

## CHAPTER 118

## GENERAL SCHOOL OPERATIONS

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**118.01 Curriculum requirements.** (1) **FUNDAMENTAL COURSE.** Reading, writing, spelling, English grammar and composition, geography, arithmetic, elements of agriculture and conservation of natural resources, history and civil government of the United States and of Wisconsin, citizenship and such other subjects as the school board determines shall be taught in every elementary school. All instruction shall be in the English language, except that the school board may cause any foreign language to be taught to such pupils as desire it.

(2) **PHYSIOLOGY AND HYGIENE.** Physiology and hygiene, sanitation, the effects of stimulants and narcotics upon the human system, symptoms of disease and the proper care of the body shall be taught in either the 6th, 7th or 8th grade, but no pupil shall be required to take such instruction if his parents file with the teacher a written objection thereto. Instruction in physiology and hygiene shall be offered in every high school.

(3) **PHYSICAL EDUCATION.** Physical instruction and training shall be provided for all pupils in conformity with the course of instruction in physical education prescribed by the state superintendent. In 1- and 2-room schools such instruction and training shall take the form of supervised playground work. In this subsection "physical education" means instruction in the theory and practice of physical exercise and instruction in hygiene, but does not include medical supervision.

(4) **PREVENTION OF ACCIDENTS.** Every public school shall provide instruction on the prevention of accidents and promotion of safety on the public highways.

(5) **MORALS.** Every public school shall provide instruction in morality and the individual's responsibility as a social being.

(6) **ANIMAL LIFE.** Every public school shall provide instruction in kindness to and the habits, usefulness and importance of animals and birds, and the best methods of protecting, preserving and caring for all animal and bird life.

(7) **FIRE PREVENTION.** Every public school shall provide instruction on fire prevention.

(8) **CO-OPERATIVES AND CONSERVATION.** Every high school and school of vocational, technical and adult education shall provide instruction in co-operative marketing and consumers' co-operatives and conservation of natural resources.

(9) **DAIRY PRODUCTS.** Every public and private elementary and high school shall give instruction in the true and comparative vitamin content and food and health values of dairy products and their importance for human diet. The course of such instruction and the educational material therefor shall be prescribed by the state superintendent and shall be included in the instruction manuals for such schools. Such educational program shall be directed by the state superintendent through school district administrators and such other educational officials whose co-operation may be deemed necessary to insure its success. The department of agriculture, the state board of health and the college of agriculture and the extension division of the university of Wisconsin shall co-operate with and assist the state superintendent in the development and execution of such program.

(10) **CITIZENSHIP.** Every public and private school, by appropriate instruction and ceremony to be formulated by the state superintendent, shall provide instruction in the proper reverence and respect for and the history and meaning of the U. S. flag, the Declaration of Independence, the U. S. constitu-

tion, the constitution and laws of this state as well as the duties and responsibilities of citizenship, so that government of the people, by the people and for the people may function and endure in the United States of America.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.46, except that a time limitation on foreign language instruction in present s. 40.46 (1) is deleted and a portion of present s. 40.46 (3) (b) is transferred to the county teachers college law and the remainder is deleted because it is obsolete. (Bill No. 353-S)

**118.02 Special observance days.** On the following days school shall be held, unless the dates fall on a Saturday or Sunday, and the day shall be appropriately observed: February 12; February 22; April 13, American Creed Day; September 28, Frances Willard Day; October 9, Leif Erikson Day; October 12; and November 11. If any such day falls on a Saturday or Sunday, the observance shall be on a school day immediately preceding or following.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Rearranges s. 40.45 (2). (Bill No. 353-S)

**118.03 Textbooks.** (1) (a) 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.

(b) 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.

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

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

(2) No book may be adopted for use or be used in any public school which falsifies the facts regarding the history of our nation, which defames our nation's founders or misrepresents the ideals and causes for which they struggled and sacrificed or which contains propaganda favorable to any foreign government.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Sub. (1) like s. 40.48. Sub. (2) like s. 40.50 (1). Present s. 40.50 (2) to (4) deleted, because the provisions are unworkable since the state superintendent does not publish annually a "list of textbooks." (Bill No. 353-S)

**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.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.99 (1). (Bill No. 353-S)

**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 co-operation 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 co-operate in making their staff and facilities available to further the objectives of this program.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.98. (Bill No. 353-S)

**118.06 Flag and pledge of allegiance.** (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 and private school shall offer the pledge of allegiance in grades one to 8 at the beginning of school at least one day per week. No student shall be compelled, against his objections or those of his parents or guardian, to recite the pledge.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Like s. 40.47 (1). (Bill No. 353-S)

A requirement that the pledge of allegiance be recited by all pupils once a week in all public and private schools would be in violation of the First and Fourteenth Amendments to the Constitution of the United States. 50 Atty. Gen. 172.

The requirement that a noncompulsory pledge of allegiance be offered is constitutional. 52 Atty. Gen. 173.

**118.07 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) (a) 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.

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

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.47 (2) and (3). (Bill No. 353-S)

**118.08 School zones.** (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.

(2) On every highway entering a city or village there shall be erected and maintained near the corporate limits, in plain view of entering motorists, signs bearing the words "Drive Carefully in School Zones."

(3) All signs required by this section and their installation shall comply with standards adopted by the state highway commission.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.60, and deletes present s. 40.60 (4). According to the highway commission, that subsection is now obsolete. (Bill No. 353-S)

**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 co-operate 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 his vehicle is approaching and leaving the zone. He shall first alight before loading or unloading pupils at the zone, and while at stops on

his highway route to load and unload pupils, he shall exhibit the vehicle's stop sign.

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

**History:** 1967 c. 92, 313.

**Legislative Council Note, 1967:** Like s. 40.61. (Bill No. 353-S)

**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, but this section shall not affect any plan in operation on July 11, 1939, under which a junior police patrol directs traffic under the authorization, supervision and control of either the sheriff's department or of the chief of police or traffic department of the police department of any city, town or village. 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:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.63. (Bill No. 353-S)

**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.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Like s. 40.62. (Bill No. 353-S)

**118.12 Prohibitions and penalties.** (1) (a) Within the school district of his jurisdiction or employment, no school teacher, agency coordinator, school district administrator, school board member or other school employe connected with any public school may act as an agent or solicitor for the sale of school books, school supplies or school equipment, or solicit or promote such sales to individuals or the school district or receive any fee or reward for any such sales.

(b) Any person violating this subsection shall forfeit not less than \$50 nor more than \$200 for each offense and may be removed from office therefor.

(2) Any officer or teacher who fails or neglects to make the reports or who fails to keep the records required by this title shall forfeit not less than \$5 nor more than \$25 for each such failure or neglect.

(3) If any person designated in this title 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:** 1967 c. 92.

**Legislative Council Note, 1967:** Sub. (1) restates s. 40.93. Sub. (2) like s. 40.95. Sub. (3) restates s. 40.94. (Bill No. 353-S)

**118.13 Pupil discrimination prohibited.** No person may be excluded from any public school on account of his religion, nationality or color. No separate school or department may be maintained for any person on account of his religion, nationality or color. Any member of a school board who votes to exclude from any public school any child on account of his religion, nationality or color may be fined not more than \$100 or imprisoned not less than 30 days nor more than 6 months or both.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.51. (Bill No. 353-S)

**118.14 Age of pupils.** No child may be admitted to the 1st grade unless he is 6 years old on or before December 1 in the year he proposes to enter school. A resident over 20 years of age may be admitted to school when in the judgment of the school board he will not interfere with the pupils of school age.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Like s. 40.44 (1). (Bill No. 353-S)

**118.145 Admission to high school.** (1) The school board of a district operating high school grades shall determine, with the advice and consent of the state superintendent, 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 either the course of study in the elementary grades of the school district in which he resides or a course of study at least equivalent to the course of study prepared for elementary grades under s. 115.31 (1) 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 state superintendent 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 state superintendent under s. 115.31 (1), 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.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Based on s. 40.90 and clearly makes this section applicable to all school districts operating high school grades. (Bill No. 353-S)

**118.15 Compulsory school attendance. (1)**

Unless the child has a legal excuse, any person having under his control a child between the ages of 7 and 16 years shall cause such child to attend school regularly, during the full period and hours, religious holidays excepted, that the public or private school in which such child should be enrolled is in session, to the end of the school term, quarter or semester of the school year in which he becomes 16 years of age.

(2) Any such child who resides in a school district which also contains within its boundaries a vocational, technical and adult education school offering day class programs shall attend a high school until the end of the school term, quarter or semester in which he becomes 18 years of age, but any such child, 16 years of age or over, with the approval of his parent or legal custodian and the school board of his district, may attend the vocational, technical and adult education school in the school district in lieu of high school. Transportation for such pupils attending a vocational, technical and adult education school shall be provided on the same basis as is transportation for those pupils attending high school. If no vocational, technical and adult education day class program is offered in a school building located in the school district, resident pupils of the school district

are required to attend high school only until age 16.

(2m) A school board may permit a pupil who is in good standing academically to attend school part-time during his last school term preceding graduation from high school.

(3) This section does not apply to any child who is not in proper physical or mental condition to attend school, to any child exempted for good cause by the school board of the district in which the child resides or to any child who has completed the full 4-year high school course. The certificate of a reputable physician in general practice shall be sufficient proof that a child is unable to attend school.

(4) Instruction during the required period elsewhere than at school may be substituted for school attendance. Such instruction must be approved by the state superintendent as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside.

(5) Whoever violates this section or files a false statement under s. 118.16 (1) may be fined not less than \$5 nor more than \$50 or imprisoned not more than 3 months or both. In a prosecution under this subsection, if the defendant proves that he is unable to comply with the law because of the disobedience of the child in question, the action shall be dismissed and the child shall be proceeded against as delinquent under ch. 48.

**History:** 1967 c. 92, 313.

**Legislative Council Note, 1967:** Restates and re-arranges s. 40.77. Present s. 40.77 (1) (b) (last sentence) is deleted because the attorney general has issued an opinion that changes made by the 1965 legislature voided that sentence. (Bill No. 353-S)

**118.16 Truancy. (1)** "Truancy" means any absence of one or more days from school during which the principal or teacher has not been notified in writing 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. The only legal causes for absence are those specified in s. 118.15 (3) and (4). Upon request of the truant officer, a statement from the local health officer or nurse or attending physician shall be submitted explaining the cause of the pupil's absence.

(2) (a) Except in school districts operating under ch. 119, the school district administrator is the truant officer unless the school board appoints as truant officer another professional employe of the school district. The

school district administrator or the professional employe shall be reimbursed for his actual and necessary expenses incurred in the performance of his duties as truant officer.

(b) In school districts operating under ch. 119, the school board shall appoint welfare workers or attendance officers who shall have the powers of truant officers. To qualify for employment such welfare workers shall possess the qualifications required for teachers in such school districts and shall have all the rights and privileges of teachers.

(3) All teachers in 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 truant officers at all reasonable times. When called upon by any truant officer, such teachers shall furnish, on blanks supplied by the truant officer, such information in regard to any child between the ages of 7 and 18 who claims or who is claimed to be in attendance at such schools. Every school teacher shall notify promptly the proper truant officer of any pupil whose attendance is habitually and inexcusably irregular.

(4) A truant officer may visit any place of employment in his locality to ascertain whether any minors are employed therein contrary to law. He shall require that the school certificates and lists of minors who are there employed be produced for inspection, and he shall report all cases of illegal employment to the proper school authorities and to the industrial commission. When a truant officer receives a report or learns by investigation or by personal observation that any child is unlawfully and habitually absent from school, he shall proceed immediately in accordance with sub. (5).

(5) School district administrators shall require the teachers under their supervision to report all absences daily to the truant officer. Within 12 hours after receiving a report of absence or other information of absence, the truant officer shall give written notice by personal service to the parent or guardian of the absent child to send the child to some school no later than the next following day on which school is in session unless an excuse from the proper health or judicial authority is filed. The notice shall set forth the legal requirements for school attendance and s. 118.15 shall be printed on the face or back of the notice. The truant officer shall notify immediately the principal or teacher in writing of the service of notice. Return of the child to school shall be reported immediately by

the principal or teacher to the truant officer. The failure of the child to return to school on such next following school day shall be reported immediately to the truant officer by the principal or teacher. The truant officer again shall give notice to the parent or guardian of the child, and notify the principal or teacher in writing of the service of notice. If the child does not return to school on the school day next following the service of the 2nd notice, the truant officer within 3 days shall cause an action to be brought under s. 118.15 (5).

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

(b) Truant officers may apprehend without warrant any child found violating s. 118.15 and cause the child to be placed in some school.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Based on s. 40.78 and provides that school district administrators are truant officers unless the school board designates another professional employe to be the truant officer. (Bill No. 353-S)

**118.17 Indigent children.** The principal or teacher in charge of any public school shall report to the authority administering general relief for the municipal unit 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:** 1967 c. 92.

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

**Legislative Council Note, 1967:** Restates s. 40.79. (Bill No. 353-S)

**118.18 Teacher reports.** Every teacher shall record the names, ages and studies of all pupils under his charge and their daily attendance and such other facts or matters relating to the school as the state superintendent or school board requires. Any teacher who fails to comply with this section shall forfeit his wages during the time of such failure.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Revises s. 40.44 (2) and (3). (Bill No. 353-S)

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

(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) Beginning with the 1972-1973 school year, no certificate or license to teach in any public school may be issued unless the applicant possesses a bachelor's degree including such professional training as the state superintendent by rule requires. Any teacher who taught in the public schools in the 1937-1938 school year or prior thereto may continue to teach in the public schools without complying with this subsection.

(4) A fee of \$5 shall be paid to the state superintendent with each application for a license or certificate to teach school or for a renewal of a license.

(5) After written notice of the charges and of an opportunity for defense, any certificate or license to teach issued by the state superintendent may be revoked by him for incompetency or immoral conduct on the part of the holder.

(6) In granting certificates or licenses for the teaching of courses in economics, social studies or agriculture, adequate instruction in co-operative marketing and consumers' co-operatives 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.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Revises s. 40.43 (1), (3), (3a), (4), (5) and (6). (Bill No. 353-S)

The grandfather provision applies to any teacher who taught in the public schools during or prior to the 1937-38 school year and without any limitation that the teaching subsequent to that school year be continuous. 54 Atty. Gen. 218.

#### **118.20 Teacher discrimination prohibited.**

(1) No discrimination because of race, nationality or political or religious affiliation may be practiced in the employment of teachers in public schools and no questions of any nature or form relative to race, nationality or political or religious affiliation may be asked applicants for teaching positions in the public schools either by public school officials or employes or by teachers agencies or placement bureaus.

(2) Whoever violates this section may be fined not less than \$25 nor more than \$50 or imprisoned not less than 5 nor more than 30 days. Violation of this section shall be cause for the removal of any school district administrator, member of a school board or other public school official.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.435. (Bill No. 353-S)

**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 in going to and from the schoolhouse at a rate not to exceed 6 cents per mile. 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 co-operative educational service agency shall file the statement in the office of the agency co-ordinator. 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 home-making 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 his wages, the whole or part of any time spent by him 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:** 1967 c. 92.

**Legislative Council Note, 1967:** Sub. (1) restates s. 40.40 (1). Sub. (2) is like s. 40.43 (2). Sub. (3) restates s. 40.40 (2). Sub. (4) revises s. 40.40 (3). (Bill No. 353-S)

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

A teacher cannot be required to attend a convention under threat of loss of pay, but can be required to work for the school if he does not attend with loss of pay if he refuses. *Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B. 35 W (2d) 540, 151 NW (2d) 617.*

A board may not refuse to rehire a teacher because of labor organization activities and cannot require a teacher to join any particular teachers' association. *Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B. 35 W (2d) 540, 151 NW (2d) 617.*

#### **118.22 Renewal of teacher contracts. (1)**

In this section "teacher" means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the state board of vocational, technical and adult education and whose legal employment requires such certificate, license or classification status, but does not include part-time teachers, teachers employed by any local board of vocational, technical and adult education in a city of the 1st class or teachers employed by any board of school directors in a city of the 1st class.

(2) On or before April 1 of the school year during which a teacher holds a contract, the school board by which the teacher is employed or a school district employe at the direction of the school board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before April 1, the teaching 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 his contract for the ensuing school year on or before April 1, 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 school board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the school 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 school board shall inform the teacher by preliminary notice in writing that the school board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the school board within 5 days after receiving the preliminary notice, the teacher has the right to a private confer-

ence with the school board prior to being given written notice of refusal to renew his contract.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Restates s. 40.41. In sub. (2) the phrase "school board by which the teacher is employed or a school district employe at the direction of the school board" is used in place of "the managing body or other proper officer of the school or system." In sub. (3) reference to "administrators" is deleted because the definition of teachers in sub. (1) covers administrators. Also, specific reference is made in sub. (3) to "preliminary notice" to make it clear that the teacher receives a preliminary notice in the case of the school board's refusal to renew his contract. (Bill No. 353-S)

**Note:** This section is printed as created by chapter 92, laws of 1967. Chapter 146, laws of 1967, amended the predecessor section (40.41 (2)) to read as follows:

"40.41 (2) A teacher shall be given written notice of renewal or refusal to renew his contract for the ensuing school year on or before March 15 of the school year during which said teacher holds a contract by the managing board, school board or district board of vocational, technical and adult education or an authorized officer or school district administrator of the board or district in which the teacher is employed. If no such notice is given on or before March 15, the contract then in force shall be continued for the ensuing school year. A teacher receiving 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 his contract for the ensuing school year on or before March 15, shall accept or reject, in writing, such contract not later than April 15 following. No teacher shall be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section shall prevent 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 district."

#### **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 this title or ch. 41 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 school or vocational, technical and adult education school in a city of the 1st class; 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. This section does not apply to any teacher after the close of the school year during which



the teacher has attained the age of 65 years, nor to any subsequent employment of such teacher.

(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 his 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 wilful 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 em-

ployment during the period he 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 previous 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.

**History:** 1967 c. 92, 313.

**Legislative Council Note, 1967:** Based on s. 40.42. Sub. (1) restates s. 40.42 (1), except last sentence, (4), (6) and (7). Sub. (2) restates s. 40.42 (2) and last sentence of s. 40.42 (1). Sub. (3) restates s. 40.42 (3). Sub. (4) restates s. 40.42 (5). (Bill No. 353-S)

See note to 119.24, citing State ex rel. Waslewski v. Bd. School Directors, 14 W (2d) 243, 111 NW (2d) 198.

The fact that a teacher has tenure does not prevent a school board from imposing restrictions on granting a leave of absence (here no gainful employment). Liddicoat v. Kenosha City Board of Education, 17 W (2d) 400, 117 NW (2d) 369.

**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.

**History:** 1967 c. 293.

**118.24 School district superintendent.** (1) The school board of any district may employ a school district superintendent for a period of not more than 3 years. Under the direction of the employing school board, the school district superintendent shall have general supervision and management of the professional work of the schools and the promotion of pupils.

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

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

(4) He may act as principal or teacher in any school under his supervision.

(5) He shall attend annually one convention called by the state superintendent for the purpose of consultation upon matters pertaining to the supervision and management of the schools. He shall be reimbursed for his actual and necessary expenses incurred for travel, board and lodging because of attendance at

such convention. Bills for such expenses shall be audited and allowed by the school board upon presentation of an itemized statement of expense accompanied by a certificate of attendance signed by the state superintendent.

History: 1967 c. 92.

**Legislative Council Note, 1967:** This section combines ss. 40.819 and 40.92 and makes the sections applicable to all school districts.

Sub. (1) (1st sentence) based on s. 40.92 which is substantially shortened and consolidated. The separate subsections of present s. 40.92 grant the authority to hire a school district superintendent to all but very small common school districts operating only elementary grades. Sub. (1) makes the grant of authority generally applicable.

Sub. (1) (2nd sentence) restates and combines s. 40.819 (1) and the last portion of s. 40.92 (1), and makes clear that the statement in present s. 40.92 (1) providing that the administrative authority of the school district superintendent is exercised under the direction of the school board is applicable in all instances.

Sub. (2) like s. 40.819 (3) (1st and first part of last sentences).

Sub. (3) restates s. 40.819 (2).

Sub. (4) identical to s. 40.819 (3) (part of last sentence).

Sub. (5) restates s. 40.819 (5).

Present s. 40.819 (3) (last part of last sentence) deleted because the requirement is stated permissively and therefore is meaningless.

Present s. 40.819 (4) is deleted and the responsibility for filing the annual school district report is given to the school district clerk in a city school district under subch. II of ch. 120. As a practical matter, it is highly likely that the school district superintendent will actually prepare the report; however, the filing of the report is made a responsibility of the appropriate school board member. (Bill No. 353-S)

**118.25 Health examinations.** (1) In this section "school employe" 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 cities of the 1st class, shall require a physical examination, including a chest X-ray or tuberculin test, of every school employe of the school district. Freedom from tuberculosis in a communicable form is a condition of employment. In the case of a new school employe, the school board may permit the school employe to submit proof of an examination, chest X-ray or tuberculin test complying with this section which was taken within the past 2 years 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. A chest X-ray or tuberculin test shall be required at least once every 3 years. If the reaction to such tuberculin test is positive, a chest X-ray shall be required. The school employe 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 employe.

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

(c) The physician making a physical examination shall prepare a report of his examination upon a standard form prepared by the state board of health and the state superintendent. Such report shall be retained in the physician's files and he shall make confidential recommendations therefrom to the school board and to the school employe on a form prepared by the state board of health and the state superintendent. 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 and state boards of health, and may pay the cost of such 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, co-operative 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:** 1967 c. 92.

**Legislative Council Note, 1967:** Revises s. 40.30 (10m). The word "licensed" before physician is deleted, because s. 990.01 (28) defines "physician" as a person holding a license from the state board of medical examiners. Section 121.52 (3) of this act contains the health examination requirements for drivers of privately owned school busses. (Bill No. 353-S)

**118.26 Claim against school district.** An action upon any claim shall not be maintained against a school district until the claim has been presented to the school board of the district and disallowed in whole or in part. Failure of the school board to allow the claim within 60 days after it is filed with the school district clerk is a disallowance. The school district clerk shall serve notice of disallowance on the claimant by registered mail with return receipt signed by the claimant required. Such receipt shall be proof of service. The claimant may accept a portion of his claim without waiving his right to recover the balance. No interest may be recovered on an allowed claim after an order of the school board is available to the claimant. If the claimant recovers a greater amount than was allowed by the school board he shall re-

cover costs; otherwise the school board shall recover costs. No action on a claim may be brought after 6 months from the date of service of the notice of disallowance.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Revises s. 40.31. (Bill No. 353-S)

**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 personal, 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.

**History:** 1967 c. 92.

**Legislative Council Note, 1967:** Revises s. 40.301. The last sentence of present s. 40.301 is deleted because it is unnecessarily repetitious. (Bill No. 353-S)