pupil progress in attaining the educational goals under s. 118.01 will be measured.

6. The governance structure of the school, including the method to be followed by the school to ensure parental involvement.

7. Subject to sub. (7) (a) and (am) and ss. 118.19 (1) and 121.02 (1) (a) 2., the qualifications that must be met by the individuals to be employed in the school.

8. The procedures that the school will follow to ensure the health and safety of the pupils.

9. The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population.

10. The requirements for admission to the school.

11. The manner in which annual audits of the financial and programmatic operations of the school will be performed.

12. The procedures for disciplining pupils.

13. The public school alternatives for pupils who reside in the school district and do not wish to attend or are not admitted to the charter school.

14. A description of the school facilities and the types and limits of the liability insurance that the school will carry.

15. The effect of the establishment of the charter school on the liability of the school district.

**(2)** PUBLIC HEARING; GRANTING OF PETITION. (a) Within 30 days after receiving a petition under sub. (1m) the school board shall hold a public hearing on the petition. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school described in the petition and the fiscal impact of the establishment of the charter school on the school district. After the hearing, the school board may grant the petition.

(b) A school board may grant a petition that would result in the conversion of all of the public schools in the school district to charter schools if all of the following apply:

1. At least 50% of the teachers employed by the school district sign the petition.

2. The school board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

(c) The school board of the school district operating under ch. 119 shall either grant or deny the petition within 30 days after the public hearing. If the school board of the school district operating under ch. 119 denies a petition, the person seeking to establish the charter school may, within 30 days after the denial, appeal the denial to the department. The department shall issue a decision within 30 days after receiving the appeal. The department's decision is final and not subject to judicial review under ch. 227.

**(2m)** SCHOOL BOARD INITIATIVE. (a) A school board may on its own initiative contract with a person to operate a school as a charter school. The contract shall include all of the provisions specified under sub. (1m) (b) and may include other provisions agreed to by the parties.

(am) At least 30 days before entering in a contract under this subsection that would convert a private school to a charter school or that would establish a charter school that is not an instrumentality of the school district, the school board shall hold a public hearing on the contract. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school and the fiscal impact of the establishment of the charter school on the school district.

(b) A school board may not enter into a contract under par. (a) that would result in the conversion of all of the public schools in the school district to charter schools unless the school board complies with sub. (2) (b) 2.

**(2r)** OTHER INITIATIVES. (a) In this subsection, "instructional staff" has the meaning given in the rules promulgated by the department under s. 121.02 (1) (a) 2.

(b) 1. All of the following entities may establish by charter and operate a charter school or, on behalf of their respective entities, may initiate a contract with an individual or group to operate a school as a charter school:

a. The common council of the city of Milwaukee.

b. The chancellor of the University of Wisconsin–Milwaukee.

c. On a pilot basis, the chancellor of the University of Wisconsin–Parkside.

d. The Milwaukee area technical college district board.

2. A charter shall include all of the provisions specified under sub. (1m) (b) 3. to 14. A contract shall include all of the provisions specified under sub. (1m) (b) 1. to 14. and shall specify the effect of the establishment of the charter school on the liability of the contracting entity under this paragraph. The contract may include other provisions agreed to by the parties. The chancellor of the University of Wisconsin–Milwaukee or of the University of Wisconsin–Parkside may not establish or enter into a contract for the establishment of a charter school under this paragraph without the approval of the board of regents of the University of Wisconsin System.

3. If the chancellor of the University of Wisconsin–Parkside contracts for the establishment of a charter school, the contract shall also provide that the charter school must be operated by a governing board and that the chancellor or his or her designee must be a member of the governing board. In addition, if the contract provides that the instructional staff of the charter school shall consist of employees of the board of regents of the University of Wisconsin System, the contract shall also include provisions that do all of the following:

a. Delegate to the governing board of the charter school the board of regents' authority to establish and adjust all compensation and fringe benefits of instructional staff, subject to the terms of any collective bargaining agreement under subch. V of ch. 111 that covers the instructional staff. In the absence of a collective bargaining agreement, the governing board may establish and adjust all compensation and fringe benefits of the instructional staff only with the approval of the chancellor of the University of Wisconsin–Parkside.

b. Authorize the governing board of the charter school to perform specified duties for the board of regents with respect to the instructional staff. This authorization may include duties related to supervising the instructional staff, taking disciplinary actions with respect to the instructional staff, recommending new hires or layoffs, collective bargaining, claims, complaints, or benefits and records administration.

(bm) The common council of the city of Milwaukee, the chancellor of the University of Wisconsin–Milwaukee, and the Milwaukee area technical college district board may only establish or enter into a contract for the establishment of a charter school located in the school district operating under ch. 119. The chancellor of the University of Wisconsin–Parkside may only establish or enter into a contract for the establishment of a charter school located in a unified school district that is located in the county in which the University of Wisconsin–Parkside is situated or in an adjacent county.

(c) 1. Except as provided in subd. 3., only pupils who reside in the school district in which a charter school established under this subsection is located may attend the charter school.

3. A pupil may attend Woodlands School, a charter school established in the school district operating under ch. 119 under this subsection, regardless of the pupil's school district of residence, if any of the following applies:

a. The pupil attended Woodlands School in the 2003–04 school year and, beginning in the 2005–06 school year, in the previous school year.

b. A member of the pupil's family who resides in the same household as the pupil attended Woodlands School in the 2003–04 school year.

(cm) The chancellor of the University of Wisconsin–Parkside may establish or enter into a contract for the establishment of only one charter school under this subsection, which may not operate high school grades and which may not accommodate more than 480 pupils.

(d) The chartering or contracting entity under par. (b) shall do all of the following:

1. Ensure that all instructional staff of charter schools under this subsection hold a license or permit to teach issued by the department.

2. Administer the examinations under ss. 118.30 (1r) and 121.02 (1) (r) to pupils enrolled in charter schools under this subsection.

(e) 1. From the appropriation under s. 20.255 (2) (fm), the department shall pay to the operator of the charter school an amount equal to the sum of the amount paid per pupil under this subdivision in the previous school year and the increase in the per pupil amount paid to private schools under s. 119.23 (4) (b) 2. in the current school year as compared to the previous school year, multiplied by the number of pupils attending the charter school. The amount paid per pupil may not be less than the amount paid per pupil under this subdivision in the previous school year. The department shall pay 25% of the total amount in September, 25% in December, 25% in February, and 25% in June. The department shall send the check to the operator of the charter school.

2. If the chancellor of the University of Wisconsin–Parkside establishes or contracts for the establishment of a charter school under this subsection, in March the department shall pay to the unified school district in which the charter school is located, from the appropriation under s. 20.255 (2) (fm), an amount equal to the amount of school aid per pupil to which the unified school district is eligible in the current school year multiplied by the number of pupils attending the charter school who were previously enrolled in the unified school district.

(f) If the chancellor of the University of Wisconsin–Parkside establishes or contracts for the establishment of a charter school under this subsection, biennially the chancellor shall submit a report to the legislature under s. 13.172 (2). The report shall include information on the academic performance of the pupils who attend the charter school and on the success of the governance structure of the charter school.

**(3) CONTRACT.** (a) If the school board grants the petition under sub. (2), the school board shall contract with the person named in the petition under sub. (1m) (b) 1. to operate the school as a charter school under this section. The contract shall include all of the provisions specified in the petition and may include other provisions agreed to by the parties.

(b) A contract under par. (a) or under subs. (2m) or (2r) may be for any term not exceeding 5 school years and may be renewed for one or more terms not exceeding 5 school years. The contract shall specify the amount to be paid to the charter school during each school year of the contract.

(c) A school board may not enter into a contract for the establishment of a charter school located outside the school district, except that if 2 or more school boards enter into an agreement under s. 66.0301 to establish a charter school, the charter school shall be located within one of the school districts, and if one or more school boards enter into an agreement with the board of control of a cooperative educational service agency to establish a charter school, the charter school shall be located within the boundaries of the cooperative educational service agency. A school board may not enter into a contract that would result in the conversion of a private, sectarian school to a charter school.

(d) A school board or an entity under sub. (2r) (b) shall give preference in awarding contracts for the operation of charter schools to those charter schools that serve children at risk, as defined in s. 118.153 (1) (a).

**(4) CHARTER SCHOOL DUTIES AND RESTRICTIONS.** (a) *Duties.* A charter school shall do all of the following:

1. If the charter school replaces a public school in whole or in part, give preference in admission to any pupil who resides within the attendance area or former attendance area of that public school.

2. Be nonsectarian in its programs, admissions policies, employment practices and all other operations.

(b) *Restrictions.* A charter school may not do any of the following:

1. Charge tuition.

2. Except as provided in par. (c), discriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(c) *Single–sex schools and courses.* A school board may enter into a contract for, and an entity under sub. (2r) may establish or enter into a contract for, the establishment of a charter school that enrolls only one sex or that provides one or more courses that enroll only one sex if the school board or entity under sub. (2r) makes available to the opposite sex, under the same policies and criteria of admission, schools or courses that are comparable to each such school or course.

**(5) CHARTER REVOCATION.** A charter may be revoked by the school board or the entity under sub. (2r) (b) that contracted with the charter school if the school board or, if applicable, the entity under sub. (2r) (b) finds that any of the following occurred:

(a) The charter school violated its contract with the school board or the entity under sub. (2r) (b).

(b) The pupils enrolled in the charter school failed to make sufficient progress toward attaining the educational goals under s. 118.01.

(c) The charter school failed to comply with generally accepted accounting standards of fiscal management.

(d) The charter school violated this section.

**(6) PROGRAM VOLUNTARY.** No pupil may be required to attend a charter school without his or her approval, if the pupil is an adult, or the approval of his or her parents or legal guardian, if the pupil is a minor.

**(7) LEGAL STATUS; APPLICABILITY OF SCHOOL LAWS.** (a) Except as provided in par. (am), the school board of the school district in which a charter school is located shall determine whether or not the charter school is an instrumentality of the school district. If the school board determines that the charter school is an instrumentality of the school district, the school board shall employ all personnel for the charter school. If the school board determines that the charter school is not an instrumentality of the school district, the school board may not employ any personnel for the charter school.

(am) 1. Except as provided in subs. 2. and 3., if a charter school is established under sub. (2m) and located in the school district operating under ch. 119, the school board of that school district shall determine whether or not the charter school is an instrumentality of the school district. If the school board determines that a charter school is an instrumentality of the school district, the school board shall employ all personnel for the charter school. If the school board determines that a charter school is not an instrumentality of the school district, the school board may not employ any personnel for the charter school.

2. A charter school established under sub. (2r) or a private school located in the school district operating under ch. 119 that is converted to a charter school is not an instrumentality of any school district and no school board may employ any personnel for the charter school. If the chancellor of the University of Wisconsin–Parkside contracts for the establishment of a charter school under sub. (2r), the board of regents of the University of Wisconsin System may employ instructional staff for the charter school.

3. Notwithstanding subd. 2., if the city of Milwaukee contracts with an individual or group operating for profit to operate a school as a charter school, the charter school is an instrumentality of the school district operating under ch. 119 and the board of the school district operating under ch. 119 shall employ all personnel for the charter school.

(ar) Nothing in this subsection affects the rights of personnel of a charter school that is an instrumentality of the school district

in which it is located to engage in collective bargaining pursuant to subch. IV of ch. 111.

(b) Except as otherwise explicitly provided, chs. 115 to 121 do not apply to charter schools.

**History:** 1993 a. 16, 490; 1995 a. 27 ss. 3983m to 3992m, 9145 (1); 1997 a. 27, 238, 252; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 105; 2003 a. 33, 156; 2005 a. 25, 111, 346.

### 118.43 Achievement guarantee contracts; state aid.

(1) DEFINITIONS. In this section:

(a) “Class size” means the number of pupils assigned to a regular classroom teacher on the 3rd Friday of September.

(b) “Low income” means the measure of low income that is used by the school district under 20 USC 2723.

(2) ELIGIBILITY; APPLICATION. (a) The school board of any school district in which a school in the previous school year had an enrollment that was at least 50% low-income is eligible to participate in the program under this section, except that a school board is eligible to participate in the program under this section in the 2000–01 school year if in the 1998–99 school year a school in the school district had an enrollment that was at least 0% low-income.

(b) In the 1996–97 school year, the school board of an eligible school district may enter into a 5-year achievement guarantee contract with the department on behalf of one school in the school district if all of the following apply:

1. In the previous school year, the school had an enrollment that was at least 30% low-income.

2. The school board is not receiving a grant under the pre-school to grade 5 program on behalf of the school under s. 115.45.

(bg) In the 1998–99 school year, the school board of an eligible school district may enter into a 5-year achievement guarantee contract with the department on behalf of one school in the school district if all of the following apply:

1. In the previous school year, the school had an enrollment that was at least 30% low-income.

2. The school board is not receiving a grant under the pre-school to grade 5 program on behalf of the school under s. 115.45.

(br) In the 2000–01 school year, the school board of an eligible school district may enter into a 5-year achievement guarantee contract with the department on behalf of one or more schools in the school district if all of the following apply:

2. The school board is not receiving a grant under the pre-school to grade 5 program on behalf of any of the schools under s. 115.45.

3. The school board, if eligible to participate in the program under this section in the 1996–97 and 1998–99 school years, had participated in the program during either school year.

4. None of the schools is a beneficiary of a contract under this section.

(c) Notwithstanding pars. (b) and (bg), the school board of the school district operating under ch. 119 may enter into an achievement guarantee contract on behalf of up to 10 schools under par. (b) and up to 10 schools under par. (bg).

(d) If an eligible school district has more than one school that qualifies under par. (b), the school board shall apply on behalf of the school with the largest number of low-income pupils in grades kindergarten and one.

(e) 1. If the school board of an eligible school district does not enter into an achievement guarantee contract with the department, a school board that has entered into such a contract, other than the school board of the school district operating under ch. 119, may apply to the department to enter into such a contract on behalf of one or more schools that meet the requirements under par. (b), (bg) or (br).

2. If more than one school board applies under subd. 1., the department shall determine which school board to contract with based on the number of low-income pupils in grades kindergarten

and one enrolled in the schools and on the balance of rural and urban school districts currently participating in the program.

(g) The department may renew an achievement guarantee contract under pars. (b), (bg), and (br) for one or more terms of 5 school years. As a condition of receiving payments under a renewal of an achievement guarantee contract, a school board shall maintain the reduction of class size achieved during the last school year of the original achievement guarantee contract for the grades specified for the last school year of the contract.

(3) CONTRACT REQUIREMENTS. Except as provided in pars. (am) and (ar), an achievement guarantee contract shall require the school board to do all of the following in each participating school:

(a) *Class size.* Reduce each class size to 15 in the following manner:

1. In the 1996–97 school year, in at least grades kindergarten and one.

2. In the 1997–98 school year, in at least grades kindergarten to 2.

3. In the 1998–99 to 2000–01 school years, in at least grades kindergarten to 3.

(am) *Class size; additional contracts.* For contracts that begin in the 1998–99 school year, reduce each class size to 15 in the following manner:

1. In the 1998–99 school year, in at least grades kindergarten and one.

2. In the 1999–2000 school year, in at least grades kindergarten to 2.

3. In the 2000–01 to 2002–03 school years, in at least grades kindergarten to 3.

(ar) *Class size; additional contracts.* For contracts that begin in the 2000–01 school year, reduce each class size to 15 in the following manner:

1. In the 2000–01 school year, in at least grades kindergarten and one.

2. In the 2001–02 school year, in at least grades kindergarten to 2.

3. In the 2002–03 to 2004–05 school years, in at least grades kindergarten to 3.

(b) *Education and human services.* 1. Keep the school open every day from early in the morning until late in the day, as specified in the contract.

2. Collaborate with community organizations to make educational and recreational opportunities, as well as a variety of community and social services, available in the school to all school district residents.

(c) *Curriculum.* 1. Provide a rigorous academic curriculum designed to improve pupil academic achievement.

2. In consultation with the department and with the participation of the school’s teachers and administrators and school district residents, review the school’s current curriculum to determine how well it promotes pupil academic achievement.

3. If necessary, outline any changes to the curriculum to improve pupil academic achievement.

(d) *Staff development and accountability.* 1. Develop a one-year program for all newly hired employees that helps them make the transition from their previous employment or school to their current employment.

2. Provide time for employees to collaborate and plan.

3. Require that each teacher and administrator submit to the school board a professional development plan that focuses on how the individual will help improve pupil academic achievement. The plan shall include a method by which the individual will receive evaluations on the success of his or her efforts from a variety of sources.

4. Regularly review staff development plans to determine if they are effective in helping to improve pupil academic achievement.

5. Establish an evaluation process for professional staff members that does all of the following:

- a. Identifies individual strengths and weaknesses.
- b. Clearly describes areas in need of improvement.
- c. Includes a support plan that provides opportunities to learn and improve.
- d. Systematically documents performance in accordance with the plan.
- e. Allows professional staff members to comment on and contribute to revisions in the evaluation process.
- f. Provides for the dismissal of professional staff members whose failure to learn and improve has been documented over a 2-year period.

**(4) OTHER CONTRACT PROVISIONS.** Each achievement guarantee contract shall include all of the following:

(a) A description of how the school will implement each of the elements under sub. (3), including any alternative class configurations for specific educational activities that may be used to meet the class size requirement under sub. (3).

(b) A description of the method that the school district will use to evaluate the academic achievement of the pupils enrolled in the school.

(c) A description of the school's performance objectives for the academic achievement of the pupils enrolled in the school and the means that will be used to evaluate success in attaining the objectives. Performance objectives shall include all of the following:

1. Where applicable, improvement in the scores on the examination administered to pupils under s. 121.02 (1) (r).
2. The attainment of any educational goals adopted by the school board.
3. Professional development with the objective of improving pupil academic achievement.
4. Methods by which the school involves pupils, parents or guardians of pupils and other school district residents in decisions affecting the school.

(d) A description of any statute or rule that is waived under s. 118.38 if the waiver is related to the contract.

(e) A description of the means by which the department will monitor compliance with the terms of the contract.

**(5) ANNUAL REVIEW; NONCOMPLIANCE.** (a) At the end of the 1996–97 school year, the department may terminate a contract if the department determines that the school board has failed to fully implement the provisions under sub. (3).

(b) Annually by June 30 through the 2003–04 school year, a committee consisting of the state superintendent, the chairpersons of the education committees in the senate and assembly and the individual chiefly responsible for the evaluation under sub. (7) shall review the progress made by each school for which an achievement guarantee contract has been entered into. The committee may recommend to the department that the department terminate a contract if the committee determines that the school board has violated the contract or if the school has made insufficient progress toward achieving its performance objectives under sub. (4) (c). The department may terminate the contract if it agrees with the committee's recommendation.

**(6) STATE AID.** (a) In this subsection, "amount appropriated" means the amount appropriated under s. 20.255 (2) (cu) in any fiscal year less \$250,000.

(b) From the appropriation under s. 20.255 (2) (cu), the department shall pay to each school district that has entered into a contract with the department under this section an amount determined as follows:

1. In the 1996–97 school year, divide the amount appropriated by the number of low-income pupils enrolled in grades kindergarten and one in each school in this state covered by contracts under this section and multiply the quotient by the number of pupils enrolled in those grades in each school in the school district covered by contracts under this section.

2. In the 1997–98 school year, divide the amount appropriated by the number of low-income pupils enrolled in grades kindergarten to 2 in each school in this state covered by contracts under this section and multiply the quotient by the number of pupils enrolled in those grades in each school in the school district covered by contracts under this section.

3. In the 1998–99 school year, divide the amount appropriated by the sum of the number of low-income pupils enrolled in grades kindergarten to 3 in each school in this state covered by contracts under sub. (3) (a) and the number of low-income pupils enrolled in grades kindergarten and one in each school in this state covered by contracts under sub. (3) (am) and multiply the quotient by the number of pupils enrolled in those grades in each school in the school district covered by contracts under this section.

4. In the 1999–2000 school year, divide the amount appropriated by the sum of the number of low-income pupils enrolled in grades kindergarten to 3 in each school in this state covered by contracts under sub. (3) (a) and the number of low-income pupils enrolled in grades kindergarten to 2 in each school in this state covered by contracts under sub. (3) (am) and multiply the quotient by the number of pupils enrolled in those grades in each school in the school district covered by contracts under this section.

6. In the 2000–01 school year, \$2,000 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by contracts under sub. (3) (a) and (am). After making these payments, the department shall pay school districts on behalf of schools that are covered by contracts under sub. (3) (ar) an amount equal to \$2,000 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by contracts under sub. (3) (ar). In making these payments, the department shall give priority to schools that have the highest percentage of low-income pupil enrollment and shall also ensure that it fully distributes the amount appropriated.

7. In the 2001–02 and 2002–03 school years, \$2,000 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by contracts under sub. (3) (am) and by renewals of contracts under sub. (2) (g). After making these payments, the department shall pay school districts on behalf of schools that are covered by contracts under sub. (3) (ar), an amount equal to \$2,000 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by contracts under sub. (3) (ar).

8. In the 2003–04 and 2004–05 school years, \$2,000 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by contracts under sub. (3) (ar) and by renewals of contracts under sub. (2) (g).

9. In the 2005–06 and 2006–07 school years, \$2,000 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by renewals of contracts under sub. (2) (g); and in the 2007–08 school year and any subsequent school year, \$2,250 multiplied by the number of low-income pupils enrolled in grades eligible for funding in each school in the school district covered by renewals of contracts under sub. (2) (g).

(d) The school board shall use the aid under this section to satisfy the terms of the contract.

(e) The department shall cease payments under this section to any school district if the school board withdraws from the contract before the expiration of the contract.

**(6m) RULES.** The department shall promulgate rules to implement and administer the payment of state aid under sub. (6).

**(7) EVALUATION.** Beginning in the 1996–97 school year, the department shall arrange for an evaluation of the program under this section and shall allocate from the appropriation under s. 20.255 (2) (cu) \$250,000 for that purpose.

**(8) STATE AID FOR DEBT SERVICE.** (a) Beginning in the 2000–01 school year, a school district is eligible for aid under this subsection if it applies to the department for approval of the amount of bonds specified in the copy of the resolution under 1999 Wisconsin Act 9, section 9139 (2d). If the department approves the amount before June 30, 2001, the department shall, from the appropriation under s. 20.255 (2) (cs), pay each school district that issues bonds pursuant to a referendum under 1999 Wisconsin Act 9, section 9139 (2d), an amount equal to 20% of the annual debt service cost on the bonds. This subsection does not apply to the school district operating under ch. 119.

(b) The department shall promulgate rules to implement and administer this subsection.

**History:** 1995 a. 27; 1997 a. 27, 252; 1999 a. 9; 2001 a. 16; 2005 a. 25, 125.

**Cross Reference:** See also ch. PI 24, Wis. adm. code.

**118.45 Tests for alcohol use.** A school board employee or agent, or law enforcement officer, as defined in s. 102.475 (8) (c), authorized by a public school board may require a public school pupil, including a charter school pupil, to provide one or more samples of his or her breath for the purpose of determining the presence of alcohol in the pupil's breath whenever the authorized employee, agent or officer has reasonable suspicion that the pupil is under the influence of alcohol while the pupil is in any of the circumstances listed in s. 125.09 (2) (b) 1. to 3. The authorized employee, agent or officer shall use a breath screening device approved by the department of transportation for the purpose of determining the presence of alcohol in a person's breath to determine if alcohol is present in the pupil's breath. The results of the breath screening device or the fact that a pupil refused to submit to breath testing shall be made available for use in any hearing or proceeding regarding the discipline, suspension or expulsion of a student due to alcohol use. No school board may require a pupil to provide one or more samples of his or her breath for the purpose of determining the presence of alcohol in the pupil's breath until the school board has adopted written policies regarding disciplines or treatments that will result from being under the influence of alcohol while on school premises or from refusing to submit to breath testing to determine the presence of alcohol in the pupil's breath.

**History:** 1995 a. 327.

**118.51 Full-time open enrollment. (1) DEFINITIONS.** In this section:

(a) "Child with a disability" has the meaning given in s. 115.76 (5).

(b) "Nonresident school board" means the school board of a nonresident school district.

(c) "Nonresident school district" means a school district, other than a pupil's resident school district, that the pupil is attending or has applied to attend under this section.

(d) "Parent" includes a guardian.

(e) "Resident school board" means the school board of a resident school district.

(f) "Resident school district" means the school district in which a pupil resides.

**(2) APPLICABILITY.** A pupil may attend a public school, including a prekindergarten, 4-year-old kindergarten, early childhood or school-operated day care program, in a nonresident school district under this section, except that a pupil may attend a prekindergarten, 4-year-old kindergarten, early childhood or school-operated day care program in a nonresident school district only if the pupil's resident school district offers the same type of program

that the pupil wishes to attend and the pupil is eligible to attend that program in his or her resident school district.

**(3) APPLICATION PROCEDURES.** (a) *Submission and acceptance or rejection.* 1. The parent of a pupil who wishes to attend a public school in a nonresident school district under this section shall submit an application, on a form provided by the department under sub. (15) (a), to the school board of the nonresident school district that the pupil wishes to attend, not earlier than the first Monday in February and not later than the 3rd Friday following the first Monday in February of the school year immediately preceding the school year in which the pupil wishes to attend. Applications may be submitted to no more than 3 nonresident school boards in any school year. On the 4th Monday in February, the nonresident school board shall send a copy of the application to the pupil's resident school board and the department. The application may include a request to attend a specific school or program offered by the nonresident school district.

2. A nonresident school board may not act on any application received under subd. 1. until after the 3rd Friday following the first Monday in February. If a nonresident school board receives more applications for a particular grade or program than there are spaces available in the grade or program, the nonresident school board shall determine which pupils to accept, including pupils accepted from a waiting list under sub. (5) (d), on a random basis, after giving preference to pupils and to siblings of pupils who are already attending public school in the nonresident school district. If a nonresident school board determines that space is not otherwise available for open enrollment pupils in the grade or program to which an individual has applied, the school board may nevertheless accept an applicant who is already attending school in the nonresident school district or a sibling of the applicant.

3. On or before the first Friday following the first Monday in April following receipt of the application, the nonresident school board shall notify the applicant, in writing, whether it has accepted the application. If the nonresident school board rejects an application, it shall include in the notice the reason for the rejection.

4. On or before the first Friday following the first Monday in April following receipt of a copy of the application, if a resident school board denies a pupil's enrollment in a nonresident school district under sub. (6), (7) or (12) (b) 1., the resident school board shall notify the applicant and the nonresident school board, in writing, that the application has been denied and include in the notice the reason for the denial.

5. If an application is accepted, on or before the 2nd Friday following the first Monday in May following receipt of the application, the nonresident school board shall notify the applicant, in writing, of the specific school or program that the pupil may attend in the following school year.

6. If an application is accepted, on or before the first Friday following the first Monday in June following receipt of a notice of acceptance, the pupil's parent shall notify the nonresident school board of the pupil's intent to attend school in that school district in the following school year.

(b) *Notice to resident school district.* Annually by June 30, each nonresident school board that has accepted a pupil under this section for attendance in the following school year shall report the name of the pupil to the pupil's resident school board.

(c) *Subsequent reapplication; when required.* 1. If a pupil's parent notifies a nonresident school board, under par. (a) 6., that the pupil intends to attend school in that school district in the following school year, the pupil may attend that school district in the following school year and may continue to attend that school district in succeeding school years without reapplying, except that the nonresident school board may require that the pupil reapply, no more than once, when the pupil enters middle school, junior high school or high school.

2. If at any time a pupil who is attending school in a nonresident school district under this section wishes to attend school in a different nonresident school district under this section, the



pupil's parent shall follow the application procedures under par. (a).

**(4) ADOPTION OF POLICIES AND CRITERIA.** (a) By February 1, 1998, each school board shall adopt a resolution specifying all of the following:

1. Its reapplication requirements, if any, under sub. (3) (c) 1.
2. Its acceptance and rejection criteria under sub. (5) (a) and (b).
3. A statement of the preference required under sub. (3) (a) 2.
4. Its transfer limitations, if any, under sub. (6).
5. If the school district is eligible for aid under subch. VI of ch. 121, the limitation on transfers into or out of the school district imposed by the school board under sub. (7).

6. Whether it will provide transportation under s. 121.54 (10) for some or all of the pupils who reside in the school district and attend school in a nonresident school district under this section or for some or all of the pupils who reside in other school districts and attend its schools under this section, and the means, under s. 121.55, by which it will provide such transportation.

(b) If the school board revises its criteria or policies under par. (a), it shall do so by resolution.

**(5) NONRESIDENT SCHOOL DISTRICT ACCEPTANCE CRITERIA.** (a) *Permissible criteria.* Except as provided in sub. (3) (a) 2., the criteria for accepting and rejecting applications from nonresident pupils under sub. (3) (a) may include only the following:

1. The availability of space in the schools, programs, classes, or grades within the nonresident school district. In determining the availability of space, the nonresident school board may consider criteria such as class size limits, pupil–teacher ratios, or enrollment projections established by the nonresident school board and may include in its count of occupied spaces pupils attending the school district for whom tuition is paid under s. 121.78 (1) (a) and pupils and siblings of pupils who have applied under sub. (3) (a) and are already attending public school in the nonresident school district.

2. Whether the pupil has been expelled from school by any school district during the current or 2 preceding school years for any of the following reasons or whether a disciplinary proceeding involving the pupil, which is based on any of the following reasons, is pending:

a. Conveying or causing to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives.

b. Engaging in conduct while at school or while under supervision of a school authority that endangered the health, safety or property of others.

c. Engaging in conduct while not at school or while not under the supervision of a school authority that endangered the health, safety or property of others at school or under the supervision of a school authority or of any employee of the school district or member of the school board.

d. Possessing a dangerous weapon, as defined in s. 939.22 (10), while at school or while under the supervision of a school authority.

4. Whether the special education or related services described in the child's individualized education program under s. 115.787 (2) are available in the nonresident school district or whether there is space available to provide the special education or related services identified in the child's individualized education program, including any class size limits, pupil–teacher ratios or enrollment projections established by the nonresident school board.

6. Whether the child has been referred to his or her resident school board under s. 115.777 (1) or identified by his or her resident school board under s. 115.77 (1m) (a) but not yet evaluated by an individualized education program team appointed by his or her resident school board under s. 115.78 (1).

(b) *Rejection after initial acceptance.* The criteria under par. (a) may provide that, notwithstanding the nonresident school board's acceptance of an application under sub. (3) (a) 3., at any time prior to the beginning of the school year in which the pupil will first attend school in the school district under this section, the school board may notify the pupil that he or she may not attend school in the school district if the school board determines that any of the criteria under par. (a) 2. are met.

(d) *Waiting list.* The school board of a nonresident school district may create a waiting list of pupils whose applications were rejected under sub. (3) (a) 3. The department shall promulgate rules to implement and administer this paragraph.

**(6) RESIDENT SCHOOL DISTRICT TRANSFER LIMITATIONS.** A school board may limit the number of its resident pupils attending public school in other school districts under this section in the 1998–99 school year to 3% of its membership. In each of the 7 succeeding school years, a school board may limit the number of its resident pupils attending public school in other school districts to an additional 1% of its membership. If more than the maximum allowable number of resident pupils apply to attend public school in other school districts in any school year under this section, the school board shall determine which pupils will be allowed to attend public school in other school districts on a random basis, except that the school board shall give preference to pupils who are already attending public school in the school district to which they are applying under this section and to siblings of such pupils.

**(7) RACIAL BALANCE.** (a) The school board of a school district that is eligible for aid under subch. VI of ch. 121 shall reject any application for transfer into or out of the school district made under this section if the transfer would increase racial imbalance in the school district. A pupil who transfers out of a school district under subch. VI of ch. 121 shall not be counted in that school district's membership, as defined in s. 121.004 (5), for the purpose of determining the school district's racial balance under this paragraph.

(b) The school board of a school district that receives applications for transfer into the school district under subch. VI of ch. 121 and this section may not accept applications made under this section until it has accepted or rejected all applications made under subch. VI of ch. 121.

**(8) DISCIPLINARY RECORDS.** Notwithstanding s. 118.125, the resident school board shall provide to the nonresident school board to which a pupil has applied under this section, upon request by that school board, a copy of any expulsion findings and orders pertaining to the pupil, a copy of records of any pending disciplinary proceeding involving the pupil, a written explanation of the reasons for the expulsion or pending disciplinary proceeding and the length of the term of the expulsion or the possible outcomes of the pending disciplinary proceeding.

**(9) APPEAL OF REJECTION.** If the nonresident school board rejects an application under sub. (3) (a) or (7) or the resident school board prohibits a pupil from attending public school in a nonresident school district under sub. (6), (7) or (12) (b) 1., the pupil's parent may appeal the decision to the department within 30 days after the decision. If the nonresident school board provides notice that the special education or related service is not available under sub. (12) (a), the pupil's parent may appeal the required transfer to the department within 30 days after receipt of the notice. If the resident school board provides notice of transfer under sub. (12) (b) 2., the pupil's parent may appeal the required transfer to the department within 30 days after receipt of the notice. The department shall affirm the school board's decision unless the department finds that the decision was arbitrary or unreasonable.

**(10) PUPIL ASSIGNMENT.** A nonresident school board may assign pupils accepted to attend public school in the school district under this section to a school or program within the school district. The school board may give preference in attendance at a school,

program, class or grade to residents of the school district who live outside the school's attendance area.

**(12) SPECIAL EDUCATION OR RELATED SERVICES.** (a) *Unavailable after enrollment.* If the individualized education program for a pupil, developed or revised under s. 115.787 after a child begins attending public school in a nonresident school district under this section, requires special education or related services that are not available in the nonresident school district or if there is no space available to provide the special education or related services identified in the child's individualized education program, including any class size limits, pupil–teacher ratios or enrollment projections established by the nonresident school board, the nonresident school board may notify the child's parent and the child's resident school board that the special education or related service is not available in the nonresident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under s. 115.79 (1) (b).

(b) *Undue financial burden.* 1. If the costs of the special education or related services required in the individualized education program under s. 115.787 (2) for a child with a disability whose parent has submitted an application under sub. (3) (a), as proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil special education or related services costs for children with disabilities continuing to be served by the resident school district, the child's resident school board may notify the child's parent and the nonresident school board by the first Friday following the first Monday in April that the pupil may not attend the nonresident school district to which the child has applied.

2. If the costs of the special education or related services required in an individualized education program for a pupil, developed or revised under s. 115.787 after a child begins attending public school in a nonresident school district under this section, as implemented or proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil special education or related services costs for children with disabilities continuing to be served by the resident school district, the child's resident school board may notify the pupil's parent and the nonresident school board that the costs of the special education or related services impose such an undue financial burden on the resident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under s. 115.79 (1) (b).

**(13) RIGHTS AND PRIVILEGES OF NONRESIDENT PUPILS.** A pupil attending a public school in a nonresident school district under this section has all of the rights and privileges of pupils residing in that school district and is subject to the same rules and regulations as pupils residing in that school district.

**(13m) PARTICIPATION IN CERTAIN PROGRAMS.** A pupil attending a public school in a nonresident school district under this section shall be considered a resident of the nonresident school district for the purposes of participating in programs of a cooperative educational service agency or a county children with disabilities education board.

**(14) TRANSPORTATION.** (a) *Responsibility.* 1. Except as provided in subd. 2., the parent of a pupil attending public school in a nonresident school district under this section is responsible for transporting the pupil to and from school in the nonresident school district attended by the pupil.

2. If the pupil is a child with a disability and transportation of the pupil is required in the individualized education program developed for the child under s. 115.787 (2) or is required under

s. 121.54 (3), the nonresident school district shall provide such transportation for the child.

(b) *Low-income assistance.* The parent of a pupil who is eligible for a free or reduced-price lunch under 42 USC 1758 (b) and who will be attending public school in a nonresident school district in the following school year under this section may apply to the department, on the form prepared under sub. (15) (a), for the reimbursement of costs incurred by the parent for the transportation of the pupil to and from the pupil's residence and the school that the pupil will be attending. The department shall determine the reimbursement amount and shall pay the amount from the appropriation under s. 20.255 (2) (cy). The reimbursement amount may not exceed the actual transportation costs incurred by the parent or 3 times the statewide average per pupil transportation costs, whichever is less. If the appropriation under s. 20.255 (2) (cy) in any one year is insufficient to pay the full amount of approved claims under this paragraph, payments shall be prorated among the parents entitled thereto. By the 2nd Friday following the first Monday in May following receipt of the parent's application under sub. (3) (a), the department shall provide to each parent requesting reimbursement under this paragraph an estimate of the amount of reimbursement that the parent will receive if the pupil attends public school in the nonresident school district in the following school year.

**(15) DEPARTMENT DUTIES.** The department shall do all of the following:

(a) *Application form.* Prepare, distribute to school districts and make available to parents an application form to be used by parents under sub. (3) (a). The form shall include provisions that permit a parent to apply for transportation reimbursement under sub. (14) (b).

(b) *Information and assistance.* Develop and implement an outreach program to educate parents about the open enrollment program under this section, including activities specifically designed to educate low-income parents, and services to answer parents' questions about the program and assist them in exercising the open enrollment option provided under this section.

(c) *Annual report.* Annually submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the number of pupils who applied to attend public school in a nonresident school district under this section, the number of applications denied and the bases for the denials, and the number of pupils attending public school in a nonresident school district under this section.

**(16) STATE AID ADJUSTMENTS.** (a) Annually, the department shall determine all of the following:

1. For each school district, the number of nonresident pupils attending public school in the school district under this section, other than pupils for whom tuition is paid under sub. (17).

2. For each school district, the number of resident pupils attending public school in a nonresident school district under this section, other than pupils for whom tuition is paid under sub. (17).

3. The statewide average per pupil school district cost for regular instruction, cocurricular activities, instructional support services and pupil support services in the previous school year.

(b) 1. If the number determined in par. (a) 1. is greater than the number determined in par. (a) 2. for a school district, the department shall increase that school district's state aid payment under s. 121.08 by an amount equal to the difference multiplied by the amount determined under par. (a) 3.

2. If the number determined in par. (a) 1. is less than the number determined in par. (a) 2. for a school district, the department shall decrease that school district's state aid payment under s. 121.08 by an amount equal to the difference multiplied by the amount determined under par. (a) 3. If the state aid payment under s. 121.08 is insufficient to cover the reduction, the department shall decrease other state aid payments made by the department to the school district by the remaining amount. If the state aid payment under s. 121.08 and other state aid payments made by the

department to the school district are insufficient to cover the reduction, the department shall use the moneys appropriated under s. 20.255 (2) (cg) to pay the balance to school districts under subd. 1.

(c) If a pupil attends public school in a nonresident school district under this section for less than a full school term, the department shall prorate the state aid adjustments under this subsection based on the number of days that school is in session and the pupil attends public school in the nonresident school district.

(d) The department shall ensure that the aid adjustment under par. (b) does not affect the amount determined to be received by a school district as state aid under s. 121.08 for any other purpose.

**(17) SPECIAL EDUCATION TUITION.** The resident school board shall pay to the nonresident school board, for each child who is attending public school in the nonresident school district under this section and is receiving special education or related services under subch. V of ch. 115, tuition calculated using the daily tuition rate under s. 121.83 for such children enrolled in the nonresident school district, or an amount agreed to by the school boards of the 2 school districts.

**History:** 1997 a. 27, 41, 164; 1999 a. 117, 118; 2001 a. 16, 104; 2003 a. 55; 2005 a. 258.

**Cross Reference:** See also ch. PI 36, Wis. adm. code.

The preference under sub. (5) (c) for continuing students only applies when there are spaces available in the first place. The acceptance of continuing students and rejection of another student when no space was available was arbitrary under sub. (9). *McMorrow v. Benson*, 2000 WI App 173, 238 Wis. 2d 329, 617 N.W.2d 247, 99–1288.

**118.52 Part-time open enrollment. (1) DEFINITIONS.** In this section:

(a) “Nonresident school board” means the school board of a nonresident school district.

(b) “Nonresident school district” means a school district, other than a pupil’s resident school district, in which the pupil is attending a course or has applied to attend a course under this section.

(c) “Parent” includes a guardian.

(d) “Resident school board” means the school board of a resident school district.

(e) “Resident school district” means the school district in which a pupil resides.

**(2) APPLICABILITY.** Beginning in the 1998–99 school year, a pupil enrolled in a public school in the high school grades may attend public school in a nonresident school district under this section for the purpose of taking a course offered by the nonresident school district. A pupil may attend no more than 2 courses at any time in nonresident school districts under this section.

**(3) APPLICATION PROCEDURES.** (a) The parent of a pupil who wishes to attend public school in a nonresident school district for the purpose of taking a course under this section shall submit an application, on a form provided by the department, to the school board of the nonresident school district in which the pupil wishes to attend a course not later than 6 weeks prior to the date on which the course is scheduled to commence. The application shall specify the course that the pupil wishes to attend and may specify the school or schools at which the pupil wishes to attend the course. The nonresident school board shall send a copy of the application to the pupil’s resident school board.

(b) If a nonresident school board receives more applications for a particular course than there are spaces available in the course, the nonresident school board shall determine which pupils to accept on a random basis.

(c) No later than one week prior to the date on which the course is scheduled to commence, the nonresident school board shall notify the applicant and the resident school board, in writing, whether the application has been accepted and, if the application is accepted, the school at which the pupil may attend the course. The acceptance applies only for the following semester, school year or other session in which the course is offered. If the nonresident school board rejects an application, it shall include in the notice the reason for the rejection.

(d) No later than one week prior to the date on which the course is scheduled to commence, the resident school board shall do all of the following:

1. If it denies an application to attend public school in a nonresident school district under sub. (6), notify the applicant and the nonresident school board, in writing, that the application has been denied and include in the notice the reason for the rejection.

2. If it determines that the course does not satisfy high school graduation requirements under s. 118.33 in the resident school district, notify the applicant in writing.

(e) Following receipt of a notice of acceptance but prior to the date on which the course is scheduled to commence, the pupil’s parent shall notify the resident school board and nonresident school board of the pupil’s intent to attend the course in the nonresident school district.

**(4) ADOPTION OF POLICIES AND CRITERIA.** By February 1, 1998, each school board shall adopt a resolution specifying the criteria and policies described in subs. (5) and (6). If the school board wishes to revise the criteria or policies, it shall do so by resolution.

**(5) NONRESIDENT SCHOOL DISTRICT ACCEPTANCE AND REJECTION CRITERIA.** School board policies and criteria for accepting and rejecting applications under sub. (3) from pupils who reside in another school district shall be the same as the policies and criteria for entry into the course that apply to pupils who reside in the school district, except that the school board may give preference in attendance in a course to residents of the school district.

**(6) RESIDENT SCHOOL DISTRICT REJECTION CRITERIA.** (a) *Individualized education program requirements.* The school board of a pupil’s resident school district shall reject a pupil’s application to attend a course in a public school in a nonresident school district if the resident school board determines that the course conflicts with the individualized education program for the pupil under s. 115.787 (2).

(b) *Undue financial burden.* The school board of a pupil’s resident school district may reject an application to attend a course in a public school in a nonresident school district if the cost of the course would impose upon the resident school district an undue financial burden in light of the resident school district’s total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil costs for children continuing to be served by the resident school district.

**(8) APPEAL OF REJECTION.** If an application is rejected under sub. (5) or a pupil is prohibited from attending a course in a public school in a nonresident school district under sub. (6), the pupil’s parent may appeal the decision to the department within 30 days after the decision. The department shall affirm the school board’s decision unless the department finds that the decision was arbitrary or unreasonable. The department’s decision is final and is not subject to judicial review under subch. III of ch. 227.

**(9) RIGHTS AND PRIVILEGES OF NONRESIDENT PUPILS.** A pupil attending a course in a public school in a nonresident school district under this section has all of the rights and privileges of pupils residing in that school district and is subject to the same rules and regulations as pupils residing in that school district.

**(10) DISCIPLINARY RECORDS.** Notwithstanding s. 118.125, the resident school board shall provide to the nonresident school board to which a pupil has applied under this section, upon request by that school board, a copy of any expulsion findings and orders, a copy of records of any pending disciplinary proceeding involving the pupil, a written explanation of the reasons for the expulsion or pending disciplinary proceeding and the length of the term of the expulsion or the possible outcomes of the pending disciplinary proceeding.

**(11) TRANSPORTATION.** (a) *Responsibility.* The parent of a pupil attending a course in a public school in a nonresident school district under this section is responsible for transporting the pupil to and from the course that the pupil is attending.

(b) *Low-income assistance.* The parent of a pupil who is attending a course in a public school in a nonresident school district under this section may apply to the department for reimbursement of the costs incurred by the parent for the transportation of the pupil to and from the pupil's residence or school in which the pupil is enrolled and the school at which the pupil is attending the course if the pupil and parent are unable to pay the cost of such transportation. The department shall determine the reimbursement amount and shall pay the amount from the appropriation under s. 20.255 (2) (cy). The department shall give preference under this paragraph to those pupils who are eligible for a free or reduced-price lunch under 42 USC 1758 (b).

(12) **TUITION.** The resident school board shall pay to the nonresident school board, for each pupil attending a course in a public school in the nonresident school district under this section, an amount equal to the cost of providing the course to the pupil, calculated in a manner determined by the department.

**History:** 1997 a. 27, 41, 164.; 2001 a. 16

**Cross Reference:** See also ch. PI 36, Wis. adm. code.

**118.55 Youth options program.** (1) **DEFINITION.** In this section, "institution of higher education" means an institution within the University of Wisconsin System, a tribally controlled college or a private, nonprofit institution of higher education located in this state.

(2) **ENROLLMENT IN INSTITUTION OF HIGHER EDUCATION; APPLICATION.** (a) Subject to par. (b) and sub. (7t) (c), any public school pupil enrolled in the 11th or 12th grade who is not attending a technical college under sub. (7r) or s. 118.15 (1) (b) may enroll in an institution of higher education for the purpose of taking one or more nonsectarian courses at the institution of higher education. The pupil shall submit an application to the institution of higher education in the previous school semester. The pupil shall indicate on the application whether he or she will be taking the course or courses for high school credit or postsecondary credit. The pupil shall also specify on the application that if he or she is admitted the institution of higher education may disclose the pupil's grades, the courses that he or she is taking and his or her attendance record to the public school in which the pupil is enrolled.

(b) Paragraph (a) applies to a private institution of higher education and to a tribally controlled college only if the private institution of higher education or tribally controlled college has notified the state superintendent of its intent to participate in the program under this section by September 1 of the previous school year.

(3) **NOTIFICATION OF SCHOOL BOARD; DETERMINATION OF HIGH SCHOOL CREDIT.** (a) A pupil who intends to enroll in an institution of higher education under this section shall notify the school board of the school district in which he or she is enrolled of that intention no later than March 1 if the pupil intends to enroll in the fall semester, and no later than October 1 if the pupil intends to enroll in the spring semester. The notice shall include the titles of the courses in which the pupil intends to enroll and the number of credits of each course, and shall specify whether the pupil will be taking the courses for high school or postsecondary credit.

(b) If the pupil specifies in the notice under par. (a) that he or she intends to take a course at an institution of higher education for high school credit, the school board shall determine whether the course is comparable to a course offered in the school district, and whether the course satisfies any of the high school graduation requirements under s. 118.33 and the number of high school credits to award the pupil for the course, if any. In cooperation with institutions of higher education, the state superintendent shall develop guidelines to assist school districts in making the determinations. The school board shall notify the pupil of its determinations, in writing, before the beginning of the semester in which the pupil will be enrolled. If the pupil disagrees with the school board's decision regarding comparability of courses, satisfaction of high school graduation requirements or the number of

high school credits to be awarded, the pupil may appeal the school board's decision to the state superintendent within 30 days after the decision. The state superintendent's decision shall be final and is not subject to review under subch. III of ch. 227.

(4) **ADMISSION TO INSTITUTION OF HIGHER EDUCATION; NOTIFICATION.** (a) An institution of higher education may admit a pupil under this section only if it has space available.

(am) A pupil may attend an institution of higher education under this section only if the institution of higher education complies with s. 118.13 (1).

(b) If an institution of higher education admits a pupil, it shall notify the school board of the school district in which the pupil is enrolled, in writing, within 30 days after the beginning of classes at the institution of higher education. The notification shall include the course or courses in which the pupil is enrolled.

(c) If a pupil is not admitted to attend the course that he or she specified in the notice under sub. (3) (a) but is admitted to attend a different course, the pupil shall immediately notify the school board of the school district in which he or she is enrolled and the school board shall inform the pupil of its determinations under sub. (3) (b) regarding the course to which the pupil was admitted as soon as practicable.

(5) **PAYMENT.** Subject to sub. (7t), within 30 days after the end of the semester, the school board of the school district in which a pupil attending an institution of higher education under this section is enrolled shall pay the institution of higher education, on behalf of the pupil, the following amount for any course that is taken for high school credit and that is not comparable to a course offered in the school district:

(a) If the pupil is attending an institution within the University of Wisconsin System, the actual cost of tuition, fees, books and other necessary materials directly related to the course.

(c) If the pupil is attending a private institution of higher education, the lesser of the following:

1. The actual cost of tuition, fees, books and other necessary materials directly related to the course.

2. An amount determined by dividing the state total net cost of the general fund in the previous school year by the state total membership in the previous school year, dividing that quotient by the statewide average number of high school credits taken by full-time pupils in the previous school year, as determined by the state superintendent, and multiplying that quotient by the number of high school credits taken by the pupil at the private institution of higher education, as determined under sub. (3) (b). In this subdivision, "net cost" has the meaning given in s. 121.004 (6), and "membership" has the meaning given in s. 121.004 (5).

(6) **RESPONSIBILITY OF PUPIL FOR TUITION AND FEES; INSTITUTION OF HIGHER EDUCATION.** (a) Subject to sub. (7t), a pupil taking a course at an institution of higher education for high school credit under this section is not responsible for any portion of the tuition and fees for the course if the school board, or the state superintendent on appeal under sub. (3) (b), has determined that the course is not comparable to a course offered in the school district.

(b) A pupil taking a course at an institution of higher education for high school credit under this section is responsible for the tuition and fees for the course if the school board has determined that the course is comparable to a course offered in the school district, unless the state superintendent reverses the school board's decision on appeal under sub. (3) (b).

(c) A pupil taking a course at an institution of higher education for postsecondary credit under this section is responsible for the tuition and fees for the course.

(7g) **TRANSPORTATION.** The parent or guardian of a pupil who is attending an institution of higher education or technical college under this section and is taking a course for high school credit may apply to the state superintendent for reimbursement of the cost of transporting the pupil between the high school in which the pupil is enrolled and the institution of higher education or technical col-

lege that the pupil is attending if the pupil and the pupil's parent or guardian are unable to pay the cost of such transportation. The state superintendent shall determine the reimbursement amount and shall pay the amount from the appropriation under s. 20.255 (2) (cw). The state superintendent shall give preference under this subsection to those pupils who are eligible for a free or reduced-price lunch under 42 USC 1758 (b).

**(7r) ATTENDANCE AT TECHNICAL COLLEGE.** (a) Upon the pupil's request and with the written approval of the pupil's parent or guardian, any public school pupil who satisfies the following criteria may apply to attend a technical college for the purpose of taking one or more courses:

1. The pupil has completed the 10th grade.
2. The pupil is in good academic standing.
3. The pupil notifies the school board of his or her intent to attend a technical college under this subsection by March 1 if the pupil intends to enroll in the fall semester and by October 1 if the pupil intends to enroll in the spring semester.
4. The pupil is not a child at risk, as defined in s. 118.153 (1) (a).
5. The pupil is not ineligible under sub. (7t) (c) to participate in the program under this section.

(am) A school board may refuse to permit a pupil to attend a technical college under this subsection if the pupil is a child with a disability, as defined in s. 115.76 (5), and the school board determines that the cost to the school district under par. (dm) would impose an undue financial burden on the school district.

(b) The technical college district board shall admit the pupil to the technical college if he or she meets the requirements and prerequisites of the course or courses for which he or she applied, except as follows:

1. The district board may admit a pupil to a course under this subsection only if there is space available in the course after admitting to the course all individuals applying for admission to the course who are not attending the technical college under this subsection.

2. The district board may reject an application from a pupil who has a record of disciplinary problems, as determined by the district board.

(c) If a child attends a technical college under this subsection, the technical college shall ensure that the child's educational program meets the high school graduation requirements under s. 118.33. At least 30 days before the beginning of the technical college semester in which the pupil will be enrolled, the school board of the school district in which the pupil resides shall notify the pupil, in writing, if a course in which the pupil will be enrolled does not meet the high school graduation requirements and whether the course is comparable to a course offered in the school district. If the pupil disagrees with the school board's decision regarding comparability of courses or satisfaction of high school graduation requirements, the pupil may appeal the school board's decision to the state superintendent within 30 days after the decision. The state superintendent's decision is final and is not subject to review under subch. III of ch. 227. The pupil is eligible to

receive both high school and technical college credit for courses successfully completed at the technical college.

(d) Subject to sub. (7t), for each pupil attending a technical college under this subsection, the school board shall pay to the technical college district board, in 2 installments payable upon initial enrollment and at the end of the semester, for those courses taken for high school credit, an amount equal to the cost of tuition, course fees, and books for the pupil at the technical college, except that the school board is not responsible for payment for any courses that are comparable to courses offered in the school district.

(dm) If a pupil who is attending a technical college under this subsection is a child with a disability, as defined in s. 115.76 (5), the payment under par. (d) shall be adjusted to reflect the cost of any special services required for the pupil.

(e) The school board is not responsible for transporting a pupil attending a technical college under this subsection to or from the technical college that the pupil is attending.

(f) A pupil taking a course at a technical college for high school credit under this subsection is not responsible for any portion of the tuition and fees for the course if the school board is required to pay the technical college for the course under par. (d).

**Cross Reference:** See also ch. TCS 9, Wis. adm. code.

**(7t) LIMITATIONS ON PARTICIPATION AND PAYMENT.** (a) A school board may establish a written policy limiting the number of credits for which the school board will pay under subs. (5) and (7r) (d) to the equivalent of 18 postsecondary semester credits per pupil.

(b) If a school board is required to pay tuition and fees on behalf of a pupil under sub. (5) (a) or (c) 1. or (7r) (d), the tuition and fees charged may not exceed the amount that would be charged a pupil who is a resident of this state.

(c) If a pupil receives a failing grade in a course, or fails to complete a course, at an institution of higher education or technical college for which the school board has made payment, the pupil's parent or guardian, or the pupil if he or she is an adult, shall reimburse the school board the amount paid on the pupil's behalf upon the school board's request. If a school board that requests reimbursement of a payment made under this section is not reimbursed as requested, the pupil on whose behalf the payment was made is ineligible for any further participation in the program under this section. For the purposes of this paragraph, a grade that constitutes a failing grade for a course offered in the school district constitutes a failing grade for a course taken at an institution of higher education or technical college under this section.

**(8) PROGRAM INFORMATION.** Annually by October 1, each school board shall provide information about the program under this section to all pupils enrolled in the school district in the 9th, 10th and 11th grades.

**(9) RULES.** The state superintendent shall promulgate rules to implement and administer this section, including rules establishing criteria for determining reimbursement amounts under sub. (7g).

**History:** 1991 a. 39, 269, 315; 1993 a. 399; 1995 a. 27 ss. 3979m, 9145 (1); 1997 a. 27 ss. 2816 to 2819, 2821 to 2827m, 2844, 2845; Stats. 1997 s. 118.55; 1997 a. 113, 164, 237; 1999 a. 9; 2003 a. 131.

**Cross Reference:** See also chs. PI 38 and 40, Wis. adm. code.