



## **§118.38 Waiver Application Background and Guidance**

### **Waiver Provisions**

Under Wisconsin Statutes [§118.38](#), a school board may request a waiver of any requirement in Wisconsin Statutes Chapters 115 to 121 or related administrative rules, except for statutes or rules related to any of the following:

1. The health or safety of pupils;
2. Pupil discrimination under s. 118.13;
3. The pupil assessment program under s. 118.30 and the standardized reading test required under s. 121.02 (1) (r);
4. Pupil records under s. 118.125;
5. The collection of data by the department;
6. The uniform financial fund accounting system under ss. 115.28 (13) and 115.30 (1) and audits of school district accounts under s. 120.14;
7. Licensure or certification under s. 115.28 (7) or (7m) other than the licensure of the school district administrator or business manager;
8. The commencement of the school term under s. 118.045; and
9. The requirements established for achievement guarantee contracts under s. 118.43 and for achievement gap reduction contracts under s. 118.44.

In requesting a waiver a school board must hold a public hearing in the school district on the request. The school board is also required to specify in its request for a waiver its reason for requesting the waiver. If requesting a waiver for hours of instruction, a resolution must also be submitted along with information detailed in Wisconsin Administrative Code [PI 8.01\(4\)\(b\)](#).

In reviewing waiver requests, the Department of Public Instruction (DPI) must consider whether the statute or rule requested for waiver impedes the district's progress in achieving educational goals to best serve all students.

For any hours of instruction waiver requests as per statute, the DPI must additionally consider the response of the community to the proposed waiver, the length of the school closure, and whether there is sufficient time before the end of the school year to adjust the school calendar to provide the required hours of direct pupil instruction missed (See appendix A on page 6).

### **Considerations Before Applying for a Waiver**

School districts have flexibility to implement changes regarding how a program is delivered, how much of a program is delivered, and who delivers it. Temporary variations like this to planned school operations do not need a waiver. They temporarily disrupt the normal flow of programming implementation or delivery, but do not necessarily require an entire program or service to be discontinued for the school year.

Consideration should be given to the flexibility or options available under the law. For instance, what are the minimum requirements? Are there alternative compliance options? The DPI has published documents detailing flexibility around aspects of the law and is available to answer your questions.

A waiver should only be considered when a school district anticipates or has determined it cannot offer a program or service required under the law during the school year. A waiver may also be desired if a school district does not anticipate being in compliance with a statutory requirement by virtue of the design of its plan of instruction or an innovation it desires to implement. Where this is the case, a school board may complete a request for waiver from a particular statute or administrative rule and explain the circumstances that will require a formal waiver.

## District Waiver Application

Applications will be accepted on a rolling basis.

The waiver application includes the following seven components.

- I. **General Information:** The information in this section details which schools are affected by the request. Waiver requests could apply to one school, more than one school, or all schools in a district. As a result, this section of the application should note the specific schools included in the waiver request. If all district schools are impacted, the applicant should note that the request applies district-wide.
- II. **Waiver Request:** The applicant will specify the statutory and/or administrative rule provisions for which they are requesting a waiver. Additional information about statutory requirements can be found in the [2021 Legislative Fiscal Bureau Informational Paper #31, Statutory Requirements for School Districts](#).
- III. **Statement of Need:** This section of the application should address the district's rationale for the requested waiver(s).
- IV. **Abstract:** Address how the granting of the waiver impacts the school and/or school district's ability to meet educational goals and, if applicable, improvement plans.
- V. **General Assurances:** This portion of the application is intended to ensure that several steps have occurred. Specifically:
  - Stakeholder engagement has occurred, including a school board hearing and a board resolution or vote approving the flexibility application;
  - The district has conducted a financial review and can assure the plan's fiscal viability;
  - The district's flexibility request is in full compliance with all state and federal laws, including those outlined above regarding waiver requests; and
  - The district has developed a process for reviews of the implemented flexibilities with its local school board, and those reviews will be publicly available.
- VI. **Certifications/Signatures:** The application requires the signature of both the district administrator in charge of implementing the waiver and the school board president, certifying school board approval of the request.
- VII. **Appendix A:** There are additional administrative rule requirements for the hours of instruction waiver request. This appendix details those additional requirements which must be completed in addition to the rest of the form.



Wisconsin Department of Public Instruction  
**ONE-YEAR SCHOOL DISTRICT  
WAIVER APPLICATION**  
PI-1396 (Rev 09-22)

**INSTRUCTIONS:** Email completed original with signature(s) to:

[waivers@dpi.wi.gov](mailto:waivers@dpi.wi.gov)

For best results, it is suggested any PDF form should be downloaded and opened in Acrobat Reader rather than filled out in the browser. Not all PDF features, including the ability to save or use digital signatures, will work as intended when opened in a browser.

*For questions regarding this application, contact:*

Laura Roeker at [waivers@dpi.wi.gov](mailto:waivers@dpi.wi.gov) or 608-266-3560

**I. GENERAL INFORMATION**

Applicant Agency		Mailing Address <i>Street, City, State, ZIP</i>	
Contact Person <i>First and Last Name</i>		Title	
Contact Person's E-Mail Address	Fax <i>Area/No.</i>	Phone <i>Area/No.</i>	

List schools to which district flexibility application applies:

**II. REQUESTED WAIVERS**

Detail the statutory and/or administrative rule provisions for which a one-year waiver is being requested. *Limit response to space provided.*

**III. STATEMENT OF NEED**

Address the rationale for the requested waiver(s) *Limit response to space provided.*

**IV. ABSTRACT**

Address how the granting of the waiver impacts the school and/or school district's ability to meet educational goals and, if applicable, improvement plans. *Limit response to space provided.*

V. GENERAL ASSURANCES

Each Applicant is ultimately responsible for compliance with the certifications and assurances selected on its behalf that apply to its project or award.

Instructions

- Step 1—Read each assurance that follows.
Step 2—Sign and date the certification statement.
Step 3—Include signed certifications and assurances with your application materials.
Step 4—Keep a copy for your records.

Assurance is hereby provided that:

- 1. Stakeholder Engagement: A Public Hearing was held on \_\_\_\_\_ and a copy of the resolution is attached.
2. Finances: The Applicant can show the flexibility plan is fiscally viable.
3. Compliance with State and Federal Laws: The Applicant has evidence that the flexibility plan meets all state and federal legal requirements, including those related to pupil confidentiality [Wis. Stats. s. 118.125] and those required for seeking a waiver from the State Superintendent [Wis. Stats. s. 118.38]. As part of this assurance, the Applicant agrees it is not seeking a waiver from any statutory provision ineligible for a waiver under Wis. Stats. s. 118.38, including those related to:
a. The health and safety of pupils;
b. Pupil discrimination;
c. Pupil assessment;
d. Pupil records;
e. Data collection/reporting;
f. Financial reporting and audits;
g. Licensure or certification;
h. Commencement of the school term; and
i. Requirements for SAGE/AGR contracts.
4. School Board Review: The Applicant will implement a process for reviewing the impact of the flexibility plan with its local school board.
5. Programmatic Changes: The Applicant shall obtain the prior approval of the WDPI prior to adding additional schools (if not listed in the original application) or implementing additional waivers that may be needed to implement the flexibility plan.
6. Duration: The Applicant is submitting this application with the understanding that any flexibility approved is approved for only one school year.

VI. CERTIFICATION/SIGNATURES

WE, THE UNDERSIGNED, CERTIFY that the information contained in this application is complete and accurate to the best of our knowledge; that the necessary assurances of compliance with applicable state and federal statutes, rules, and regulations will be met; and, that the indicated agency designated in this application is authorized to administer this grant.

WE FURTHER CERTIFY that the assurances listed above have been satisfied and that all facts, figures, and representation in this application are correct to the best of our knowledge.

Table with 2 columns: Signature of School District Administrator, Date Signed Mo./Day/Yr. and Signature of School Board President If applicable, Date Signed Mo./Day/Yr.

---

**VII. APPENDIX A**

---

**Hours of Instruction Waiver Request—Additional Administrative Rule Requirements**

As required under PI 8.01(4), a school district board requesting a waiver from the required number of hours of direct pupil instruction shall submit the following information to the DPI along with the waiver request form:

A letter from the district administrator or school board president requesting a waiver from the hours of direct pupil instruction requirement under sub. [\(2\) \(f\)](#) and s. [121.02 \(1\) \(f\)](#), Stats., and specifying the reason or reasons for requesting the waiver.

A record of the public hearing held under s. [118.38 \(1\) \(b\)](#), Stats., indicating the response from the community to the waiver request.

A copy of the order to close the school under s. [115.01 \(10\) \(b\)](#) or [\(c\)](#), Stats., if applicable. If the order is submitted under s. [115.01 \(10\) \(c\)](#), Stats., a copy of the board minutes indicating approval of the request for a waiver.

The number of hours requested to be waived.

The dates the school or schools were closed.

A description of the actions the school board took to make up the hours of instruction missed during the period of the school closure and what prevented the district from scheduling and holding at least the number of hours of direct pupil instruction specified under sub. [\(2\) \(f\)](#) and s. [121.02 \(1\) \(f\)](#), Stats.

The number of days planned for inclement weather and parent teacher conference days as specified under sub. [\(2\) \(f\)](#).

---

---