



School Law FYI

MAY 7, 2020

State Law Waivers and Requests Available in Light of School Closures

Under state law, the Wisconsin Department of Public Instruction (“DPI”) has the authority to grant school districts waivers from many statutory requirements under Wisconsin Statutes Chapters 115-121 and DPI’s administrative rules. In light of Governor Evers’ order to close schools in Wisconsin due to the public health emergency, districts may wish to seek certain waivers available from DPI pursuant to Wis. Stat. § 118.38 related to school hours, educator effectiveness, and civics exams and submit requests to commence school prior to September 1. Each of these waivers and the request to commence school early are discussed below.

REQUIREMENT TO HOLD A PUBLIC HEARING

Before seeking waivers, school boards need to hold a public hearing on the waiver request pursuant to state law and document the date of the public hearing in the waiver request submitted to DPI. The public hearing can be virtual or teleconferenced (DPI advises districts to refer to the Wisconsin Department of Justice guidance on public meetings during the health emergency). The hearing can be noticed within the regular board agenda with the standard proper notice of at least 24 hours (including posting at the district’s customary posting places or publishing, for districts that are still doing that). Class 1, Class 2, or Class 3 notices are not required.

Two agenda items must be specifically included on the notice. First, there must be an agenda item for holding the public hearing. The agenda item should clearly state that the hearing is with respect to a waiver of a particular statutory requirement (ex. Instructional Hours, Educator Effectiveness, or Civics Exam) that is being sought pursuant to Wis. Stat. § 118.38. Next, there must be an agenda item for adoption of the resolution or motion approving the request for the waiver and the submittal of the request to DPI. Examples of agenda items are as follows:

Example 1: Public Hearing on Request for DPI Waiver pursuant to Wis. Stat. § 118.38 due to the COVID-19 Public Health Emergency for [describe with specificity waiver being sought].

Example 2: Consideration of and Action on Resolution on Request for DPI Waiver due to the COVID-19 Public Health Emergency for [describe with specificity waiver being sought].

The Board should hold the public hearing and, at the conclusion of the hearing, the Board should vote to approve or deny the resolution. Sample resolutions are available on the Wisconsin Association of School Board’s website. The waiver should be submitted to DPI following board action to approve the resolution.

INSTRUCTIONAL HOURS WAIVER

TGovernor Evers signed an emergency order which suspends the requirements in DPI’s administrative rule related to the hours of instruction. The DPI will now waive the hour requirement for any district that requests a waiver due to the COVID-19 public health emergency. The DPI has provided an expedited waiver process and a simple waiver request form is available on its website. Note that the DPI waiver does not require a district to provide dates or minutes of instruction.

Mike Thompson, DPI Deputy Superintendent, clarified that a district does not need to seek a waiver if the district will meet the minimum-mandated hours of instruction requirements through alternative learning opportunities. He added that each district is responsible for determining if the hours are met - DPI will not ask for documentation or audit the process used to document the minutes. Even if a district meets the instructional hours requirement, the district may still wish to consider seeking a waiver as a district's instructional hours may affect compensatory education calculations for students with disabilities at the end of the school closure. DPI will continue to offer the simplified waiver request for all districts until June 30, 2020. The waiver form for this purpose is located at: https://docs.google.com/forms/d/e/1FAIpQLSdJ8MnVgqivD-JstqTE736kv5fimsWDU4A-XTP2IyVzKu_HFg/viewform.

WISCONSIN EDUCATOR EFFECTIVENESS SYSTEM WAIVER

As part of DPI's Educator Effectiveness Program developed pursuant to Wis. Stat. § 115.415 and Wisconsin Administrative Code, PI § 8.01, districts are required to evaluate all licensed school personnel in their first year of employment and, at least, every third year thereafter. DPI has provided guidance on how to complete the 2019-20 Educator Effectiveness Cycle in light of the public health emergency through a collaborative process with educators with an emphasis on learning. Please note, however, 2019 Wisconsin Act 185, prohibits school boards from considering student performance on statewide assessments in the evaluation score assigned to a teacher or principal under the educator effectiveness evaluation system. At the end of the collaborative process, the district and the educator can agree to close out the educator effectiveness evaluation or extend the educator's Summary year to 2020-2021.

Finally, if needed, DPI has stated that it will waive the requirements for educators in their summary year thereby waiving the requirements in the statute and administrative regulations for 2019-20. DPI has a waiver form for this purpose at:

<https://docs.google.com/forms/d/e/1FAIpQLSdoYadZXkvU3JX5qWnfsOu7KoVpNuPCla5GRQ-RGyQuA3UkNw/viewform>

Note that DPI advises that districts consult with legal counsel "prior to making any high stakes decisions about an educator resulting from the 2019-20 Educator Effectiveness process due to the impacts of COVID-19."

CIVICS EXAM WAIVER

Since 2017, Wisconsin law requires all students graduating from a Wisconsin high school to take a civics test with questions that match the test for individuals applying for U.S. citizenship and correctly answer 65 out of 100 questions on the test. (Wis. Stat. sec. 118.33(1m)(a)1). DPI recognizes that some students have not passed the civics exam before the school closure took effect, which may prohibit their ability to graduate in 2020. Accordingly, DPI has created the Civics Graduation Exam, an answer key, and study resources to assist students in passing the exam during the school closure.

DPI has also created a waiver form in the event extenuating circumstances prohibit students' ability to graduate in 2020 because they have not passed the civics exam graduation requirement. In seeking a waiver, DPI will ask the district to choose one or more of the following reasons it believes necessitates a waiver:

- There is unequal and/or irregular access to technology.
- The district is unable to translate the test to be in the language of student choice.
- Special education and /or English language services are unavailable.
- Inability to administer an online or paper test.

The waiver form for the Civics Exam may be found at: <https://docs.google.com/forms/d/e/1FAIpQLSfHDgD628MBExEW5MD2H17NyhVldw3MdsWmecPAzD-nFC3brg/viewform>.

REQUEST TO COMMENCE SCHOOL TERM PRIOR TO SEPTEMBER 1

Wisconsin law prohibits a school district from commencing the school term prior to September 1. (Wis. Stat. sec. 118.045; PI § 27.03). A district may request that DPI grant an exception to this limitation, allowing a district to begin school prior to September 1. The process to submit such a request is dictated by Wis. Admin. Code PI § 27.03 and,

typically, requires a district to submit a request to DPI “annually by January 1 prior to the beginning of the school term.” However, if “an extraordinary event” occurs after that deadline, a district may still request an early start date “at the earliest possible time prior to the beginning of the school year.” Districts should note that DPI’s requirements for this request also include a public hearing. The opportunity for a public hearing may be provided in conjunction with a regular school board meeting as long as the hearing is publicized well in advance of the meeting.

PI § 27.03 and supplemental guidance from DPI (located here: <https://dpi.wi.gov/cal/commencement-school-term-school-start-date-information>) require that a request to start the school year prior to September 1 must:

- Be adopted as a written resolution at a school board meeting;
- Be made by letter signed by the district administrator or president of the school board;
- Include a description of the community’s response to the request as indicated by a record of the public hearing;
- Contain the reasons and facts relating to the request;
- Identify when an extraordinary event took place or a chronology of events leading to the request;
- Include a copy of the board’s minutes adopting the resolution; and
- Include a copy of the board’s minutes adopting the ratified calendar covered by the request.

DPI may only grant a request to start the school year early if there are “extraordinary reasons” for granting such a request. PI § 27.03(5) lists four “extraordinary reasons,” only one of which is relevant to the current school closures. Specifically, PI § 27.03(5)(c) states that a request may be granted in the event of “[c]losure of school due to forces of nature, code violations, or environmental codes.” “Forces of nature” is further defined as “an event that is outside the control of the school board and could not be avoided by exercise of due care.” (PI § 27.02(2)).

Unlike the waivers involving instructional hours, educator effectiveness and the civics exam, at this time DPI has not provided a streamlined process or COVID-19-specific guidance associated with requests to commence the school term early. However, the current school closures stemming from a pandemic that was clearly not caused by districts nor avoidable by any measure of due care, may be deemed to be an extraordinary reason sufficient to grant a request to commence the school term early.

If you have any questions about these waivers, please contact a member of the Boardman Clark School Law Team.

PRIMARY AUTHORS



M. Tess O'Brien-Heizen

(608) 283-1798
TOBRIEN@BOARDMANCLARK.COM



Matthew W. Bell

(608) 286-7239
MBELL@BOARDMANCLARK.COM

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|----------------------|----------------|--------------------------|----------------|--------------------------|----------------|
| ■ Michael J. Julka | (608) 286-7238 | ■ Steven C. Zach | (608) 283-1736 | ■ Matthew W. Bell | (608) 286-7239 |
| ■ James K. Ruhly | (608) 283-1738 | ■ Richard F. Verstegen | (608) 283-7233 | ■ Christopher T. Schmidt | (608) 286-7157 |
| ■ William L. Fahey | (608) 286-7234 | ■ David P. Weller | (608) 286-7235 | ■ Brian P. Goodman | (608) 283-1722 |
| ■ JoAnn M. Hart | (608) 286-7162 | ■ Jennifer S. Mirus | (608) 283-1799 | ■ Daniel T. Fahey | (608) 286-7216 |
| ■ Eileen A. Brownlee | (608) 822-3251 | ■ Rhonda R. Hazen | (608) 283-1724 | ■ Eric B. Hagen | (608) 286-7225 |
| ■ Doug E. Witte | (608) 283-7529 | ■ M. Tess O'Brien-Heizen | (608) 283-1798 | | |

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