

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

The state superintendent of public instruction hereby creates Chapter PI 23, relating to ESEA intradistrict safe school transfer options.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 115.28 (9) and 227.11 (2) (a), Stats.

Statute interpreted: s. 115.28 (9), Stats.

Public Law 107-110 section 9532 reauthorizing the Elementary and Secondary Education Act (ESEA), requires each state receiving ESEA funds to establish and implement a statewide policy that allows students who attend persistently dangerous public schools to attend safe public schools. This provision also allows students who become victims of a violent criminal offense while in or on the grounds of a public school they attend to attend safe public schools. This transfer provision only applies if the district has another appropriate grade level public school, including a public charter school.

Each state must certify to the U. S. Department of Education that it has developed an unsafe school policy. The policy must be determined by the state in consultation with a representative sample of local educational agencies. Accordingly, the department worked with the Wisconsin Association of School District Administrators and the Association of Wisconsin School Administrators and their statewide, representative network of school administrators to develop and refine the policy through draft administrative rules prior to the promulgation process.

To comply with the ESEA and to remain eligible to receive more than \$250 million in federal funds, the proposed rules:

- Specify criteria to determine whether a school is persistently dangerous.
 - Define the terms “victim” and “violent criminal offense.”
 - Specify school board notification and pupil transfer requirements.
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SECTION 1. Chapter PI 23 is created to read:

CHAPTER PI 23

ESEA INTRADISTRICT SAFE SCHOOL TRANSFER OPTIONS

PI 23.01 Authority. This chapter is adopted under ss. 115.28 (9) and 227.11 (2) (a), Stats.

PI 23.02 Applicability and purpose. (1) Section 20 USC 7912 requires that each state receiving funds under the Elementary and Secondary Education Act of 1965 establish and implement a statewide policy requiring

that pupils attending a persistently dangerous public school, or pupils who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school operated by the local education agency, including a public charter school.

(2) This chapter establishes procedures for all of the following:

(a) Identification of persistently dangerous schools.

(b) Identification of victims of a violent criminal offense.

(c) School board notification and pupil transfer requirements.

PI 23.03 Definitions. In this chapter:

(1) "Department" means the Wisconsin department of public instruction.

(2) "ESEA" means the federal Elementary and Secondary Education Act of 1965.

(3) "School board" has the meaning given in s. 115.001 (7), Stats.

(4) "School district" has the meaning given in s. 115.01 (3), Stats.

(5) "School hours" means the hours of a normal school day established by a school board under s. 120.12 (15), Stats.

(6) "Victim" means a person who is the subject of a violent criminal offense.

(7) "Violent criminal offense" means a crime specified in the appendix to this chapter.

PI 23.04 ESEA intradistrict safe school transfer options. The school board of a school shall allow a pupil to attend another appropriate grade level public school operated by the school district, including a public charter school, if either of the following applies to the pupil:

(1) The pupil attends a school identified as persistently dangerous by the department under s. PI 23.05 (1).

(2) The pupil has been a victim of a violent criminal offense as specified under s. PI 23.06.

PI 23.05 Persistently dangerous schools. (1) The department shall identify persistently dangerous schools using data collected through the school performance report under s. 115.38 (1) (b) 2., Stats., and upon review of information submitted under sub. (3). If the department determines the school is persistently dangerous, it shall notify the school board of the school in writing within 30 days of receiving the information under sub. (3). The department's decision under this section shall be final.

NOTE: The department's decision is final but does not preclude possible review under subch. III of ch. 227, Stats.

(2) A school may be considered persistently dangerous if the school performance reports under s. 115.38 (1) (b) 2., Stats., indicates that the school meets one of the following criteria:

(a) In each of the 3 school years that immediately precede the current school year, weapon-related suspensions at the school in a school year are greater than 5% of the number of pupils enrolled in the school.

(b) In each of the 3 school years that immediately precede the current school year, the greater of either of the following occurred:

1. The school board of the school expelled in a school year at least 1% of the pupils enrolled in the school for assault, endangering behavior or weapons-related offenses.

2. The school board of the school expelled in a school year 5 or more pupils enrolled in the school for assault, endangering behavior or weapons-related offenses.

(3) The department shall notify in writing the school board of the school that meets the criteria under sub. (2) that the school may be considered persistently dangerous. The notice under this subsection shall be given within 30 days after receiving the data under s. 115.28 (1) (b) 2., Stats. A school board that receives a notice under this subsection shall submit all of the following information to the department within 30 days of receiving the notice:

(a) The school's safety plan.

(b) Local efforts to address the school's safety concerns.

(c) Current data the school may have available that is deemed relevant by the school board that is not reflected in the school performance report.

(d) Other information deemed relevant by the department, upon the department's request.

(4) A school board that has received a notice under sub. (1) shall do all of the following:

(a) Within 10 working days of receiving the notice under sub. (1), notify in writing the parents or guardians of the pupils attending the school that it has been identified as persistently dangerous. The notice shall include an offer to pupils attending the school to transfer to another appropriate grade level public school operated by the school district, including a public charter school.

(b) Within 30 working days of receiving the notice under sub. (1), complete the transfer for those pupils who accept the offer under par. (a).

(c) Within 30 working days of receiving the notice under sub. (1), submit a corrective action plan to the department. Corrective action activities may include, but are not limited to, any of the following:

1. Providing additional personnel to supervise children.

2. Providing conflict resolution instructional programs.
3. Collaborating with local law enforcement agencies.
4. Providing school discipline enforcement training for school staff.
5. Providing additional security measures.

(5) If a school has been identified as persistently dangerous under sub. (1) in the previous school year, the department shall review the school's performance report data within 30 days after receiving the data under s. 115.38 (1) (b) 2., Stats., and shall request updated information under sub. (3) within 30 days of receiving this updated information. The department shall notify the school that it is no longer considered persistently dangerous if it meets both of the following criteria:

(a) The school no longer meets the criteria specified under sub. (2).

(b) The department has determined the school is no longer persistently dangerous based on a review of updated information submitted under sub. (3).

PI 23.06 Victims of a violent criminal offense. (1) A pupil may transfer to another appropriate grade level public school operated by the school district if he or she has been a victim of a violent criminal offense under either of the following circumstances and reports the incident to the appropriate law enforcement agency and to the building principal:

(a) The pupil has been a victim of a violent criminal offense while on the school grounds of the school that the pupil attends during school hours or during a school-sponsored event at the school that the pupil attends that does not occur during school hours.

(b) The pupil has been a victim of a violent criminal offense while being transported to school for the purpose of attending curricular programs during school hours or from school to home immediately following school hours on a school bus owned, leased, or contracted by the school district or by a motor vehicle operated as an alternative method of transportation under s. 121.555, Stats. For a pupil who has been a victim of a violent criminal offense while being transported to or from a school by a common carrier in a school district providing transportation under s. 121.54 (1), Stats., transfer decisions under this section shall be made by the school board or the school board's designee on a case-by-case basis.

NOTE: The department also encourages school boards and the community to promote safe pedestrian pathways for pupils walking to school for the purpose of attending curricular programs during school hours or from school to home immediately following school hours.

(2) A school board or the school board's designee that has a pupil who meets the provisions under sub. (1) shall do all of the following:

(a) Within 10 working days of the incident being reported under sub. (1), do all of the following:

1. Determine, in consultation with law enforcement officers if necessary, if the incident is a violent criminal offense.

2. Notify in writing the parents or guardians of the pupil of the choice to transfer to another appropriate grade level public school operated by the school district, including a public charter school if the incident is determined to be a violent criminal offense.

(b) Within 30 working days of the pupil accepting the offer under par. (a) 2., complete the transfer.

(3) A school board does not have to allow a pupil under sub. (1) to transfer to another school if the pupil was a victim of a violent criminal offense under any of the following circumstances:

(a) While away from the school he or she attends but during a school sponsored activity or field trip.

(b) While traveling on the school bus to or from a school-sponsored activity or field trip.

(c) While on school grounds of the school he or she attends but not during school hours or during a school-sponsored event.

NOTE: Federal law does not require a criminal conviction to qualify a pupil as a victim, 20 USC 7912. Accordingly, the determination by the school board or its designee about whether a violent criminal offense has been committed under the statutory definitions found within Wisconsin's criminal code is not an adjudication of the elements of a crime, as found under Wisconsin law, but rather a determination by the school board or its designee about the nature of the alleged conduct at issue. This determination by the school board or its designee will be based upon the reports it receives from law enforcement and other school authorities, including the building principal.

NOTE: The transfer provision in this chapter only applies if the district has another appropriate grade level public school, including a public charter school. However, the U. S. Department of Education's Guidance encourages, but does not require, school districts to explore other appropriate options such as an agreement with a neighboring school district to accept transfer pupils if there is not another school in the school district for the transferring pupils.

SECTION 2. INITIAL APPLICABILITY. (1) Except as specified under subs. (2) to (4), treatment of this chapter first applies upon the effective date of this rule.

(2) The treatment of s. PI 23.05 (2) (b) first applies to 1999-2000 school year data collected through the school performance report under s. 115.38 (1) (b) 2., Stats.

(3) The treatment of s. PI 23.05 (2) (a) first applies to 2000-2001 school year data collected through the school performance report under s. 115.38 (1) (b) 2., Stats.

(4) The treatment of s. PI 23.06 first applies to a violent criminal offense that occurred on the effective date of this rule.

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 _____ day of June, 2003

Elizabeth Burmaster
State Superintendent

CHAPTER PI 23**APPENDIX****LIST OF VIOLENT CRIMINAL OFFENSES UNDER THE
ESEA INTRADISTRICT SAFE SCHOOL TRANSFER OPTIONS**

Class B Felonies

- Attempted first-degree intentional homicide under ss. 939.32 and 940.01, Stats.
- Attempted second-degree intentional homicide under ss. 939.32 and 940.05, Stats.
- Attempted first-degree sexual assault under ss. 939.32 and 940.225 (1), Stats.
- First-degree sexual assault under s. 940.225 (1), Stats.
- First-degree sexual assault of a child under s. 948.02 (1), Stats.
- Repeated first- or second-degree sexual assault of a child, if at least three of the offenses are first-degree sexual assault of a child under s. 948.025 (1), Stats.

Class C Felonies

- Attempted second-degree sexual assault under ss. 939.32 and 940.225 (2), Stats.
- Mayhem under s. 940.21, Stats.
- Second-degree sexual assault under s. 940.225 (2), Stats.
- Kidnapping under s. 940.31, Stats.
- Armed robbery under s. 943.32 (2), Stats.
- Second-degree sexual assault of a child under s. 948.02 (2), Stats.
- Repeated first- or second-degree sexual assault of a child, if fewer than three of the offenses are first-degree sexual assault of a child under s. 948.025 (1), Stats.

Class D Felonies

- Aggravated battery to an unborn child (causing great bodily harm to an unborn child by an act done with intent to cause great bodily harm) under s. 940.195 (5), Stats.
- First-degree reckless injury under s. 940.23 (1), Stats.

Class E Felonies

- Aggravated battery (causing great bodily harm to another by an act done with intent to cause great bodily harm) under s. 940.19 (5), Stats.
- Physical abuse of a child (intentionally causing great bodily harm) under s. 948.03 (2) (a), Stats.

Class F Felonies

- Second-degree reckless injury under s. 940.23 (2), Stats.

- Stalking (causing bodily harm, with a prior history of violence with the victim or using a dangerous weapon) under s. 940.32 (3), Stats.
- First-degree recklessly endangering safety under s. 941.30 (1), Stats.
- Causing great bodily harm by tampering with household products under s. 941.327 (2) (b) 3., Stats.
- Physical abuse of a child (causing bodily harm to a child by conduct creating a high probability of great bodily harm) under s. 948.03 (2) (c), Stats.

Class G Felonies

- Attempted third-degree sexual assault under ss. 939.32 and 940.225 (3), Stats.
- Third-degree sexual assault under s. 940.225 (3), Stats.
- Physical abuse of a child (recklessly causing great bodily harm) under s. 948.03 (3) (a), Stats.

Class H Felonies

- Physical abuse of a physically disabled person under s. 940.19 (6), Stats.
- False imprisonment under s. 940.30, Stats.
- Threats to injure or accuse of a crime (extortion) under s. 943.30, Stats.
- Physical abuse of a child (recklessly causing bodily harm to a child by conduct which creates a high probability of great bodily harm) under s. 948.03 (3) (c), Stats.
- Hazing (if the act results in great bodily harm) under s. 948.51 (3) (b), Stats.

Class I Felonies

- Injury by negligent handling of a dangerous weapon, explosives or fire under s. 940.24, Stats.
- Stalking (if the victim suffers fear of bodily injury or death, or defendant has certain prior convictions against same victim) under s. 940.32 (2) and (2e), Stats.
- Soliciting a child to participate in criminal gang activity under s. 941.38 (2), Stats.
- Harassment (if the person had a prior conviction for harassing the same victim that occurred within the last seven years) under s. 947.013 (1t), Stats.