

CHAPTER 127

ACTIONS AND PENALTIES

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127.01 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.01 **DEFINITIONS.** For purposes of this chapter, the words defined in section 120.02 have the same meaning.
[Ex1959 c 71 art 8 s 1]

127.02 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.02 **ACTIONS BY DISTRICTS.** Any school board may prosecute actions in the name of the district in the following cases:

- (1) On a contract made with the district, or with the board in its official capacity;
- (2) To enforce a liability, or a duty enjoined by law, in its favor or in favor of the district;
- (3) To recover a penalty or forfeiture given by law to it or to the district; or
- (4) To recover damages for an injury to the rights or property of the district.

[Ex1959 c 71 art 8 s 2]

127.03 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.03 **ACTIONS AGAINST DISTRICTS AND TEACHERS.** Subdivision 1. An action may be brought against any school district, either upon a contract made with the district or its board, in its official capacity and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such board, whether the members of the board making the contract, or guilty of the act or omission complained of, be still in office or not.

Subd. 2. Upon written request of the teacher involved, any school district, however organized, shall provide legal counsel for any school teacher against whom claim is made or action is brought for recovery of damages in any tort action involving physical injury to any person or property or for wrongful death arising out of or in connection with the employment of such teacher with such school district. The choice of such legal counsel shall be made only after consultation with the teacher. Provision of counsel under this subdivision shall not be construed to render the school district liable for its torts, except as otherwise provided by law; or for reimbursement of costs of counsel provided to the teacher pursuant to the contract obligation of another or otherwise than under this subdivision; or for payment of any judgments or any other costs or disbursements in connection therewith where the judgment, cost or disbursement is against the teacher and not against the school district.

[Ex1959 c 71 art 8 s 3; 1965 c 165 s 1; 1975 c 162 s 41]

127.04 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.04 **JUDGMENT PAID BY TREASURER.** Except as hereinafter provided, no execution shall issue upon any judgment against a school district for the recovery of

money. Unless the same be stayed by appeal, the treasurer shall pay such judgment, upon presentation of a certified copy thereof, if he has sufficient money of the district not otherwise appropriated. If he fails to do so, he shall be personally liable for the amount, unless the collection be afterwards stayed.

[Ex1959 c 71 art 8 s 4]

127.05 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.05 TAX LEVY FOR UNPAID JUDGMENT. If such judgment is not satisfied, or stayed by appeal or otherwise, before the next annual meeting of the district, a certified copy thereof may be presented at its annual meeting, whereupon the district shall cause the amount of the judgment, with interest, to be added to the tax of the district. If such tax is not levied and certified to the county auditor on or before October 1 next after presentation, a certified copy thereof may be filed with such auditor at any time before he has extended the tax of such district, with an affidavit showing the amount remaining unpaid thereon and the fact of such presentation to the district. Thereupon the auditor shall at once levy and extend such amount as a tax upon the property taxable within the district. By mutual agreement between the district and the judgment creditor the levy may be spread equally over a period of more than one year.

[Ex1959 c 71 art 8 s 5]

127.051 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.052 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.053 MS 1949 [Renumbered 128.234]

127.054 MS 1949 [Renumbered 128.235]

127.056 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.057 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.058 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.06 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.06 ISSUANCE OF EXECUTION. If the judgment is not paid within 30 days after the time when the proceeds of such levy becomes payable by the county treasurer of the district, execution may be issued thereon, to which any property belonging to the district shall be liable.

[Ex1959 c 71 art 8 s 6]

127.07 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.07 MS 1967 [Repealed, 1969 c 380 s 2]

127.071 [Repealed, 1974 c 572 s 16]

127.08 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.08 IMPROPER CLASSIFICATION OF PUPILS. No district shall classify its pupils with reference to race, color, social position, or nationality, nor separate its pupils into different schools or departments upon any of such grounds. Any district so classifying or separating any of its pupils, or denying school privileges to any of its pupils upon any such ground shall forfeit its share in all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. The state commissioner upon notice to the offending district and upon proof of the violation of the provisions of this section, shall withhold in the semi-annual apportionment the share of such district and the county auditor shall thereupon exclude such district from his apportionment for such period.

[Ex1959 c 71 art 8 s 8]

127.09 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.09 REFUSING TO SERVE ON SCHOOL BOARD. Any person accepting an election or appointment upon any school board and refusing or neglecting to qualify or to serve or to perform any of the duties of such office, shall forfeit for each offense the sum of \$10 to be collected in an action before a justice of the peace, to be prose-

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cuted in the name of the district by any school board member of the district or by any freeholder thereof.

[*Ex1959 c 71 art 8 s 9*]

127.10 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.10 FAILURE OF CLERK TO REPORT. Any clerk of a school district who fails to make any report required of him by law shall forfeit not less than \$5, nor more than \$50, for the use of the district.

[*Ex1959 c 71 art 8 s 10*]

127.11 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.11 DRAWING ILLEGAL ORDER. Any school district clerk who shall illegally draw an order upon the treasurer, any chairman or other officer who shall attest such order, and any school district treasurer who shall knowingly pay the same, shall each forfeit to the district twice the amount of such order, to be collected in an action brought in the name of the district by any freeholder thereof.

[*Ex1959 c 71 art 8 s 11*]

127.12 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.12 NEGLECTING TO KEEP OR DELIVER RECORDS. Any school district clerk who shall neglect to keep the books and records of his office in the manner prescribed by law or shall wilfully refuse to deliver such books and records to his successor in office, shall forfeit to the use of the district the sum of \$10 for each offense.

[*Ex1959 c 71 art 8 s 12*]

127.13 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.13 FAILURE OF AUDITOR TO REPORT. Any county auditor who shall fail to make to the commissioner any report of apportionment required by law shall forfeit, for the benefit of the school fund of the county, the sum of \$50.

[*Ex1959 c 71 art 8 s 13*]

127.14 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.14 MS 1974 [Repealed, 1975 c 162 s 42]

127.15 DEALING IN SCHOOL SUPPLIES. Except as provided for in sections 471.87 and 471.88, no teacher in the public schools, nor any state, county, town, city, or district school officer, including any superintendent of schools, or any member of any school board, nor any person connected with the public school system in any capacity, shall be interested directly or indirectly in the sale, proceeds, or profits of any book, apparatus, or furniture used, or to be used, in any school with which he is connected in any official capacity. Any person violating any of the provisions of this section shall forfeit not less than \$50, nor more than \$200 for each such offense. This section shall not apply to a person who may have an interest in the sale of any book of which he himself is the author.

[*Ex1959 c 71 art 8 s 15; 1973 c 121 s 1*]

127.16 DUTY OF OFFICERS TO REPORT VIOLATIONS OF LAW. Every officer to whom reports are required by law to be made and for the failure to make which a penalty or fine or forfeiture is provided, shall give immediate written notice of such failure to the delinquent and to the proper county attorney. Such county attorney shall thereupon institute proper proceedings to collect such penalty, fine, or forfeiture. Upon complaint of the district superintendent, or when it comes to his knowledge that any school officer has violated any provision of law for which violation a penalty, fine or forfeiture is provided, such attorney shall institute like proceedings.

[*Ex1959 c 71 art 8 s 16; 1975 c 162 s 35*]

127.17 SECRET FRATERNITIES AND SOCIETIES. Subdivision 1. **Membership regulated.** It shall be unlawful for any pupil, registered as such and attending any public elementary, high school, community college, or vocational school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any secret fraternity or society wholly or partially formed from the membership of pupils attending any such schools or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the board of the district concerned.

Subd. 2. **Rules and regulations.** The boards shall enforce the provisions of this section and have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of this section.

Subd. 3. **Penalties.** The boards shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such boards or a majority of their membership, such pupil is guilty of violating any of the provisions of this section or is guilty of violating any rule or regulation adopted by such boards for the purpose of governing such schools, or enforcing this section.

Subd. 4. **"Rushing" or soliciting forbidden.** It is hereby made a misdemeanor for any person, not a pupil of such schools, to be upon the school grounds, or to enter any school building, for the purpose of "rushing" or soliciting, while there, any pupil of such schools to join any fraternity, society, or association organized outside of the schools. All municipal courts and justice courts in this state shall have jurisdiction of all offenses committed under this subdivision and all persons found guilty of such offenses shall be fined not less than \$2, nor more than \$10, to be paid to the city treasurer, when such schools are situated inside of the corporate limits of any city, and to the county treasurer, when situated outside of the corporate limits of any city, or, upon failure to pay such fine, to be imprisoned for not more than ten days.

[*Ex1959 c 71 art 8 s 17; 1973 c 123 art 5 s 7; 1973 c 349 s 2*]

127.18 [Repealed, 1975 c 162 s 42]

127.19 OFFICERS, TEACHERS; NEGLECT OF DUTY; PENALTY. Any school officer, truant officer, teacher of a public or private school, school principal or district superintendent refusing, wilfully failing, or neglecting to perform any duty imposed upon him by the provisions of law relating to the compulsory attendance in school of children of school age shall be guilty of a misdemeanor; and, upon conviction thereof, punished for each offense by a fine of not to exceed \$10 or by imprisonment in the county jail for not to exceed ten days. All such fines, when collected, shall be paid into the county treasury for the benefit of the school district in which the offense is committed.

[*Ex1959 c 71 art 8 s 19; 1975 c 162 s 36*]

127.20 VIOLATIONS; PENALTIES. Any person who shall fail or refuse to send to or keep in school any child of whom he has legal charge or control, and who is required by law to attend school, when notified so to do by a truant officer or other official as hereinbefore provided, or any person who induces or attempts to induce any such child unlawfully to absent himself from school, or who knowingly harbors or employs, while school is in session, any child unlawfully absent from school, shall be guilty of a misdemeanor; and, upon conviction thereof, punished by a fine of not to exceed \$50, or by imprisonment in the county jail for not more than 30 days. All such fines, when collected, shall be paid into the county treasury for the benefit of the school district in which the offense is committed.

[*Ex1959 c 71 art 8 s 20*]

127.21 COMBINATION TO CONTROL PRICES; DUTY OF ATTORNEY GENERAL. If at any time any publisher shall enter into any understanding, agreement, or combination to control the prices or to restrict competition in the adoption or sale of school books, then the attorney general shall institute and prosecute legal proceedings for the forfeiture of the bond of the publisher and for the revocation of his license to sell school books in this state, and each and every contract made by the publisher under this chapter shall thereupon become null and void at the option of the other parties thereto.

[*Ex1959 c 71 art 8 s 21*]

127.22 FAILURE TO OBTAIN LICENSE; PENALTY. Any person, company, or corporation who shall sell or offer for sale or adoption in the state, school textbooks of any kind without first obtaining a license therefor from the commissioner of educa-

tion, shall be guilty of a gross misdemeanor; and, upon conviction thereof, shall be fined not less than \$500, and not more than \$2,000.

[*Ex1959 c 71 art 8 s 22; 1973 c 386 s 2*]

127.23 STATE OFFICIALS TO BE DISINTERESTED; PENALTY. If the commissioner of education, his assistant or any employee connected with his office, or any member of any school board shall accept or receive any money, gift or any property, or favor from any person, firm, or corporation offering for sale any textbooks, or any agent thereof, or from any person in any way interested in the sale of textbooks, he shall, upon conviction, be punished by a fine not exceeding \$500, or by imprisonment in the county jail for not more than six months, or both by such fine and imprisonment.

[*Ex1959 c 71 art 8 s 23*]

127.24 [Repealed, 1973 c 121 s 2]

127.25 APPEALS. Subdivision 1. Any district or any person aggrieved by final order of the county board or final order of the county auditor, made pursuant to the provisions of this code, may appeal from such final order to the district court upon the following grounds:

- (1) That the county board or the county auditor had no jurisdiction to act;
- (2) That the county board or the county auditor exceeded its jurisdiction;
- (3) That the action appealed from is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interest of the territory affected;
- (4) That the order of action appealed from is based upon an erroneous theory of law.

An appeal from a final order of a county board or the county auditor shall be taken by serving a notice of appeal upon the county auditor. An appeal from a final order of a county board or a county auditor shall be taken to the district court in the county of the board or auditor. Notice of appeal must be served within 30 days of the issuance of the order appealed from and shall be accompanied by a corporate surety bond in the amount of \$250, conditioned for the payment of all costs taxed against appellant on such appeal. The notice of appeal shall be filed with the clerk of the district court and noticed for hearing in the manner provided for the trial of civil actions by Minnesota rules of civil procedure.

In an appeal from an order of a county auditor effecting a consolidation the action of the commissioner or the state board approving the plat is reviewable and the commissioner may be called by either party as a witness in such appeal proceedings and may be examined under the rules of civil procedure relating to the cross-examination of adverse parties.

Subd. 2. Any school district or any person affected by final order of the county board or final order of the county auditor shall be permitted to intervene in appeals under this section as a party respondent.

Subd. 3. An appeal lies from the district court to the supreme court in accordance with the rules of civil appellate procedure.

Subd. 4. Unless otherwise provided by law, any school district or any person aggrieved by a final order of the commissioner made pursuant to provisions of this code may proceed under the provisions of sections 15.0418 to 15.0426.

[*Ex1959 c 71 art 8 s 25; 1975 c 162 s 37; 1976 c 239 s 36; 1978 c 764 s 90-92*]

127.26 CITATION OF SECTIONS 127.26 TO 127.39. Sections 127.26 to 127.39 may be cited as "The pupil fair dismissal act of 1974".

[*1974 c 572 s 1*]

127.27 DEFINITIONS. Subdivision 1. As used in sections 127.26 to 127.39, the terms defined in this section shall have the meanings assigned them.

Subd. 2. "Dismissal" means the denial of the appropriate educational program to any pupil, including exclusion, expulsion, and suspension.

Subd. 3. "District" means any school district.

Subd. 4. "Exclusion" means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year.

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Subd. 5. "Expulsion" means an action taken by a school board to prohibit an enrolled pupil from further attendance for a period that shall not extend beyond the school year.

Subd. 6. "Parent" means (a) one of the pupil's parents, or (b) in the case of divorce, legal separation, or illegitimacy, the custodial parent.

Subd. 7. "Pupil" means any handicapped or nonhandicapped student under 21 years of age eligible to attend a public elementary or secondary school.

Subd. 8. "School" means any school as defined in Minnesota Statutes 1971, Section 120.05, Subdivision 2.

Subd. 9. "School board" means the governing body of any school district.

Subd. 10. "Suspension" means an action taken by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than five school days. This definition does not apply to dismissal from school for one school day or less. Each suspension action shall include a readmission plan. The readmission plan shall include, where appropriate, a provision for alternative programs to be implemented upon readmission. Suspension may not be consecutively imposed against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to persons or property around him. In no event shall suspension exceed 15 school days, provided that an alternative program shall be implemented to the extent that suspension exceeds five days.

[1974 c 572 s 2; 1975 c 162 s 41]

127.28 POLICY. No public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.

[1974 c 572 s 3]

127.29 GROUNDS FOR DISMISSAL. Subdivision 1. No school shall dismiss any pupil without attempting to provide alternative programs of education prior to dismissal proceedings, except where it appears that the pupil will create an immediate and substantial danger to himself or to persons or property around him. Such programs may include special tutoring, modification of the curriculum for the pupil, placement in a special class or assistance from other agencies.

Subd. 2. A pupil may be dismissed on the following grounds:

(a) Willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;

(b) Willful conduct which materially and substantially disrupts the rights of others to an education;

(c) Willful conduct which endangers the pupil or other pupils, or the property of the school.

[1974 c 572 s 4; 1978 c 764 s 93]

127.30 SUSPENSION PROCEDURES. Subdivision 1. No suspension from school shall be imposed without an informal administrative conference with the pupil, except where it appears that the pupil will create an immediate and substantial danger to himself or to persons or property around him.

Subd. 2. A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of sections 127.26 to 127.39, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon his parent or guardian by certified mail within 48 hours of the conference. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to persons or property around him, the written notice shall be served either personally or by certified mail upon the pupil and his parent or guardian within 48 hours of the suspension. Service by certified mail is complete upon mailing.

Subd. 3. Notwithstanding the provisions of subdivisions 1 and 2, the pupil may be suspended pending the school board's decision in the expulsion or exclusion hear-

ing; provided that an alternative program shall be implemented to the extent that suspension exceeds five days.

[1974 c 572 s 5; 1978 c 764 s 94]

127.31 EXCLUSION AND EXPULSION PROCEDURES. Subdivision 1. No exclusion or expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the pupil and parent or guardian. The action shall be initiated by the school board or its agent.

Subd. 2. Written notice of intent to take action shall:

- (a) Be served upon the pupil and his parent or guardian by certified mail;
- (b) Contain a complete statement of the facts, a list of the witnesses and a description of their testimony;
- (c) State the date, time, and place of the hearing;
- (d) Be accompanied by a copy of sections 127.26 to 127.39;
- (e) Describe alternative educational programs accorded the pupil prior to commencement of the expulsion or exclusion proceedings; and
- (f) Inform the pupil and parent or guardian of the right to:
 - (1) Have legal counsel at the hearing;
 - (2) Examine the pupil's records before the hearing;
 - (3) Present evidence; and
 - (4) Confront and cross-examine witnesses.

Subd. 3. The hearing shall be scheduled within ten days of the service of the written notice unless an extension, not to exceed five days, is requested for good cause by the school board, pupil, parent or guardian.

Subd. 4. The hearing shall be at a time and place reasonably convenient to pupil, parent or guardian.

Subd. 5. The hearing shall be closed unless the pupil, parent or guardian requests an open hearing.

Subd. 6. The pupil shall have a right to a representative of his own choosing, including legal counsel. If a pupil is financially unable to retain counsel, the school board shall advise the pupil's parent or guardian of available legal assistance.

Subd. 7. The hearing shall take place before:

- (a) An independent hearing officer;
- (b) A member of the school board;
- (c) A committee of the school board, or;
- (d) The full school board;

as determined by the school board.

Subd. 8. The proceedings of the hearing shall be recorded and preserved, at the expense of the school district, pending ultimate disposition of the action. Testimony shall be given under oath. The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths.

Subd. 9. At a reasonable time prior to the hearing, the pupil, parent or guardian, or his representative, shall be given access to all public school system records pertaining to the pupil, including any tests or reports upon which the proposed action may be based.

Subd. 10. The pupil, parent or guardian, or his representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system.

Subd. 11. The pupil, parent or guardian, or his representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.

Subd. 12. The pupil cannot be compelled to testify in the dismissal proceedings.

Subd. 13. The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and be made to the school board within two days of the end of the hearing.

Subd. 14. The decision by the school board shall be based upon the recommendation of the hearing officer or school board member or committee and shall be rendered at a special meeting within five days after receipt of the recommendation. The decision shall be in writing and the controlling facts found upon which the decision is made shall be stated in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.

[1974 c 572 s 6]

127.32 APPEAL. An exclusion or expulsion decision made pursuant to sections 127.26 to 127.39 may be appealed to the commissioner of education. The commissioner or his representative shall make a final decision based upon a record of evidence presented at the hearing. Such ruling shall be binding upon the parties, subject to judicial review as provided in section 127.33.

[1974 c 572 s 7]

127.33 JUDICIAL REVIEW. The decision of the commissioner of education made pursuant to sections 127.26 to 127.39 shall be subject to direct judicial review in the district court of the county in which the school district or any part thereof is located. The scope of the judicial review shall be as provided by Minnesota Statutes 1971, Section 15.0425.

[1974 c 572 s 8]

127.34 REPORTS TO SERVICE AGENCY. The school board shall report any action taken pursuant to sections 127.26 to 127.39 to the appropriate public service agency, when the pupil is under the supervision of such agency.

[1974 c 572 s 9]

127.35 NONAPPLICATION OF CERTAIN LAW. The provisions of Minnesota Statutes 1971, Section 120.10, Subdivision 1, shall not apply to any pupil during a dismissal pursuant to sections 127.26 to 127.39.

[1974 c 572 s 10]

127.36 REPORT TO COMMISSIONER OF EDUCATION. The school board shall report each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of education. This report shall include a statement of alternative programs of education accorded the pupil prior to the commencement of exclusion or expulsion proceedings.

[1974 c 572 s 11]

127.37 NOTICE OF RIGHT TO BE REINSTATED. Whenever a pupil fails to return to school within ten school days of the termination of dismissal, the pupil and his parents shall be informed by certified mail of the pupil's right to attend and to be reinstated in the public school.

[1974 c 572 s 12]

127.38 POLICIES TO BE ESTABLISHED. The commissioner of education shall promulgate guidelines to assist each school board. Each school board shall establish uniform criteria for dismissal and adopt policies and rules in writing to effectuate the purposes of sections 127.26 to 127.39. The policies will emphasize the prevention of dismissal action through early detection of problems. The policies shall recognize the continuing responsibility of the school for the education of the pupil during the dismissal period and help prepare him for readmission.

[1974 c 572 s 13]

127.39 APPLICATION. Subdivision 1. Sections 127.26 to 127.39 shall not be deemed to amend or otherwise affect or change section 363.03, subdivision 5, clause (2).

Subd. 2. Sections 127.26 to 127.39 shall apply only to those portions of the school program for which credit is granted.

[1974 c 572 s 14,15]