

Clearinghouse Rule 95-156

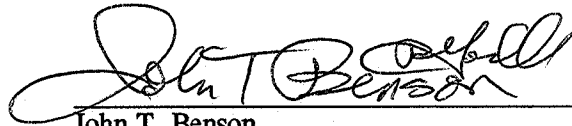
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

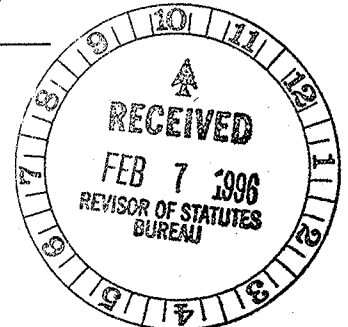
I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to interim alternative educational settings for children with exceptional educational needs who bring firearms to school was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 7th day of February, 1996.



John T. Benson
State Superintendent
State Department of Public Instruction



**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING RULES**

The state superintendent of public instruction hereby creates PI 11.13(4) and (5), relating to interim alternative educational settings for children with EEN who bring firearms to school.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11(2)(a), Stats.

Statute interpreted: s. 115.85, 115.81(3), 115.80(4m), Stats.

Under the federal Individuals with Disabilities Education Act (IDEA) and s. 115.81(3), Stats., parents of children with exceptional educational needs (EEN) may challenge the educational placement of their children by requesting a due process hearing. During the pendency of such a challenge, the child remains in the current educational placement, unless the parent and the school agree otherwise or unless a court orders a change. This legal requirement is commonly referred to as the "stay-put" rule.

With the passage of the Gun Free Schools Act (GFSA) and a growing national concern over violence in schools, congress amended the IDEA in October, 1994 to create an exception to the "stay-put" rule for children with EEN who are found to have brought a gun to school. These children may be placed in an "interim alternative educational setting" for 45 days. If the parent challenges that setting or the placement proposed after that setting, the child remains in the interim alternative setting pending any due process proceedings.

The proposed permanent rules provide for a child with EEN to be placed in an interim alternative educational setting for 45 days if he or she has brought a firearm to school. The setting must be determined by individuals specified in rule and the child's parents must be notified of such alternative setting. The rules also require that the child placed in an interim alternative educational setting shall remain in such setting during the pendency of due process proceedings, unless the parents and the board agree otherwise.

1 **SECTION 1.** PI 11.13(4) and (5) are created to read:

2 PI 11.13(4) Under this subsection, "firearm" means a firearm as defined in 18 U.S.C. 921. If a child
3 with exceptional educational needs is determined by a board to have brought a firearm to a school under the
4 board's jurisdiction, then the child may be placed in an interim alternative educational setting for not more than
5 45 days as follows:

6
7 (a) The interim alternative educational setting shall be decided by individuals described in s. PI
8 11.05(2)(b), pursuant to the notice requirements in ss. PI 11.05(3) and PI 11.09(1).

9 (b) The board shall send the parent a notice informing the parent of the interim alternative educational
10 setting decided under par. (a). The notice shall meet the requirements of s. PI 11.09(1).

1 (5) Notwithstanding subs. (1), (2) and (3), if a hearing, appeal or proceedings specified in sub. (1)
2 involves a child placed pursuant to sub. (4) in an interim alternative educational setting, then the child shall
3 remain in the interim alternative educational setting during the pendency of any such hearing, appeal or
4 proceeding, unless the parents and the board agree otherwise.

5 NOTE: Under 18 U.S.C. 921, the term "firearm" means (A) any weapon (including a starter gun)
6 which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B)
7 the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive
8 device. Such term does not include an antique firearm.

9 (4) The term "destructive device" means -

10 (A) any explosive, incendiary, or poison gas -

11 (i) bomb,

12 (ii) grenade,

13 (iii) rocket having a propellant charge of more than four ounces,

14 (iv) missile having an explosive or incendiary charge of more than one-quarter
15 ounce,

16 (v) mine, or

17 (vi) device similar to any of the devices described in the preceding clauses;

18 (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is
19 generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or
20 which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which
21 has any barrel with a bore of more than one-half inch in diameter; and

22 (C) any combination of parts either designed or intended for use in converting any device into
23 any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily
24 assembled.

25 The term "destructive device" shall not include any device which is neither designed nor redesigned for
26 use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a
27 signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the
28 Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other
29 device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle
30 which the owner intends to use solely for sporting, recreational or cultural purposes.


31 (5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be
32 fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a
33 fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single
34 pull of the trigger.

35 (6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen
36 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such
37 weapon as modified has an overall length of less than twenty-six inches.

38 (7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired
39 from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed
40 metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

The rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 7th day of February, 1996



John T. Benson
State Superintendent

f:\rules\firearms.rul

