



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-032

AN ORDER to create chapter 28, relating to providing access to the 4th, 8th, and 10th grade knowledge and concepts examinations and the high school graduation test.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

02-28-02 RECEIVED BY LEGISLATIVE COUNCIL.

03-20-02 REPORT SENT TO AGENCY.

RNS:JLK:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-032

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

I. Statutory Authority

a. Section 118.30, Stats., requires the administration of 4th, 8th, and 10th grade knowledge and concepts examinations (KCE) and high school graduation examinations to pupils in public schools and charter schools. This statute requires the State Superintendent of Public Instruction (State Superintendent) to adopt or approve 4th, 8th, and 10th grade KCEs and to develop a graduation examination. However, a school board and the operator of a charter school under s. 118.40 (2r), Stats. ("(2r) charter school"), may develop or adopt its own 4th or 8th grade KCE or graduation examination and notify the Department of Public Instruction (DPI) that it has done so.

Section 118.30 (3) (a), Stats., provides that the *State Superintendent* must allow a person to view an examination required to be administered under s. 118.30, Stats. (that is, any KCE or graduation examination), if the person submits a timely written request to the *State Superintendent*. In contrast, s. PI 28.02 (1) (a) indicates that a person may view the test if he or she submits a written request to the State Superintendent *and* the school board. There does not appear to be statutory authority for the additional requirement to make a request to the school board. (Moreover, s. PI 28.02 (2) (a) refers to the school board *or* DPI receiving the written request. This internal inconsistency should be remedied.)

If it were appropriate to include a role for school boards, the rule should explain the role of operators of (2r) charter schools. For example, s. PI 28.02 (1) indicates that a person may

view a test if a request is submitted to the State Superintendent and the school board. What if a (2r) charter school were involved?

Is the point of including references in s. PI 28.02 (2) to duties of DPI *or* the school board to make viewing a test more convenient for the requester--for example, so that a person may request to view a test locally instead of traveling to DPI offices in Madison? If so, this should be clearly stated. Moreover, the rule should be clarified so that the respective roles of a school board and local staff (and (2r) charter schools) and DPI and its staff are understood if a person is permitted to have a choice of viewing locations. For example, the requirement in s. PI 28.02 (2) (d) that the school board or DPI ensure that the test viewer is accompanied by a qualified staff member at all times could be redrafted to impose this duty on DPI if the viewing occurs at DPI in Madison and on the school board or operator of a (2r) charter school if the viewing occurs locally.

While this appears to be the approach taken in the rule, it should be noted that s. 118.30 (3) (a), Stats., requires the State Superintendent to allow a person to view an examination if the person submits a timely request to the State Superintendent. Therefore, it is not clear that the State Superintendent has statutory authority to impose these duties (such as providing a qualified staff member to accompany the viewer) on a school board or the operator of a (2r) charter school.

Or is the point of including references in s. PI 28.02 (2) to duties of DPI or a school board to differentiate between requests to view a test adopted or approved by the State Superintendent versus a test developed or adopted by a school board or the operators of a (2r) charter school? If so, this should be clarified.

b. Section PI 28.02 (2) provides that a school board or DPI must allow a person to view a test after certain requirements are met. One of the requirements is that DPI or the school board has filed a confirmation of destruction/security agreement with the test publisher. This implies that DPI or a school board could refuse to allow a test to be viewed by the simple expedient of failing to file confirmation of the destruction/security agreement. However, s. 118.30 (3) (a), Stats., requires that the State Superintendent allow a person to review a test if a timely written request is made. If it is necessary to include a provision about filing the destruction/security agreement, the rule should be revised to require that the appropriate entity immediately file the confirmation (if filing has not already occurred) so that the person may be permitted to view a test.

2. Form, Style and Placement in Administrative Code

a. There are two provisions numbered s. PI 28.01 (Authority and purpose; and Definitions). One of them should be renumbered.

b. In s. PI 28.01 (1) (first entry), "s. 118.30 (3)," should be changed to "s. 118.30 (3), Stats.,". [See s. 1.07 (2), Manual.]

c. Section PI 28.01 (1) (first entry) indicates that the "rules" do not apply to an examination that is being developed or validated. It should indicate that "this chapter" does not apply to an examination that is being developed or validated. [See s. 1.07 (1) (a), Manual.] However, this provision could be deleted inasmuch as it is repetitious of the provision in s. PI 28.02 (1) (b).

d. A period should be inserted at the end of the title in s. PI 28.02 (1).

In addition, s. PI 28.02 (1) is titled "TEST VIEWER REQUIREMENTS." However, a significant requirement is that the requester sign the confidentiality agreement in s. PI 28.02 (2) (c). It would be preferable to include this viewer requirement in s. PI 28.02 (1) and include a reference to this provision in s. PI 28.02 (2). For example, s. PI 28.02 (2) (a) could be redrafted to additionally require that DPI (or the school board or operator of a (2r) charter school) has received a copy of the signed confidentiality agreement required in s. PI 28.02 (1).

e. The note following s. PI 28.02 appropriately indicates that the agreements may be obtained from DPI. If the forms are also available on the Internet (as appears to be the case), the note also should indicate the web site. [See s. 1.09 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section PI 28.01 (2) (first entry) states that ch. PI 28 establishes requirements for "school boards" providing the tests. (As noted above, it is not clear that DPI has authority to impose these requirements on school boards; also, (2r) charter schools are not included.) At a minimum, it is unclear why s. PI 28.01 (2) (first entry) does not indicate that ch. PI 28 imposes requirements on DPI.

Moreover, it is not clear what "providing" the tests means. Does it mean: (1) tests that the school board (or (2r) charter school) administers if the tests have been adopted or approved by DPI; (2) tests that the school board (or (2r) charter school) developed on its own; or (3) both?

b. In ss. PI 28.01 (2) (first entry) and 28.02 (1) (a) and (2) (intro.), changing the references to allowing a person to "view" a test, rather than "review" a test, would make these provisions consistent with the statutes and with s. PI 28.01 (1) (first entry).

c. Sections PI 28.01 (1) (first entry) and 28.02 (1) (a) and (2) (intro.) refer to a "person" who requests to view a test. However, ss. PI 28.01 (2) (first entry) and 28.02 (2) (c) refer to "individuals" who request to view the tests. "Person" and "individual" are sometimes interpreted as having different meanings. Although that likely would not occur with respect to ch. PI 28, it would be preferable to change "individual" to "person" to be consistent with the remainder of ch. PI 28 and s. 118.30 (3) (a), Stats.

d. Section PI 28.02 (2) (intro.) indicates that a school board or DPI must allow a person to view a test "after it meets all of the following requirements:". The meaning of "it" is unclear. Consideration could be given to changing this phrase to "if all of the following apply:".

e. In s. PI 28.02 (2) (c) (intro.), “, in part,” should be deleted because it is superfluous.

f. Section PI 28.02 (2) (b) and the note following s. PI 28.02 refer to a “destruction/security agreement.” The document provided is titled “Confirmation of Destruction.” It would be preferable to select one term and use it consistently in order to avoid confusion as to whether this is the same form.

g. The rule does not address any deadline for DPI (or a school board or operator of a (2r) charter school) to respond to a request. Was this omission intentional?

h. The rule does not address whether DPI (or a school board or operator of a (2r) charter school) may charge the viewer a fee for the cost of staff time to accompany the viewer. Was this omission intentional?

REPORT TO
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE
Test Access
Chapter PI 28, Wisconsin Administrative Code

Wisconsin Statutory Authority - ss. 118.30 (3) (b) and 227.11(2)(a), Stats.

Federal Statutory Authority - None

Court Decisions Directly Relevant - None

Analysis of the Rule - Rule Effect - Reason for the Rule

Since 1992, when the knowledge and concepts examinations were first instituted in Wisconsin, the state superintendent has been required to make available, upon request, within 90 days of the date of administration, any of the required pupil assessments under s. 118.30, Stats. This requirement also applied to the high school graduation test when it was added in 1997. The department has provided guidance on proper test use and review in a document titled, "DPI Guidelines for Appropriate Testing Procedures."

2001 Wisconsin Act 16 created s. 118.30 (3) (b), Stats., requiring the state superintendent to promulgate rules establishing procedures to allow a person to view these tests. The proposed rules codify the requirements in the guidelines. Specifically, the rules:

- Do not allow a person to review a test that is being developed or validated.
- Require a person to submit a written request to the state superintendent and the school board within 90 days after the date of administration of the test.
- Require the school board to file a confirmation of destruction/security agreement with the test publisher before allowing a test to be reviewed.
- Require the school board or the department to ensure that the individual making the request signs a confidentiality agreement.
- Require the school board or the department to ensure the test viewer is accompanied by a qualified staff member who is aware of the confidentiality requirements associated with the test.

Agency Procedure for Promulgation

Notice to Legislative Council pursuant to s. 227.15, Stats., and proceeding under the ten day notice/hearing process pursuant to ss. 227.16 to 227.18, Stats.

Description of any Forms (attach copies if available)

Confirmation of Destruction/Security Agreement
Confidentiality Agreement

Name and Telephone Number of Agency Liaison(s)

H. Gary Cook, Director, Office of Educational Accountability, 267-9111
Lori L. Slauson, Administrative Rules Coordinator, Policy and Budget, 267-9127

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

The state superintendent of public instruction hereby proposes to create ch. PI 28, relating to providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 118.30 (3) (b) and 227.11 (2) (a), Stats.
Statute interpreted: s. 118.30 (3), Stats.

Since 1992, when the knowledge and concepts examinations were first instituted in Wisconsin, the state superintendent has been required to make available, upon request, within 90 days of the date of administration, any of the required pupil assessments under s. 118.30, Stats. This requirement also applied to the high school graduation test when it was added in 1997. The department has provided guidance on proper test use and review in a document titled, "DPI Guidelines for Appropriate Testing Procedures."

2001 Wisconsin Act 16 created s. 118.30 (3) (b), Stats., requiring the state superintendent to promulgate rules establishing procedures to allow a person to view these tests. The proposed rules codify the requirements in the guidelines. Specifically, the rules:

- Do not allow a person to review a test that is being developed or validated.
- Require a person to submit a written request to the state superintendent and the school board within 90 days after the date of administration of the test.
- Require the school board to file a confirmation of destruction/security agreement with the test publisher before allowing a test to be reviewed.
- Require the school board or the department to ensure that the individual making the request signs a confidentiality agreement.
- Require the school board or the department to ensure the test viewer is accompanied by a qualified staff member who is aware of the confidentiality requirements associated with the test.

SECTION 1. Chapter PI 28 is created to read:

Chapter PI 28
TEST ACCESS

PI 28.01 Authority and purpose. (1) Under s. 118.30 (3), the state superintendent is required to promulgate rules to allow a person to view the 4th, 8th and 10th grade Wisconsin knowledge and concepts examinations and the high school graduation examination. The rules do not apply to an examination being developed or validated. To the extent possible, the rules must protect the security and confidentiality of the examinations.

(2) This chapter establishes requirements for school boards providing the tests under sub. (1) and procedures for individuals requesting the tests under sub. (1) for review.

PI 28.01 Definitions. In this chapter:

- (1) "Department" means the Wisconsin department of public instruction.
- (2) "School board" has the meaning defined in s. 115.001 (7), Stats.



(3) "State superintendent" means the Wisconsin state superintendent of public instruction.

(4) "Test" means the 4th, 8th and 10th grade Wisconsin knowledge and concepts examinations and the high school graduation examination administered under s. 118.30, Stats.

PI 28.02 Test access. (1) **TEST VIEWER REQUIREMENTS** (a) Except as specified under par. (b), a person may review a test under this chapter if he or she submits a written request to the state superintendent and the school board within 90 days after the date of administration of the test.

(b) A person may not review a test while it is being developed or validated.

(2) **SCHOOL BOARD AND DEPARTMENT REQUIREMENTS.** A school board or the department shall allow a person to review a test under this chapter after it meets all of the following requirements:

(a) The school board or the department has received the written request under sub. (1) (a).

(b) The school board or the department has filed a confirmation of destruction/security agreement with the test publisher.

(c) The school board or the department ensures that the individual making the request under sub. (1) (a) signs a confidentiality agreement provided by the department. The agreement shall, in part, include the following provisions:

1. The test viewer may not discuss, disseminate, describe or otherwise reveal the contents of the test to any third party.


2. The test viewer may not make copies of the test or any test items, take notes, or otherwise reproduce the test or test items.

(d) The school board or the department shall ensure the test viewer is accompanied by a qualified staff member at all times. A qualified staff member means a staff member who is aware of the confidentiality requirements associated with the test and can explain the proper use of the test, the purposes of the Wisconsin student assessment system, and the meaning of test results.

NOTE: The Confirmation of Destruction/Security Agreement and the Confidentiality Agreement may be obtained at no charge from the Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

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 28th day of February, 2002


Elizabeth Burmaster
State Superintendent

FISCAL ESTIMATE FORM

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

Introduction #

Admin. Rule # Chapter PI 28

Subject
Test Access

Fiscal Effect (See below)

State: No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs (See below)

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

Local and State

The rules establish requirements for school boards providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test. The rules also establish procedures for individuals to follow in requesting these tests for review.

Requiring test access originated with the enactment of 1991 Wisconsin Act 269; however, rules relating to test access were not required to be developed. Instead, the department developed *DPI Guidelines for Appropriate Testing Procedures*. 2001 Wisconsin Act 16 required the department to promulgate rules relating to test access. The rule codifies the requirements in the guidelines.


Because the requirements specified in the guidelines have been in place for quite some time, the rules codifying these requirements are not anticipated to have a local or state fiscal effect separate from current practice.

Long-Range Fiscal Implications:

Prepared By:

Lori Slauson 267-9127
Department of Public Instruction

Authorized Signature / Telephone No.

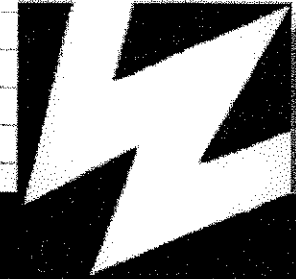

Michael Bornett (608) 266-2804

Date

2/28/02



State of Wisconsin
Department of Public Instruction
 LEADERSHIP FOR EXCELLENCE IN PUBLIC EDUCATION



OFFICE OF EDUCATIONAL ACCOUNTABILITY

**STATE OF WISCONSIN KNOWLEDGE AND CONCEPTS
 EXAMINATIONS AT GRADES 4, 8, AND 10**

**AGREEMENT TO MAINTAIN CONFIDENTIALITY
 WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION**

The test instrument you are about to view, *TerraNova*, was adopted by the state superintendent for administration under the Wisconsin Student Assessment System (WSAS) Knowledge and Concepts Examinations (WKCE). It is important to note that this test is a secure, proprietary test instrument published and copyrighted by CTB/McGraw-Hill. Any disclosure or dissemination of test items to any person will undermine the value of the test and adversely affect the validity of test results. The confidentiality of test questions and answers is paramount in maintaining the integrity and validity of the WKCE test. Accordingly, the Department of Public Instruction and Wisconsin educators must take every step to assure the security of these test instruments. I hereby agree that I will not disclose any materials (such as, but not limited to: test items, graphics, tasks, scoring rubrics, item specifications, test design, content limits, and measurement/research data) related to the Wisconsin Knowledge and Concepts Examinations at Grades 4, 8, and 10.

I am reviewing the WKCE test administered to students in public schools in the State of Wisconsin solely to better understand the test with respect to students' educational assessment. I understand the test is a secure, confidential, and proprietary test instrument, and I agree that I will NOT:

- Discuss, disseminate, describe, or otherwise reveal the contents of the test to any third party;
- Publish, or cause to be published, any of the test items;
- Make copies of the test or any test items, take notes, or otherwise reproduce the test or test items.

Signature

 Date

 Name (Please Print)

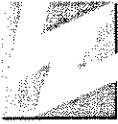
 Title

 Organization/Employer Name

 Street Name, Address, City, State, Zip

 DPI Representative *Signature* (Date)

Appendix A



The Wisconsin Knowledge and Concepts Examinations (WKCE) are secure materials and may not be photocopied or reproduced. To do so is in violation of copyright laws. District Assessment Coordinators acknowledge their responsibility by signing this form and returning it to CTB/McGraw-Hill no later than March 15, 2002. CTB will withhold test results until this acknowledgment is received.

CONFIRMATION OF DESTRUCTION

2001-2002 Wisconsin Knowledge and Concepts Examinations

Please indicate your district information:

_____ District #

_____ District Name

I confirm the following:

Not more than 20 copies of each grade of the Wisconsin Knowledge and Concepts Examinations have been retained at the district as "review copies."

All remaining copies of the grade 4, 8, and 10 test books have been destroyed.

ACKNOWLEDGMENT: By signing below, I acknowledge my responsibility for test security and confirm the above disposition of all WKCE test books.

Signature of District Assessment Coordinator (DAC)

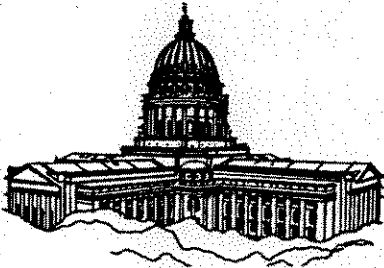
Date

Print Name of DAC

**DEADLINE
TO
SUBMIT**
March 15, 2002

..... [Mail to:
CTB/McGraw-Hill
Attn: MELODY WALL
20 Ryan Ranch Road
Monterey, CA 93940

..... [FAX to:
(888) 282-9579



September 5, 2002

WISCONSIN STATE SENATOR
RICHARD GROBSCHMIDT

7TH SENATE DISTRICT

TO: Senate Education Committee Members

FROM: Senator Grobschmidt

RE: **Clearinghouse Rule 02-032** – relating to providing access to the 4th, 8th and 10th grade knowledge and concepts examinations and the high school graduation test.

The following rule has been referred to the Senate Education Committee. Please contact Lisa in my office (6-7505) by Friday, September 20, 2002, if you would like a public hearing on the rule. For your reference, a copy of the rule is enclosed.

Clearinghouse Rule 02-032 – relating to providing access to the 4th, 8th and 10th grade knowledge and concepts examinations and the high school graduation test.

NOTICE OF RULES IN FINAL DRAFT FORM

NOTICE IS HEREBY GIVEN To the presiding officers of each house of the legislature that the proposed rules are in final draft form according to the procedure set forth in s. 227.19, Stats.

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

The state superintendent of public instruction hereby proposes to create ch. PI 28, relating to providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 118.30 (3) (b) and 227.11 (2) (a), Stats.

Statute interpreted: s. 118.30 (3), Stats.

Since 1992, when the knowledge and concepts examinations were first instituted in Wisconsin, the state superintendent has been required to make available, upon request, within 90 days of the date of administration, any of the required pupil assessments under s. 118.30, Stats. This requirement also applied to the high school graduation test when it was added in 1997. The department has provided guidance on proper test use and review in a document titled, "DPI Guidelines for Appropriate Testing Procedures."

2001 Wisconsin Act 16 created s. 118.30 (3) (b), Stats., requiring the state superintendent to promulgate rules establishing procedures to allow a person to view these tests. The proposed rules codify the requirements in the guidelines. Specifically, the rules:

- Do not allow a person to review a test that is being developed or validated.
- Require the test viewer to submit a written request and a signed confidentiality agreement to the state superintendent and school board or charter school under s. 118.40 (2r), Stats., [(2r) charter school] within 90 days after the date of administration of the test.
- Require the school board, (2r) charter school or the department to file a confirmation of destruction with the test publisher before allowing a test to be viewed.
- Require the school board, (2r) charter school or the department to ensure that the individual making the request signs a confidentiality agreement.
- Require the school board, (2r) charter school or the department to ensure the test viewer is accompanied by a qualified staff member who is aware of the confidentiality requirements associated with the test.

SECTION 1. Chapter PI 28 is created to read:

Chapter PI 28

TEST ACCESS

PI 28.01 Authority and purpose. (1) Under s. 118.30 (3), Stats., the state superintendent is required to promulgate rules to allow a person to view the 4th, 8th and 10th grade Wisconsin knowledge and concepts examinations and the high school graduation examination. This chapter does not apply to an examination being developed or validated. To the extent possible, the rules must protect the security and confidentiality of the examinations.

(2) This chapter establishes requirements for school boards, charter schools and the department providing the tests under sub. (1) and procedures for persons requesting the tests under sub. (1) for viewing.

PI 28.02 Definitions. In this chapter:

- (1) "Department" means the Wisconsin department of public instruction.
- (2) "School board" has the meaning defined in s. 115.001 (7), Stats.
- (3) "Charter school" means a charter school established under s. 118.40 (2r), Stats.
- (4) "State superintendent" means the Wisconsin state superintendent of public instruction.
- (5) "Test" means the 4th, 8th and 10th grade Wisconsin knowledge and concepts examinations and the high school graduation examination administered under s. 118.30, Stats.

PI 28.03 Test access. (1) **TEST VIEWER REQUIREMENTS.** (a) Except as specified under par. (b), a person may view a test under this chapter if he or she submits a written request and a signed confidentiality agreement to the school board or charter school at which he or she wants to view the examination and the state superintendent within 90 days after the date of administration of the test.

(b) A person may not view a test while it is being developed or validated.

(2) **SCHOOL BOARD, CHARTER SCHOOL AND DEPARTMENT REQUIREMENTS.** (a) A school board, charter school or department that provides for the viewing of the test under this chapter shall allow a person to view a test if all of the following apply:

1. The school board and the department or the charter school and the department have received the written request and a copy of the signed confidentiality agreement under sub. (1) (a). The agreement shall include the following provisions:

a. The test viewer may not discuss, disseminate, describe or otherwise reveal the contents of the test to any third party.

b. The test viewer may not make copies of the test or any test items, take notes, or otherwise reproduce the test or test items.

2. The school board, charter school or department that provides for the viewing of the test shall file, if it hasn't already filed, a confirmation of destruction/security agreement with the test publisher.

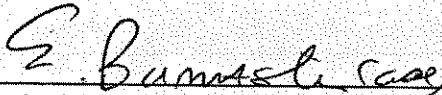
3. The school board, charter school or department that provides for the viewing of the test shall ensure the test viewer is accompanied by a qualified staff member at all times. A qualified staff member means a staff member who is aware of the confidentiality requirements associated with the test and can explain the proper use of the test, the purposes of the Wisconsin student assessment system, and the meaning of test results.

(2) The school board, charter school or department that receives a request under sub. (1) (a) shall acknowledge and provide for viewing the test within 90 days of receipt of the request.

NOTE: The Confirmation of Destruction is available on the department's web site at <http://www.dpi.state.wi.us/dpi/oea/pdf/dacgui02.pdf> (see Appendix A). The Confidentiality Agreement is available on the department's web site at http://www.dpi.state.wi.us/dpi/oea/kc_conf.html. Both forms may be obtained at no charge from the Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

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.

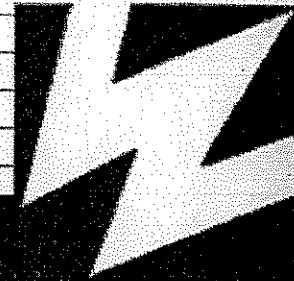
Dated this 30th day of August, 2002



Elizabeth Burmaster
State Superintendent



State of Wisconsin
Department of Public Instruction
 LEADERSHIP FOR EXCELLENCE IN PUBLIC EDUCATION



OFFICE OF EDUCATIONAL ACCOUNTABILITY

**STATE OF WISCONSIN KNOWLEDGE AND CONCEPTS
 EXAMINATIONS AT GRADES 4, 8, AND 10**

**AGREEMENT TO MAINTAIN CONFIDENTIALITY
 WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION**

The test instrument you are about to view, *TerraNova*, was adopted by the state superintendent for administration under the Wisconsin Student Assessment System (WSAS) Knowledge and Concepts Examinations (WKCE). It is important to note that this test is a secure, proprietary test instrument published and copyrighted by CTB/McGraw-Hill. Any disclosure or dissemination of test items to any person will undermine the value of the test and adversely affect the validity of test results. The confidentiality of test questions and answers is paramount in maintaining the integrity and validity of the WKCE test. Accordingly, the Department of Public Instruction and Wisconsin educators must take every step to assure the security of these test instruments. I hereby agree that I will not disclose any materials (such as, but not limited to: test items, graphics, tasks, scoring rubrics, item specifications, test design, content limits, and measurement/research data) related to the Wisconsin Knowledge and Concepts Examinations at Grades 4, 8, and 10.

I am reviewing the WKCE test administered to students in public schools in the State of Wisconsin solely to better understand the test with respect to students' educational assessment. I understand the test is a secure, confidential, and proprietary test instrument, and I agree that I will NOT:

- Discuss, disseminate, describe, or otherwise reveal the contents of the test to any third party;
- Publish, or cause to be published, any of the test items;
- Make copies of the test or any test items, take notes, or otherwise reproduce the test or test items.

Signature

 Date

 Name (Please Print)

 Title

 Organization/Employer Name

 Street Name, Address, City, State, Zip

 DPI Representative *Signature* (Date)

Appendix A



The Wisconsin Knowledge and Concepts Examinations (WKCE) are secure materials and may not be photocopied or reproduced. To do so is in violation of copyright laws. District Assessment Coordinators acknowledge their responsibility by signing this form and returning it to CTB/McGraw-Hill no later than March 15, 2002. CTB will withhold test results until this acknowledgment is received.

CONFIRMATION OF DESTRUCTION

2001-2002 Wisconsin Knowledge and Concepts Examinations

Please indicate your
district information:

District #

District Name

I confirm the following:

Not more than 20 copies of each grade of the Wisconsin Knowledge and Concepts Examinations have been retained at the district as "review copies."

All remaining copies of the grade 4, 8, and 10 test books have been destroyed.

ACKNOWLEDGMENT: By signing below, I acknowledge my responsibility for test security and confirm the above disposition of all WKCE test books.

Signature of District Assessment Coordinator (DAC)

Date

Print Name of DAC

**DEADLINE
TO
SUBMIT**
March 15, 2002

..... [Mail to:
CTB/McGraw-Hill
Attn: MELODY WALL
20 Ryan Ranch Road
Monterey, CA 93940

..... [FAX to:
(888) 282-9579

FISCAL ESTIMATE FORM

2001 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #
Introduction #
Admin. Rule # Chapter PI 28

Subject
Test Access

Fiscal Effect (See below)

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation
 or affects a sum sufficient appropriation.

- Increase Costs - May be possible to Absorb
 Within Agency's Budget Yes No

 Decrease Costs

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Local: No local government costs (See below)

- | | | |
|--|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input checked="" type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|--|--|---|

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

Local and State

The rules establish requirements for school boards providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test. The rules also establish procedures for individuals to follow in requesting these tests for review.

Requiring test access originated with the enactment of 1991 Wisconsin Act 269; however, rules relating to test access were not required to be developed. Instead, the department developed *DPI Guidelines for Appropriate Testing Procedures*. 2001 Wisconsin Act 16 required the department to promulgate rules relating to test access. The rule codifies the requirements in the guidelines.

Because the requirements specified in the guidelines have been in place for quite some time, the rules codifying these requirements are not anticipated to have a local or state fiscal effect separate from current practice.

Long-Range Fiscal Implications:

Prepared By:

Lori Slauson 267-9127
Department of Public Instruction

Authorized Signature/Telephone No.


 Michael Bormett (608) 266-2804

Date

2/28/02

**FINAL REPORT
CLEARINGHOUSE RULE 02-032
CHAPTER PI 28
PROVIDING ACCESS TO THE 4TH, 8TH, AND 10TH GRADE KNOWLEDGE AND CONCEPTS
EXAMINATIONS AND THE HIGH SCHOOL GRADUATION TEST**

Analysis by the Department of Public Instruction

Statutory authority: ss. 118.30 (3) (b) and 227.11 (2) (a), Stats.
Statute interpreted: s. 118.30 (3), Stats.

Since 1992, when the knowledge and concepts examinations were first instituted in Wisconsin, the state superintendent has been required to make available, upon request, within 90 days of the date of administration, any of the required pupil assessments under s. 118.30, Stats. This requirement also applied to the high school graduation test when it was added in 1997. The department has provided guidance on proper test use and review in a document titled, "DPI Guidelines for Appropriate Testing Procedures."

2001 Wisconsin Act 16 created s. 118.30 (3) (b), Stats., requiring the state superintendent to promulgate rules establishing procedures to allow a person to view these tests. The proposed rules codify the requirements in the guidelines. Specifically, the rules:

- Do not allow a person to review a test that is being developed or validated.
- Require the test viewer to submit a written request and a signed confidentiality agreement to the state superintendent and school board or charter school under s. 118.40 (2r), Stats., [(2r) charter school] within 90 days after the date of administration of the test.
- Require the school board, (2r) charter school or the department to file a confirmation of destruction with the test publisher before allowing a test to be viewed.
- Require the school board, (2r) charter school or the department to ensure that the individual making the request signs a confidentiality agreement.
- Require the school board, (2r) charter school or the department to ensure the test viewer is accompanied by a qualified staff member who is aware of the confidentiality requirements associated with the test.

A public hearing to consider the proposed rule was conducted by the department on April 26, 2002, in Madison. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Madison Hearing, April 26, 2002

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Tom Fonfara	CTB McGraw Hill	X		

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
None				

Changes made as a result of oral or written testimony: None

Responses to Clearinghouse Report:

1. Statutory Authority:

a. The responsibility for implementing the process required under s. 118.30 (3), Stats., (including providing a qualified staff member to accompany the viewer) must be shared by school boards, (2r) charter schools (charter school requirements have been added to the rule) and the department for the following reasons:

- Section 118.30, Stats., requires school boards and (2r) charter schools to “administer” the state tests under s. 118.30, Stats., to pupils in public schools and charter schools. The department considers “viewing” an examination to fall under the scope of “administering” an examination. (Section PI 28.02 (2) (a) has been modified to refer to the school board *or* (2r) charter school and the department for consistency).
- Convenience for the test viewer.

Although school boards and (2r) charter schools are currently allowed to develop their own examinations under s. 118.30, Stats., this has not been the case to date and is not anticipated to be the case in the future. However, the proposed rule will allow individuals to make requests from a school board or (2r) charter school that has adopted its own department-approved test. It is not necessary to differentiate in the rule whether a request is made to review a state test or a state-approved local test because either way, the request must be sent to the school board or (2r) charter school, and the department.

b. Recommendation accepted. Section PI 28.03 (2) (b) has been modified to require a school board, (2r) charter school or the department to file, if it hasn't already filed, a confirmation of destruction/security agreement.

2. Form, Style and Placement in Administrative Code:

- a. Recommendation accepted. Changes made.
- b. Recommendation accepted. Changes made.
- c. Recommendation accepted. The term “rules” has been changed to “this chapter.”
- d. Recommendation accepted. Changes made.
- e. Recommendation accepted. The appropriate web sites have been included in the note following s. PI 28.02.

5. Clarity, Grammar, Punctuation and Plainness:

a. Section PI 28.01 (2) has been modified to include requirements for school boards, (2r) charter schools and the department. Tests that must be “provided” by school boards and (2r) charter schools applies to both the state tests and state-approved locally developed tests. There will not be a separate process for requesting state tests versus state-approved locally developed tests. Therefore, further clarification is not necessary.

- b. Recommendation accepted. The term "review" has been changed to "view" throughout the rule.
- c. Recommendation accepted. The term "individual" has been changed to "person" throughout the rule.
- d. Recommendation accepted. Changes made.
- e. Recommendation accepted. Changes made.
- f. Recommendation accepted. The rule now refers to "confirmation of destruction" throughout the rule.
- g. Section PI 28.03 (2) (d) has been added to require the department, school board or (2r) charter school to respond and provide for test viewing within 90 days of receipt of a request made under this chapter.
- h. The rules may have to be modified in the future to allow for charging a viewer fee. However, at this point it is not necessary.

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Summary of Comments:

No comments were reported.