



NEW LAWS

2019 WISCONSIN ACT 185

(additions made on 4/20/20 are **highlighted in yellow**;
an addition made on 4/21/20 is **highlighted in gray**)

Assembly Bill 1038

Effective Date: April 17, 2020
(with some retroactive initial applicability)

STATE LEGISLATION IN RESPONSE TO THE COVID-19 PANDEMIC

2019 Wisconsin Act 185 addresses a wide variety of issues in response to the public health emergency caused by the COVID-19 pandemic. The provisions that are likely to be the most relevant to public school districts are summarized in this bulletin.

- **School District Reports Related to the State-Wide Closure of Schools and Virtual Instruction**

As a nonstatutory directive, Act 185 requires each school district to submit a report to the Department of Public Instruction by November 1, 2020, that covers the following topics:

1. A description of any virtual instruction provided during the public health emergency (including methods, scope and amount by grade level, etc.). For purposes of the report, “virtual instruction” includes any instruction provided through means of the Internet, where the instructional staff and the participating pupils are geographically remote from each other.
2. A description of any instruction provided during the summer of 2020 to help pupils learn content that was missed due to the public health emergency.
3. Regarding transitioning to and providing virtual instruction when schools are closed, identifying any recommendations for best practices and, specifically in connection with the public health emergency, any challenges or barriers that were encountered.
4. The number of lunches provided by the district during the public health emergency.
5. By position type, the number of staff members laid off during the public health emergency.
6. The total amount of reduced expenditures experienced during or because of the public health emergency, broken down into utilities, transportation, food service, personnel (including reductions from layoffs), and contract terminations.

By January 1, 2021, DPI is required to compile the data received from the school district reports and submit the information to the legislature. *(Note: DPI plans to create a standardized method for school districts to use to organize and submit the data that is required for these reports.)*

- **DPI Guidance on Returning to In-Person Instruction**

By June 30, 2020, the Department of Public Instruction shall post on its Internet site guidance to schools on best practices related to transitioning from virtual instruction to in-person instruction.

- **Changes to Full-Time Open Enrollment Deadlines**

Under nonstatutory provisions, Act 185 adjusts the deadlines related to full-time open enrollment applications for attending a nonresident school district in the 2020-21 school year:

1. The deadline for the submission of an application to a nonresident school district is May 29, 2020. *(Note: DPI has clarified that the deadline is 4:00 p.m. on May 29.)*
2. Nonresident school boards must send a copy of each application the district has received to the pupil's resident school board and to the department by the end of the day on June 1, 2020. *(Note: This process is generally handled electronically through DPI's OPAL system and takes place automatically if the application was submitted online. DPI has clarified that nonresident districts must enter any paper applications into OPAL by no later than June 1.)*
3. Each resident school board must provide applicable disciplinary records related to an applicant, if any, to each nonresident school board to which a pupil has applied by June 5, 2020.
4. Each resident school board must send a copy of a pupil's individualized education program, if any, to the applicable nonresident school district(s) by June 8, 2020.
5. A nonresident school board may not act to approve or deny any regular-period applications before June 1, 2020. *(Note: This date is earlier than the deadline for receiving all IEPs and disciplinary records from resident school districts. Districts may wish to defer taking action on applications until after those later dates so that decisions can be made with full information.)*
6. A nonresident school board must notify an applicant of whether the applicant's application has been accepted or denied by no later than July 2, 2020 (but not earlier than June 1, 2020).
7. A resident school board must notify an applicant and the nonresident school board that an application has been denied, if applicable, by July 9, 2020.
8. The pupil's parent must notify the relevant nonresident school board of the pupil's intent to attend school in the nonresident school district in the 2020-21 school year by no later than July 31, 2020, or within 10 days of receiving a notice of acceptance if a pupil is selected from a waiting list.
9. Each nonresident school board that has accepted a pupil for attendance in the 2020-21 school year under full-time open enrollment shall report the name of the pupil to the pupil's resident school board by August 7, 2020. *(Note: DPI has clarified that this information is entered through the OPAL system.)*
10. The Department of Public Instruction shall provide parents who request transportation reimbursement an estimate of the amount of reimbursement by June 12, 2020.

(Note: DPI issued a list serve notice on April 16, 2020, that further clarifies the impact of Act 185's changes to the open enrollment procedures. DPI has also updated the resource titled "[2020 Important Dates for Open Enrollment](#)" to reflect the changes. In addition to the items mentioned above, DPI emphasizes that July 1, 2020, continues to be the first date on which alternative open enrollment applications may be submitted for the 2020-21 school year.)

- **State-Mandated Assessments Not Required for the 2019-20 School Year**

Under a nonstatutory provision, Act 185 specifies that the pupil assessment mandates found in section 118.30(1m) and sections 121.02(1)(r) and (s) of the state statutes do not apply in the 2019-20 school year. This eliminates the 2019-20 requirements for the state-mandated 3rd grade reading test and the annual state assessments that school districts are otherwise required to conduct in grades 4, 8, 9, 10, and 11.

Such testing requirements are similarly suspended for parental choice program schools, independent charter schools, and private schools participating in the Special Needs Scholarship Program.

(Note: DPI has also received approval from the U.S. Department of Education to implement waivers for the federal student assessment requirements found in Section 1111 of the Elementary and Secondary Education Act. As a result of that approval, all federal testing requirements are waived for the state and for all Wisconsin school districts for the 2019-20 school year. With the enactment of Act 185, state testing requirements are also waived for the 2019-20 school year.)

- **No School District Performance Reports Will Be Issued for the 2019-20 School Year**

Act 185 provides that the Department of Public Instruction shall not publish school and school district accountability reports under section 115.385 of the state statutes in the 2020-21 school year.

(Note: These reports are normally published annually by November 30 and relate back to data from the previous school year (i.e., 2019-20 in this case).)

- **Educator Effectiveness Evaluations**

For the evaluation of teachers and principals in the 2019-20 school year, school boards may not consider pupil performance on statewide assessments administered under s. 118.30 in the 2019-20 school year and may not include pupil performance on those assessments in the evaluation score assigned to a teacher or principal under the educator effectiveness evaluation system that is implemented in the school district.

(Note: Prior to the enactment of Act 185, the DPI provided [specific guidance](#) to support school districts that wished to complete the educator effectiveness cycle for educators who are in their Summary Year in 2019-20. If a district determines that it is not possible/desirable to do so, the DPI has indicated it will waive those requirements upon the submission of a [waiver request](#) under section 118.38 of the state statutes. Prior to requesting such a waiver, a school district must hold a public hearing on the proposed waiver.)

- **Counties and Taxation Districts Permitted to Defer Accrual of Interest and Penalties on Unpaid Property Taxes Until October 1, 2020**

Under a nonstatutory provision relating to property taxes that are payable in 2020, Act 185 states that, after making a general or case-by-case finding of hardship, a taxation district may provide that an installment payment that is due and payable after April 1, 2020, and that is received after its due date shall not accrue interest or penalties if the total amount due and payable in 2020 is paid on or

before October 1, 2020. (Interest and penalties shall accrue from October 1 for any such property taxes that are delinquent after October 1.) Such authority to defer the accrual of interest and penalties exists only if (1) the county board of the county where the taxation district is located first adopts a resolution authorizing such waivers and establishing criteria for determining hardship; and (2) the taxation district subsequently adopts a similar resolution.

A county that has adopted a resolution authorizing the waiver of interest and penalties under this subsection shall settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, as provided under section 74.29(1), and settle the remaining unpaid taxes, interest, and penalties on September 20, 2020. The August 20, 2020, settlement will be distributed proportionally to the underlying taxing jurisdictions.

(Note: School districts should determine if their county board(s) and municipalities elect to adopt such resolutions and work with these other governmental units to determine the effect on the school district's cash flows and short-term borrowing needs.)

- **Changes to Unemployment Insurance**

Act 185 makes a number of changes to the state's unemployment insurance program. Some of the changes, such as the temporary suspension of the one-week waiting period for the receipt of benefits, were required in order for Wisconsin to fully-participate in the expanded federal unemployment benefits that are related to the COVID-19 pandemic. Under Act 185, the one-week waiting period is inapplicable to claimant benefit years that begin after March 12, 2020, and prior to February 7, 2021.

Another significant temporary change to unemployment insurance concerns the extent to which regular benefits will be charged back to employers. In particular, Act 185 provides as follows:

1. When processing initial claims for regular benefits payable for weeks beginning after March 12, 2020, and beginning before December 31, 2020, the Department of Workforce Development will determine whether a claim is related to the public health emergency declared on March 12, 2020, by executive order 72. The determination will be made based on information that claimants and employers are required to provide to the Department.
2. If such a claim is determined to be related to the public health emergency, then the regular benefits paid for that claim shall, for all "reimbursable employers" (including school districts), be charged to the administrative account and paid from the appropriation established under [section 20.445\(1\)\(gd\)](#) of the state statutes.

(Note: In order to take maximum advantage of the Act 185 provisions that avoid charging the cost of regular benefits back to the school district as a reimbursable employer, each school district will want to ensure that, to the extent relevant to any claim, the district provides the information that establishes that the claim relates to the public health emergency. The Department of Workforce Development will likely provide additional information about this process in the near future, including the extent to which such a designation might be made retroactively.)

- **State Agencies and Local Governmental Units Authorized to Suspend Certain Deadlines and Training Requirements During the Public Health Emergency [description added on 4/21/20]**

Under Act 185, any state agency or local governmental unit (defined to include school districts) may toll (i.e., temporarily suspend) any deadline that the agency or local governmental unit administers or enforces that falls within the period covered by the public health emergency declared on March 12, 2020, by executive order 72, plus 30 days. The tolling of a deadline may last for the duration of such period. The agency or local governmental unit may not charge any interest or penalty that would otherwise apply with respect to the tolled deadline. For these purposes, “deadline” means any date certain by which, or any other limitation as to time within which, an action or event is required to occur. However, this broad authority related to deadlines, as set forth in section 323.265 of the state statutes, does not apply to any deadline with respect to the filing or payment of certain taxes or to the date of any election or any deadline related to an election.

During the period covered by the public health emergency declared on March 12, 2020, by executive order 72, plus 30 days, a state agency or local governmental unit may also suspend any training requirement associated with any program the agency or local governmental unit administers or enforces.

- **Employee Access to Personnel Records under Section 103.13 Temporarily Suspended [clarified with additional text on 4/20/20]**

Act 185 provides that during the public health emergency declared on March 12, 2020, by executive order 72, an employer is not required to provide an employee's personnel records within 7 working days after an employee makes a request to inspect his or her personnel records, and an employer is not required to provide the inspection at a location reasonably near the employee's place of employment during normal working hours. This provision serves to temporarily suspend the requirements for employee access to personnel records that are found in section 103.13 of the state statutes.

(Note: Act 185 did not modify or suspend any portion of the Wisconsin Public Records Law, as found in Chapter 19 of the state statutes. As a result, even though section 103.13 may not apply to an employee's or representative's request for access to personnel records, any public employer likely needs to evaluate and respond to such a request under the Public Records Law or any other additional source of law that may grant access independent of section 103.13.)

- **New Mandates Affect Health Insurance Plans and Plan Benefits**

Act 185 introduces a number of new requirements related to health insurance plans and to the benefits that are provided under certain insurance plans. For example:

1. *Nondiscrimination based on COVID-19.* The Act provides that an insurer that offers an individual or group health benefit plan, a pharmacy benefit manager, or a self-insured health plan, as well as any limited service health organizations, preferred provider plans, and defined network plans, may **not**:

- a. Establish rules for the eligibility of any individual to enroll, for the continued eligibility of any individual to remain enrolled, or for the renewal of coverage under the plan based on a current or past diagnosis or suspected diagnosis of COVID-19.
 - b. Establish rules for the eligibility of any employer or other group to enroll, for the continued eligibility of any employer or group to remain enrolled, or for the renewal of an employer's or group's coverage under the plan based on a current or past diagnosis or suspected diagnosis of COVID-19 of any employee or other member of the group.
 - c. Use as a basis for cancellation of coverage during a contract term a current or past diagnosis of COVID-19 or suspected diagnosis of COVID-19.
 - d. Use as a basis for setting rates for coverage a current or past diagnosis of COVID-19 or suspected diagnosis of COVID-19.
 - e. Refuse to grant to an individual, employer, or other group a grace period for the payment of a premium based on an individual's, employee's, or group member's current or past diagnosis of COVID-19 or suspected diagnosis of COVID-19 if a grace period for payment of premium would generally be granted under the plan.
2. Coverage for COVID-10 testing. Limited service health organizations, preferred provider plans, and defined network plans, as well as every disability insurance policy, and every self-insured health plan of the state or of a county, city, town, village, or school district, that generally covers testing for infectious diseases shall, before March 13, 2021, provide coverage of testing for COVID-19 without imposing any copayment or coinsurance on the individual covered under the policy or plan.
 3. Drug prescriptions during the state of emergency. Defined network plans, preferred provider plans, and limited service health organizations, as well as any insurer offering a disability insurance policy that covers prescription drugs, a self-insured health plan of the state or of a county, city, town, village, or school district that covers prescription drugs, or a pharmacy benefit manager acting on behalf of a policy or plan may **not** do any of the following in order to maintain coverage of a prescription drug during the period covered by the state of emergency declared by executive order 72:
 - a. Require prior authorization for early refills of a prescription drug or otherwise restrict the period of time in which a prescription drug may be refilled.
 - b. Impose a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply.
 - c. The requirements identified in the previous two subparagraphs do **not** apply to a prescription drug that is a controlled substance, as defined in section 961.01(4) of the state statutes.
 4. Costs related to certain out-of-network services, treatments, and supplies. All of the following apply to a defined network plan or preferred provider plan during the state of emergency related to public health declared on March 12, 2020, by executive order 72, and for the 60 days following the date that the state of emergency terminates:

- a. The plan may not require an enrollee to pay, including cost sharing, for a service, treatment, or supply provided by a provider that is not a participating provider in the plan's network of providers more than the enrollee would pay if the service, treatment, or supply is provided by a provider that is a participating provider. This subsection applies to any service, treatment, or supply that is related to diagnosis or treatment for COVID-19 and to any service, treatment, or supply that is provided by a provider that is not a participating provider because a participating provider is unavailable due to the public health emergency.
- b. The plan shall reimburse a provider that is not a participating provider for a service, treatment, or supply provided under the circumstances described in the previous paragraph at 225 percent of the rate the federal Medicare program reimburses the provider for the same or a similar service, treatment, or supply in the same geographic area.

5. Receipt of certain payments by out-of-network providers/facilities. During the state of emergency related to public health declared on March 12, 2020, by executive order 72, and for the 60 days following the date that the state of emergency terminates, all of the following apply to any health care provider or health care facility that provides a service, treatment, or supply to an enrollee of a defined network plan or preferred provider plan but is not a participating provider of that plan:

- a. The health care provider or facility shall accept as payment in full any payment by a defined network plan or preferred provider plan that is at least 225 percent of the rate the federal Medicare program reimburses the provider for the same or a similar service, treatment, or supply in the same geographic area.
- b. The health care provider or facility may not charge the enrollee for the service, treatment, or supply an amount that exceeds the amount the provider or facility is reimbursed by the defined network plan or preferred provider plan.

- **Civil Liability Exception for Emergency Medical Supplies**

Any person engaged in the manufacturing, distribution, or sale of emergency medical supplies, who donates or sells, at a price not to exceed the cost of production, emergency medical supplies to a charitable organization or governmental unit to respond to the public health emergency related to the 2019 novel coronavirus pandemic is immune from civil liability for the death of or injury to an individual caused by the emergency medical supplies donated or sold by the person.

- **Various Changes Affecting Private Schools, the Special Needs Scholarship Program, the Parental Choice Programs and Participating Schools, Independent Charter Schools, and the Opportunity Schools and Partnership Programs**

A substantial number of provisions found in Act 185 affect private schools and various non-district educational programs that exist under state law. Some examples of these provisions include the following:

- 1. Waivers of hours of instruction requirements for private schools. Under a nonstatutory provision of Act 185, in the 2019-20 school year, the governing body of a private school, including but not

limited to private schools participating in a parental choice program, may request the Department of Public Instruction to waive any requirement related to providing hours of instruction in chapter 115 to 121 or in administrative rules promulgated by the Department.

2. Department of Public Instruction waivers applicable to certain state programs, certain private schools, and independent charter schools. Under Act 185, the Department of Public Instruction may waive, for the 2019-20 school year only, any requirement in chapters 115 to 121 or in the administrative rules promulgated by the Department related to (1) the Special Needs Scholarship Program and any parental choice (i.e., voucher) program or any private school participating in any of those programs; and (2) independent charter schools, including any requirement related to an authorizer, governing board, or operator of such a charter school. DPI is also authorized to modify certain deadlines related to the Special Needs Scholarship Program or any parental choice program, as such deadlines are found in chapters 115 to 121 or in the administrative rules promulgated by the Department.
3. Application deadline extension for the state-wide parental choice program. Under a nonstatutory provision, a private school that has submitted a timely notice of intent to participate in the state-wide parental choice program may accept pupil applications for the 2020-21 school year until May 14, 2020.
4. Opportunity Schools and Partnership Program. Act 185 modifies the statutory language regarding the Opportunity Schools and Partnership Program (OSPP) to reflect the one-year lapse, during 2019-20, in administering statewide assessments and publishing accountability reports. Specifically, in defining “eligible” districts under the program, Act 185 modifies the criteria to refer to the “most recent” accountability reports (rather than requiring that the reports be issued in consecutive school years). (*Note: Similar changes were made to the Superintendent of Schools Opportunity Schools and Partnership Program that operates in Milwaukee.*)
5. Other changes. Act 185 makes additional modifications and accommodations for these schools and programs in light of the public health emergency. If a school district has any questions about any such additional items, the district may refer directly to the Act or contact the WASB for more information.

Notes: The full text of this Act can be found at: <https://docs.legis.wisconsin.gov/2019/related/acts/185>