

Clearinghouse Rule 24-026

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AMENDING RULES

The scope statement for this rule, SS 111-24, was published in Register No. 817B, on January 29, 2024, and approved by State Superintendent Jill K. Underly on February 13, 2024.

The State Superintendent of Public Instruction hereby proposes an order to amend ss. PI 27.02 (2), 27.03 (2) (d), (3) (a), (b), (4) (a), (b), (5) (intro.), (b), (c), (d), and (e) 1.; and to create ss. PI 27.02 (5), 27.03 (5) (f) and (6) (am), relating to revisions to rules governing the commencement of the school term prior to September 1 and affecting small businesses.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.045, Wis. Stats.

Statutory authority: s. 118.045 (3), Wis. Stats.

Explanation of agency authority:

Under s. 118.045 (3), Wis. Stats., the Superintendent of Public Instruction is required to promulgate rules governing the procedures by which school boards may request that a school term commence prior to September 1, including the extraordinary reasons that allow the department to grant such requests.

Related statute or rule:

N/A

Plain language analysis:

The proposed rule seeks to amend ch. PI 27 of the Wisconsin Administrative Code with respect to the extraordinary reasons under which school boards may request the department's approval to allow a school term to commence prior to September 1.

Summary of, and comparison with, existing or proposed federal regulations:

Education in the United States is primarily governed by state and local governments, resulting in varying regulations regarding the commencement of the school term. Unlike federal regulations, which are generally silent on exceptions for the commencement of the school term, each state has its own set of parameters and requirements for granting exceptions. Consequently, the commencement of the school term varies across states, and exceptions to the commencement of the school term are subject to state-specific regulations and processes.

Summary of any public comments and feedback on the statement of scope for the proposed rule that the agency received at a preliminary public hearing and comment period held and a description of how and to what extent the agency took those comments into account and drafting the proposed rule:

The Department held a preliminary public hearing and comment period on February 12, 2024, and received comments on the statement of scope for the proposed rule. A summary of comments and the Department's response to those comments are as follows:

- Some respondents expressed opposition to proposed changes to the rule, arguing that the current rule already provides exemptions to the September 1 school commencement date for various specialized programs, such as gifted and talented classes, remedial education, and migrant programs, among others. They also noted that local school boards have significant flexibility in setting school calendars, including determining school hours, makeup days for inclement weather, holiday breaks, staff development days, and the last day of school, with the aid of technology and virtual schooling. Additionally, they raised concerns that changing the rule may negatively impact the state's tourism industry during August, a crucial month for tourism revenue. As such, the respondents believe changing the rule is unnecessary to address local needs, as the September 1 school commencement date has proven to be successful for students and teachers in the state.

Agency Response: The department regularly communicates with external stakeholders, including school districts, which have indicated a desire for greater flexibility in the rule rules governing commencement of the school term. Further, the increase in the number of school districts that have applied for an exemption to the September 1 school commencement date is evidence that greater autonomy is needed for school boards to meet the unique needs of their local communities. The proposed rule responds to these concerns by clarifying the means in which the department may grant exemptions to the September 1 school commencement date and providing greater flexibility for school boards to address local needs.

- Some respondents opposing the rule change expressed disappointment that the department is proceeding with the rule without soliciting input from organizations representing the tourism industry. They believed that the failure to include tourism businesses as an impacted entity in the statement of scope was an oversight by the department.

Agency Response: Section 227.135 (2), Wis. Stats., provides that no state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of the scope of the proposed rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve the statement. External stakeholders will have additional opportunities to engage in the rulemaking process going forward, including opportunities to provide feedback on the proposed rule.

- Finally, one respondent opposing the rule change argued that if high school juniors and seniors need to attend dual-credit classes offered by post-secondary institutions, those students should be allowed to start their courses early, rather than requiring the entire school population to attend school before September 1. They noted that the University of Wisconsin starts classes after September 1, and dual-credit enrollment primarily affects courses within the Wisconsin Technical College System. The respondent expressed an understanding that colleges are already working with many high schools in their districts to address this issue.

Agency Response: The department agrees with the respondent's suggestion and will explore including the change in the proposed rule.

Comparison with rules in adjacent states:

- Illinois: 105 ILCS 5/10-19 provides that each school board shall annually prepare a calendar for the school term, specifying the opening and closing dates and providing a minimum term of at least 185 days to insure 176 days of actual pupil attendance. Additionally, a school board may make such changes in its calendar for the school term as may be required by any changes in the legal school holidays prescribed in Section 24-2. A school board may make changes in its calendar for the school term as may be necessary to reflect the utilization of teachers' institute days as parental institute days as provided in Section 10-22.18d. The calendar for the school term and any changes must be submitted to and approved by the regional superintendent of schools before the calendar or changes may take effect.
- Iowa: Iowa Code Ann. § 279.10 provides that the school year for each school district and accredited nonpublic school shall begin on July 1 and the school calendar shall begin no sooner than August 23 and no later than the first Monday in December. The school calendar shall include not less than one hundred eighty days or one thousand eighty hours of instruction during the calendar year, of which not more than five days or thirty hours of instruction may be delivered primarily over the internet except as otherwise provided in section 256.43 or in rules

adopted by the state board of education pursuant to section 256.7, subsection 32. The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall determine the school commencement date for the school calendar and shall set the number of days or hours of required attendance for the school year, but the board of directors of a school district shall hold a public hearing on any proposed school calendar prior to adopting the school calendar. Additionally, the board of directors of a school district and the authorities in charge of an accredited nonpublic school may apply to the department of education for authorization to maintain a year-round school calendar at an attendance center or school for students in prekindergarten through grade eight. However, a board shall hold a public hearing on any proposal relating to authorization for a year-round school calendar prior to applying to the department of education for approval.

- Michigan: Mich. Comp. Laws Ann. § 380.1284b provides that the board of a school district or intermediate school district or board of directors of a public school academy shall ensure that the district's or public school academy's school year does not begin before Labor day. However, this requirement does not apply to a school district, intermediate school district, or public school academy operating a year-round school or international baccalaureate academy after September 29, 2005. However, if one of those entities operate a year-round program after that date, they can apply for a waiver from this requirement if it's determined to be a bona fide year-round school for educational reasons. Additionally, intermediate school districts may align their programs or services with the calendar of constituent districts or public school academies if those entities have a school year that begins before Labor Day. Finally, public schools that operate grades 6 to 12 at a single site, align their high school curriculum with advanced placement courses, and end their second academic semester concurrently with the end of the advanced placement examination period, are exempted from this requirement.
- Minnesota: Minn. Stat. Ann. § 120A.40 provides that, except for learning programs during summer, flexible learning year programs, and learning year programs, a district must not commence an elementary or secondary school year before Labor Day. However, a school district may commence the school year before Labor Day under the following circumstances: 1) if there's a construction or remodeling project impacting a district school facility that costs \$400,000 or more; 2) if the district has an agreement with another district that qualifies under the construction or remodeling project criteria, and 3) if the district agrees to the same schedule as a neighboring school district in an adjoining state.

Summary of factual data and analytical methodologies:

Section 118.045, Wis. Stats., provides that, beginning in the year 2000, no public school may commence the school term until September 1, but does not prohibit a school board from holding athletic contests or practices or scheduling in-service days before September 1, or holding school year-round. However, under s. 118.045 (3), Wis. Stats., 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, the school board includes reasons with its request, and the department approves the request. This subsection additionally provides that the department may grant approval for a request only if it determines that there are extraordinary reasons for granting it. The department is given statutory authority under s. 118.045 (3), Wis. Stats., to promulgate rules to effectuate this subsection.

Chapter PI 27 of the Wisconsin Administrative Code was promulgated to establish procedures for school boards to use in requesting that a school term commence prior to September 1. Section PI 27.03 (5) provides that the department may grant a request to commence a school term prior to September 1 only if it determines that there are extraordinary reasons for granting the request. Extraordinary reasons include any of the following: 1) major construction projects that cause the school term to be altered and necessitate an earlier commencement date for the entire district; 2) closure of school due to forces of nature, code violations, or environmental orders; 3) excessive costs associated with the transportation of pupils who attend private schools that commence school prior to September 1, provided that the requesting school board provides sufficient documentation to establish that it has made a good faith effort to work with the private school to coordinate a school commencement date on or after September 1; and 4) participation by a high school in the international baccalaureate program with more than 75% of the 11th and 12th grade pupils enrolled in the high school also being enrolled in one or more of the courses that are offered under the international baccalaureate program, provided the pupils in the school district are given the option of enrolling in another high school in the school district that is not subject to a request for an early commencement date, and that the request applies only to the high school that is participating in the international baccalaureate program and not to any other elementary, middle, junior high, or high schools operated by the school district.

Because the rules were originally promulgated in May 2002, the department's experience with the current criteria for granting exemptions to the September 1 school commencement date are both inflexible and outdated from the perspective of the school district. Further, the increase in the number of school districts that have applied for an exemption to the September 1 school commencement date is evidence that greater autonomy is needed for school boards to meet the unique needs of their district and will address student achievement and other academic needs. As a result, the department proposes to amend the rules by which the department may grant exemptions to the September 1 school commencement date and provide greater autonomy for school boards to address local needs. For example, the proposed rule aims expand the types of extraordinary reasons for granting exemptions to the September 1 school commencement date by including factors identified by the school board that address student achievement and other academic considerations. These factors include student graduation rates, reading and mathematics proficiency, student attendance, coordination with postsecondary institutions for dual or concurrent enrollment, mental health of students and staff, recruitment and retention strategies for educators, and coordination efforts among school districts for educational programs. To effectuate these changes, the proposed rule seeks to enhance flexibility in the process for school boards to request a school term to commence before September 1 by allowing written requests to be submitted to the department by March 1 and outlining procedures for unforeseen circumstances.

The effect of the proposed rule is a more flexible process for school boards to follow when seeking to adjust their school calendars to better meet the academic and local needs of their respective districts. Without a rule change, the department would be required to implement ch. PI 27 as the rule currently exists, thus limiting the criteria by which school boards may request an exemption to the September 1 school commencement date to the criteria in current rule.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The department held a preliminary public hearing and comment period on the scope statement for the proposed rule. As provided in the hearing notice, any comment received during the preliminary public hearing and comment period would be considered in determining the rule's effect on small businesses and in preparation of the economic impact analysis. The preliminary comment received, and the subsequent analysis conducted by the department, suggests that there may be an impact on small businesses and the state's economy due to the proposed rule. The information received from these sources informed decision-making during rule development and to prepare the proposed rule's initial regulatory flexibility analysis and economic impact analysis. More specific information on the impact of the proposed rule on small businesses and the state's economy are provided below and in the attached economic impact analysis.

Effect on small business (initial regulatory flexibility analysis):

An analysis conducted by the department indicates that the proposed rule may impact small businesses in the state. Pursuant to s. 227.114, Stats., a small business means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000. Because the rule does not seek to regulate or impose compliance costs on those entities, the department does not estimate any compliance costs will be incurred by the proposed rule. Further, the department is unable to speculate on the net positive or negative impacts on small businesses as a result of the rule, because the actual impact on small businesses largely depends on local and individual behavior.

Local economic considerations remain an important factor that should be considered by school boards when shaping school calendar decisions, as these may impact small businesses. While the proposed rule does not specifically target or regulate small businesses, the extent of this impact is difficult to estimate and may vary depending on factors such as local tourism patterns and individual spending behaviors. Therefore, while the department acknowledges the potential implications for small businesses, the overall effect remains indeterminate due to the complex interplay of various economic factors and individual choices.

Agency contact person:

Carl Bryan
Legislative Policy Coordinator

Place where comments are to be submitted and deadline for submission:

Comments should be submitted to Carl Bryan, Department of Public Instruction, at adminrules@dpi.wi.gov. The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

RULE TEXT

SECTION 1. PI 27.02 (2) is amended to read:

PI 27.02 (2) “Forces of nature” means an event that is outside the control of the school board and could not be avoided ~~by~~with the exercise of due care.

SECTION 2. PI 27.02 (5) is created to read:

PI 27.02 (5) “Year-round school” means a school term with an academic program calendar that does not have more than 45 calendar days between consecutive sessions during which hours of direct pupil instruction are counted to meet the requirement in s. 121.02 (1) (f), Stats.

SECTION 3. PI 27.03 (2) (d), (3) (a), (b), (4) (a), (b), (5) (intro.), (b), (c), (d), and (e) 1. are amended to read:

PI 27.03 (2) (d) Holding ~~school year round~~year-round school.

(3) (a) A school board may commence a school term prior to September 1, if it submits a written request to the department under sub. (4) asking for an earlier school ~~start~~commencement date, and such request is granted by the department. The request shall be submitted annually by ~~January~~March 1 prior to the beginning of the school term.

(b) If an ~~extraordinary~~unforeseen event occurs after the ~~January~~March 1 deadline that causes a school board to submit a written request for an earlier school commencement date, the school board shall submit the written request under par. (a) at the earliest possible time following the unforeseen event and prior to the beginning of the school term.

(4) (a) The reasons for, and any other relevant facts relating to, the request for an earlier school ~~start~~commencement date.

(b) ~~When an extraordinary~~If a written request is made after the March 1 deadline under sub. (3) (b), when the unforeseen event which led to the written request took place or a chronology of events leading, and any additional relevant facts regarding the unforeseen event which led to the request.

(5) The department may grant a request only if it determines that there are extraordinary reasons for granting the request, and, in the case of written requests made after the March 1 deadline under sub. (3) (b), that the request was untimely due to an unforeseen event. Extraordinary reasons include any of the following:

(b) Major construction projects that cause the school term to be altered and necessitate an earlier ~~start~~commencement date for the entire district.

(c) Closure of a school due to forces of nature, code violations, or environmental orders.

(d) Excessive costs associated with the transportation of pupils who attend private schools that ~~start~~have a school commencement date prior to September 1. If an earlier ~~start~~commencement date is requested under this paragraph, the school board shall provide sufficient documentation to establish that it has made a good faith effort to work with the private ~~school~~schools to coordinate a school ~~start~~commencement date on or after September 1.

(e) 1. The pupils in the school district are given the option of enrolling in another high school in the school district that is not subject to a request for an early ~~start~~commencement date.

SECTION 4. PI 27.03 (5) (f) and (6) (am) are created to read:

PI 27.03 (5) (f) A determination by the school board that an earlier commencement date will improve student achievement across content areas or address academic needs, which includes any of the following:

1. Student graduation rates.
2. Reading proficiency, as measured by reading readiness scores, and mathematics proficiency.
3. Student attendance or absenteeism.
4. Coordination between universities, technical colleges, and school districts related to dual or concurrent enrollment.
5. Mental health of student and staff.
6. Recruitment and retention of the educator workforce.
7. Coordination between one or more school districts related to educational programming.

(6) (am) If a request is made after the March 1 deadline under sub. (3) (b), and the department determines the request was not made as a direct result of the unforeseen event cited in the request, the department shall determine that an extraordinary reason does not exist.

SECTION 5. EFFECTIVE DATE:

The proposed 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 _____ day of _____, 2024

Jill Underly, PhD
State Superintendent