

JLK:tlu

03/15/2005

1 **AN ACT** *to amend* 115.30 (3), 115.31, 118.06 (1) and (2), 118.07 (1), (2) (a) and (b),
2 118.09, 118.169, 254.168 (6) and 254.61 (5) of the statutes; **relating to:** provisions
3 that impose requirements on private schools.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft is the 2nd in a series of 5 drafts prepared for the purpose of discussion by the working group on tribal schools of the joint legislative council's special committee on state-tribal relations at the working group's meeting on March 18, 2005. Additional background information is provided in the first draft (WLC: 0158/1).

One of the tasks of the working group is to review statutes relating to private schools to determine if similar treatment should be accorded to tribal schools. This draft lists requirements in current law that explicitly refer to private schools, other than those related to transportation, reporting truancy, and confidentiality of records. (Transportation matters are included in WLC: 0162/1; reporting truancy and confidentiality of records are covered in WLC: 0158/1.)

As discussed in the first draft, it appears that, in most cases, a court would hold that the state is without authority to impose a state civil regulatory law on tribal schools if the law regulates the activities of a tribal school or imposes a requirement on a tribal school. However, even if it is not certain that a particular state civil regulatory law may be applied to a tribal school, federal law does not prohibit a state from providing funding or other benefits to a tribal school and conditioning such funding or benefits on the tribal school's meeting certain prerequisites to be eligible for the funding or benefits.

This draft sets forth the current text of statutes that explicitly impose requirements on private schools for the purpose of discussion but does not amend them to apply to tribal schools. The question for the working group is whether any of the statutes in this draft should be amended to additionally apply to tribal schools and, if so, under what conditions, for example, as a condition of receiving funding or a certain benefit.

The NOTE following each SECTION explains the applicability of the provision to private schools under current law.

All of the preliminary bill drafts are intended to facilitate discussion by the working group to develop a proposal for consideration by the committee. They are not intended to be the final version presented to the committee. Recommendations may be made to delete or modify some of a draft's provisions or include other provisions.

1 **SECTION 1.** 115.30 (3) of the statutes is amended to read:

2 115.30 (3) On or before each October 15, each administrator of a public or private
3 school system or a home-based private educational program shall submit, on forms provided
4 by the department, a statement of the enrollment on the 3rd Friday of September in the
5 elementary and high school grades under his or her jurisdiction to the department which shall
6 prepare such reports as will enable the public and private schools and home-based private
7 educational programs to make projections regarding school buildings, teacher supply, and
8 funds required. The administrator of each private school system and home-based private
9 educational program shall indicate in his or her report whether the system or program meets
10 all of the criteria under s. 118.165 (1).

NOTE: Requires private schools to make a statement to the department of public instruction (DPI) about enrollment on the pupil count date of the third Friday in September.

11 **SECTION 2.** 115.31 of the statutes is amended to read:

12 **115.31 License or permit revocation; reports; investigation.** (1) In this section:

13 (a) "Administrator" means the chief administrative officer of an educational agency.

14 If the chief administrative officer is the subject of a report under this section, "administrator"
15 means the presiding officer of the governing board of the educational agency or the secretary
16 of the department in which the educational agency is located.

17 (b) "Educational agency" means a school district, cooperative educational service
18 agency, state correctional institution under s. 302.01, secured correctional facility, as defined
19 in s. 938.02 (15m), secured child caring institution, as defined in s. 938.02 (15g), the

1 Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services
2 Program for the Deaf and Hard of Hearing, the Mendota Mental Health Institute, the
3 Winnebago Mental Health Institute, a state center for the developmentally disabled, a private
4 school, or a private, nonprofit, nonsectarian agency under contract with a school board under
5 s. 118.153 (3) (c).

6 (c) "Immoral conduct" means conduct or behavior that is contrary to commonly
7 accepted moral or ethical standards and that endangers the health, safety, welfare or education
8 of any pupil.

9 (2) Except as provided under sub. (2g), after written notice of the charges and of an
10 opportunity for defense, any license granted by the state superintendent may be revoked by
11 the state superintendent for incompetency or immoral conduct on the part of the licensee.

12 (2g) Notwithstanding subch. II of ch. 111, the state superintendent shall revoke a license
13 granted by the state superintendent, without a hearing, if the licensee is convicted of any Class
14 A, B, C, or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that
15 occurs on or after September 12, 1991, or any Class E, F, G, or H felony under ch. 940 or 948,
16 except ss. 940.08 and 940.205, for a violation that occurs on or after February 1, 2003.

17 (2r) (a) Except as provided under par. (b), the state superintendent may not reinstate
18 a license revoked under sub. (2g) for 6 years following the date of the conviction, and may
19 reinstate a license revoked under sub. (2g) only if the licensee establishes by clear and
20 convincing evidence that he or she is entitled to reinstatement.

21 (b) The state superintendent shall reinstate a license revoked under sub. (2g), prior to
22 the expiration of the 6-year period following the conviction, if he or she receives from the
23 court in which the conviction occurred a certificate stating that the conviction has been
24 reversed, set aside or vacated.

1 **(3)** An administrator shall do all of the following:

2 (a) Report to the state superintendent the name of any person employed by the
3 educational agency and licensed by the state superintendent if any of the following occurs:

4 1. The person is charged with a crime under ch. 948, including a crime specified under
5 s. 948.015, a felony with a maximum term of imprisonment of at least 5 years or a crime in
6 which the victim was a child.

7 2. The person is convicted of a crime described under subd. 1. or of 4th degree sexual
8 assault under s. 940.225 (3m).

9 3. The person is dismissed, or his or her contract is not renewed, by the employer based
10 in whole or in part on evidence that the person engaged in immoral conduct.

11 4. The person resigns and the administrator has a reasonable suspicion that the
12 resignation relates to the person having engaged in immoral conduct.

13 (b) Report to the state superintendent the name of any person employed by the
14 educational agency who is not licensed by the state superintendent if the person is convicted
15 of a crime described under par. (a) 1. or of 4th degree sexual assault under s. 940.225 (3m).

16 (c) Send a copy of any report that is made to the state superintendent under par. (a) or
17 (b) to the person who is the subject of the report.

18 **(4)** If an administrator requests a person who is employed by an educational agency and
19 licensed by the state superintendent to resign, and the administrator has a reasonable suspicion
20 that the person engaged in immoral conduct, the administrator shall inform the person of the
21 duty to report to the state superintendent under sub. (3) (a) 4.

22 **(5)** (a) A report under sub. (3) shall be made within 15 days after the administrator
23 becomes aware of the charge, conviction, dismissal, nonrenewal or resignation.

1 (b) Any administrator who in good faith reports or fails to report information under sub.
2 (3), and any other person who reports information under sub. (3) to the state superintendent,
3 is immune from civil liability for such acts or omissions.

4 (6) (a) Upon receiving a report under sub. (3) (a) 2. or (b) indicating that a person was
5 convicted of a crime, the state superintendent shall verify the conviction.

6 (b) Upon receiving a report under sub. (3) relating to a person licensed by the state
7 superintendent, the state superintendent shall investigate to determine whether to initiate
8 revocation proceedings. During the investigation, the state superintendent shall keep
9 confidential all information pertaining to the investigation except the fact that an investigation
10 is being conducted and the date of the revocation hearing.

11 (c) Notwithstanding s. 16.61 (4), the department shall destroy all information pertaining
12 to an investigation or a revocation proceeding, other than the fact that a person was convicted
13 of a crime described under sub. (3) (a) 1., 3 years from the date on which the investigation is
14 terminated or a final decision denying revocation of the person's license is issued, whichever
15 is later.

16 (6m) The department of public instruction shall, without a hearing, revoke a license or
17 permit granted by the department of public instruction if the department of revenue certifies
18 under s. 73.0301 that the licensee or permit holder is liable for delinquent taxes.

19 (7) Any person who intentionally fails to report as required under this section may be
20 fined not more than \$1,000 or imprisoned for not more than 6 months or both.

21 (8) The state superintendent shall promulgate rules to implement and administer this
22 section.

NOTE: Section 115.31 (1) (a), stats., defines "administrator" of an
"educational agency" in s. 115.31 (1) (b), stats., and then imposes duties
on these administrators to report to DPI about certain criminal

convictions or charges or dismissal for immoral conduct of individuals licensed by DPI and employed by the school. An “educational agency” includes a private school for this purpose. While a teacher at a private school is not required to be licensed by the state, many are. The statute applies to administrators of private schools in such cases and imposes the duties in subs. (3) to (5) and the penalty in sub. (7).

If the definition of “educational agency” in s. 115.31 (1) (b) were amended to include tribal schools, unless other changes were made, it would have the effect of adding tribal schools to the following statutes that cross-reference this definition: (1) s. 118.19 (1) (a), stats., which would then require DPI to conduct periodic background checks of license holders employed at tribal schools and require tribal schools to provide to DPI certain information about license holders employed at tribal schools; and (2) s. 973.135 (1) (a), stats., which would require a court to notify the state superintendent if a license holder employed by a tribal school is convicted of certain crimes.

1 **SECTION 3.** 118.06 (1) and (2) of the statutes are amended to read:

2 118.06 (1) Every school board and the governing body of every private school shall
3 cause the U.S. flag to be displayed in the schoolroom or from a flagstaff on each school ground
4 during the school hours of each school day.

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

NOTE: Requires private schools to display the flag and offer the pledge of allegiance or national anthem.

11 **SECTION 4.** 118.07 (1), (2) (a) and (b) of the statutes are amended to read:

12 118.07 (1) Every school board and the governing body of every private school shall
13 provide a standard first aid kit for use in cases of emergency.

1 (2) (a) Once each month, without previous warning, the person having direct charge of
2 any public or private school shall drill all pupils in the proper method of departure from the
3 building as if in case of fire, except when the person having direct charge deems that the health
4 of the pupils may be endangered by inclement weather conditions.

5 (b) Annually the person having direct charge of any public or private school shall file
6 a report pertaining to such drills on forms furnished by the department of commerce. Such
7 reports shall be made to the department of commerce and, in each community having a
8 recognized fire department, to the chief of the fire department. When no fire drill is held
9 during any month, the person having direct charge of the school shall state the reasons therefor
10 in the report.

NOTE: Requires private schools to have a first aid kit and conduct fire
 drills.

11 **SECTION 5.** 118.09 of the statutes is amended to read:

12 **118.09 Safety zones. (1)** Every school district maintaining a school outside the
13 corporate limits of a city or village shall provide at the school site a zone which will provide
14 safety for pupils from vehicular traffic during loading and unloading of pupils at the school.
15 The zone may consist of a widening toward or into the schoolyard of the traveled portion of
16 the adjacent highway so as to permit a vehicle to stop in the extended area completely clear
17 of such traveled portion or may be constructed wholly within the schoolyard with connecting
18 roads to the adjacent highway. The zone and approaches from the highway for use of vehicles
19 shall be graveled or hard-surfaced.

20 (2) The school district shall cooperate with the agency of the town, county or state
21 having jurisdiction of the highway to the end that matters pertaining to the highway will be
22 properly protected. Contracts for the necessary materials and construction and maintenance,

1 including snow removal, of zones may be entered into with the county or town or with private
2 persons. If the contracting party does not have jurisdiction over the highway, the contract shall
3 be approved by the agency of the state, county or town having jurisdiction over the highway
4 before any work is commenced thereunder.

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

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

NOTE: Requires school safety zones, including for private schools.

13 SECTION 6. 118.169 of the statutes is amended to read:

14 **118.169 Pupil identification numbers.** A school board, and the governing body of a
15 private school, may assign to each pupil enrolled in the school district or private school a
16 unique identification number. The school board or governing body shall not assign to any
17 pupil an identification number that is identical to or incorporates the pupil's social security
18 number. This section does not prohibit a school board or governing body from requiring a
19 pupil to disclose his or her social security number, nor from using a student's social security
20 number if such use is required by a federal or state agency or private organization in order for
21 the school district or private school to participate in a particular program.

NOTE: Authorizes a private school to assign pupil identification numbers but prohibits a private school from using a pupil's social security number for this purpose.

1 **SECTION 7.** 254.168 (6) of the statutes is amended to read:

2 254.168 (6) A private or public nursery school or kindergarten.

NOTE: Requires a private nursery school or kindergarten to have
periodic lead inspections.

3 **SECTION 8.** 254.61 (5) of the statutes is amended to read:

4 254.61 (5) “Restaurant” means any building, room or place where meals are prepared
5 or served or sold to transients or the general public, and all places used in connection with it
6 and includes any public or private school lunchroom for which food service is provided by
7 contract. “Meals” does not include soft drinks, ice cream, milk, milk drinks, ices and
8 confections. “Restaurant” does not include:

9 (a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels,
10 cold sausage, cured fish or bread and butter.

11 (b) Churches, religious, fraternal, youths’ or patriotic organizations, service clubs and
12 civic organizations which occasionally prepare, serve or sell meals to transients or the general
13 public.

14 (c) Any public or private school lunchroom for which food service is directly provided
15 by the school, or a private individual selling foods from a movable or temporary stand at public
16 farm sales.

17 (d) Any bed and breakfast establishment that serves breakfasts only to its lodgers.

18 (e) The serving of food or beverage through a licensed vending machine.

19 (f) Any college campus, as defined in s. 36.05 (6m), institution as defined in s. 36.51
20 (1) (b) or technical college that serves meals only to the students enrolled in the college
21 campus, institution or school or to authorized elderly persons under s. 36.51 or 38.36.

- 1 (g) A concession stand at a locally sponsored sporting event, such as a little league
2 game.

NOTE: Includes in the definition of “restaurant”, subject to restaurant regulation, food service at a private school if the food is brought in by contract and not directly provided by the private school. This definition is cross-referenced in statutes relating to prohibiting smoking, restroom equity, and alcohol licensing.

3 (END)