

👉 07hr_CRule_07-057_SC-Ed_pt01



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Education (SC-Ed)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - (**ajr** = Assembly Joint Resolution)
 - (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

9/13

Stromme, Denise

From: Jamie A. Van Ooyen [jav@dewittross.net]
Sent: Friday, November 16, 2007 4:30 PM
To: Sen.Lehman
Cc: Todd E. Palmer; Jamie A. Van Ooyen
Subject: Letter from Todd Palmer RE CR 07-057
Attachments: ltr_071116_john_lehman_re_proposed_rule_07-057.pdf

Senator Lehman,

Attached please find the above-referenced letter from Todd Palmer. We are mailing the same to you today as well. Thank you.

--
Jamie A. Van Ooyen
Legal Assistant
DeWitt Ross & Stevens S.C.
608-283-5524 (direct)
608-252-9243 (facsimile)
jav@dewittross.net

IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

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November 16, 2007

VIA EMAIL TO Sen.Lehman@legis.wisconsin.gov
AND FIRST CLASS MAIL

Senator John Lehman
Chair, Senate Education Committee
Room 310 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

RE: Clearinghouse Rule 07-057—Gifted and Talented Pupil Identification

Dear Senator Lehman:

I am writing with respect to the above-referenced Clearinghouse Rule which proposes modifications to Wis. Admin. Code § PI 8.01(2)(t) concerning the identification of gifted and talented pupils in public schools. I request that your Education Committee object to the rule, or alternatively request modifications.

I. BACKGROUND AND REQUEST TO COMMITTEE.

DPI is proposing Clearinghouse Rule 07-057 in response to an “Order and Writ of Mandamus” issued by the Honorable Judge Michael Nowakowski ordering the State of Wisconsin Department of Public Instruction and State Superintendent Elizabeth Burmaster to, among other things, develop rules which provide “more detailed and objective guidelines” for school districts to use in identifying gifted and talented students. In relevant part, Judge Nowakowski ordered DPI and Superintendent Burmaster to do the following:

IT IS HEREBY ORDERED that Plaintiff’s Motion for Summary Judgment is GRANTED with respect to requiring and commanding Defendants [DPI and Superintendent Burmaster] to comply with the requirement in Wis. Stat. § 118.35(2) that “The state superintendent shall by rule establish guidelines for the identification of gifted and talented pupils.” These rules shall provide more detailed and objective guidelines than are currently set forth in Wis. Admin. Code § PI 8.01(t).

A copy of the Order and Writ of Mandamus is attached as Appendix 1.

Clearinghouse Rule 07-057, does not meet Judge Nowakowski’s Order, and more importantly, for purposes of your committee work, does not fulfill the needs of school districts and public school students throughout the state. The basis for these concerns is discussed in more detail in Sections II and III, below.

Due to these deficiencies, I respectfully request that your committee either object to the proposed rule for failing to comply with legislative intent, being contrary to state law,

Senator John Lehman
Chair, Senate Education Committee
November 16, 2007
Page 2

being arbitrary and capricious, or imposing an undue hardship on school districts. Alternatively, I ask that your committee request that DPI modify the proposed rule to provide more detailed and objective guidelines for school districts to use in the identification of gifted pupils.

II. CLEARINGHOUSE RULE 07-057 DOES NOT PROVIDE SCHOOL BOARDS WITH DETAILED AND OBJECTIVE GUIDELINES FOR THE IDENTIFICATION OF GIFTED PUPILS.

On March 2, 2006 I filed a lawsuit against DPI and Superintendent Burmaster asserting that existing state rules for identifying gifted students are illegal for failing to establish specific and detailed guidelines for school districts to use in the identification process. After full briefing and a hearing, Judge Nowakowski agreed with my arguments and ordered that DPI and Superintendent Burmaster modify its existing identification rules¹ to "provide more detailed and objective guidelines than are currently set forth in Wis. Admin. Code § PI 8.01(t)." Clearinghouse Rule 07-057 fails to meet Judge Nowakowski's Order.

In this regard, the proposed rule lacks *any* "detailed and objective guidelines" to be used to by school districts in the identification of gifted pupils. In fact, the new rule actually provides *less* guidance to school districts than the rule that was already held to be invalid.

The inadequacy of the proposed rule is evident by comparing the following redline/strikeout text which is a comparison of the existing rule (held to be illegally vague) to the proposed rule modifications:

SECTION 1. PI 8.01(2)(T)2. is amended to read:

PI 8.01(2)(t)2. Each school district board shall establish a plan and designate a person to coordinate the gifted and talented program. Gifted and talented ~~students~~ pupils shall be identified as required in s. 118.35(1), Stats. This identification shall ~~include multiple criteria that are appropriate for the category of gifted including intelligence, achievement occur in kindergarten through grade 12 in general intellectual, specific academic, leadership, creativity, product evaluations, and nominations and visual and performing arts.~~ include general intellectual, specific academic, leadership, creativity, product evaluations, and nominations and visual and performing arts. A pupil may be identified as gifted or talented in one or more of the categories under s. 118.35(1), Stats. The school district board shall build a pupil profile using multiple measures, including but not limited to standardized test data, nominations, rating scales or inventories, products, portfolios, and demonstrated performance. Identification tools shall be appropriate for the specific purpose for which they are being employed. The identification process and tools shall be responsive to factors such as, but not limited to, pupils' economic conditions, race, gender, culture, native language, developmental differences, and identified disabilities as described under Subch. V of Chapter 115. The school district

¹ The current rules which were held illegal are set forth as PI 8.01(t).

board shall provide access, without charge for tuition, to appropriate programming for pupils identified as gifted or talented as required under ss. 118.35(3) and 121.02(1)(t), Stats. The school district board shall provide an opportunity for parental participation in the ~~planning of the proposed program~~ identification and resultant programming.

As you can see, Clearinghouse Rule 07-057 provides no more “detailed or objective guidelines” on identification than exist in the current rule. The proposed rule instructs school boards to use “identification process and tools” that are “appropriate for the specific purpose for which they are being employed.” There is no attempt to provide any specific information as to what these things should be or how they are to be implemented.

III. CLEARINGHOUSE RULE 07-057 WOULD PERPETUATE THE LACK OF UNIFORMITY IN GIFTED EDUCATION WHICH EXISTS ACROSS SCHOOL DISTRICTS IN VIOLATION OF STATE CONSTITUTIONAL MANDATES.

The Wisconsin Constitution created the school district-based public education system that exists in our state. Wis. Const. Art. X, Sec. 3, known as the “uniformity clause,” directs that each of Wisconsin’s school districts “shall be as nearly uniform as practicable.”

The Wisconsin Supreme Court has interpreted the “uniformity clause” in several decisions. In *Vincent, et al. v. Voight, et al.*, 236 Wis. 2d 588, 402, 614 N.W.2d 388 (Wis. 2000), the Supreme Court held that the “uniformity clause” pertains to the “character of instruction” provided by the various school districts in Wisconsin:

The word “uniform” in the context of art. X, § 3 plainly refers to the “character of instruction” provided in the public schools...

...from our earliest jurisprudence on, we have construed the uniformity clause to relate to the “character of instruction: offered in the public schools, and not the size, boundaries, or composition of the school districts. (Emphasis added)

In *Kukor v. Grover*, 148 Wis. 2d 469, 492-93, 436 N.W.2d 568 (1989) the plurality of the Supreme Court held that the “character of instruction” that must be uniform across school districts is defined by the standards set forth by the Legislature in Wis. Stat. 121.02—one of which is the gifted education mandate of § 121.02(1)(t):

The framers unequivocally and specifically provided for a mode of distribution of state funds to districts in other sections of art. X; the uniformity provision thus could only have been intended to assure that those resources distributed equally on a per-pupil basis were applied in such a manner as to assure that the “character” of instruction was as uniform as practicable. **Viewed in this regard,**

Senator John Lehman
Chair, Senate Education Committee
November 16, 2007
Page 4

the "character" of instruction which is constitutionally compelled to be uniform is legislatively regulated by sec. 121.02, Stats., regarding, for example, minimum standards for teacher certification, minimal number of school days, and standard school curriculum. (Emphasis added)

To ensure "uniformity" across school districts in the area of identification, Clearinghouse Rule 07-057 must contain the "more detailed and objective guidelines" required by the Court's Order. This level of specificity is required to ensure that our 426 school boards will no longer implement widely divergent (and in some cases nonexistent) gifted pupil identification criteria. The lack of detailed and objective guidelines which now exists has created the current situation whereby school districts are not and cannot be "as uniform as practicable."

Under Clearinghouse Rule 07-057, each school board would continue to independently define its own guidelines for identifying gifted students. This "hodge podge" of guidance would be the antithesis of the "uniformity" that is required by the State Constitution. The amended rule leaves 426 disparate political bodies (*i.e.*, school boards) with no detailed or objective guidance to interpret and administer vague, ill-defined requirements.

A good metric for evaluating the sufficiency of the amended rule is to assess how the rule would treat a hypothetical student moving to our state and enrolling in Wisconsin public schools. The amended rules must contain sufficient detail and objective guidelines to ensure that this child would receive the same gifted identification status irrespective of which of the 426 school districts the student enrolls. The current rules which were held inadequate by the Court would not meet this metric. Clearinghouse Rule 07-057 would not meet this metric either.

CONCLUSION

For the foregoing reasons, I request that your committee either object to Clearinghouse Rule 07-057 or request that DPI undertake modifications to provide the detail listed above.

Sincerely,

Handwritten signature of Todd Palmer, with the initials JAV written at the end of the signature.

Todd Palmer
W5505 Spring Valley Road
New Glarus, WI 53574
(608) 252-9368

Attachment

TODD PALMER,

Plaintiff,

v.

THE STATE OF WISCONSIN
DEPARTMENT OF PUBLIC
INSTRUCTION and
ELIZABETH BURMASTER,

Defendants.

COPY

Case No: 06CV0672

Case Code: 30920, 30701, 30607

ORDER AND WRIT OF MANDAMUS

Plaintiff Todd Palmer having served and filed a Motion for Summary Judgment in the above-captioned matter, and the same having come on for hearing before the Court on January 12, 2007, the appearances being as follows:

- Todd Palmer, Esq., on behalf of himself;
- Thomas Bellavia, Esq., on behalf of Defendants, Department of Public Instruction ("DPI") and State Superintendent Elizabeth Burmaster; and

AND, the Court having read and considered the affidavits, briefs and oral arguments of counsel, and being fully-advised in the premises;

AND, the Court having orally rendered findings of fact, conclusions of law and a decision from the bench on such motion on January 12, 2007;

NOW, THEREFORE, upon the records and proceedings had therein and for the reasons stated by the Court on January 12, 2007;

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment is GRANTED with respect to requiring and commanding Defendants to comply with the requirement in Wis. Stat. § 118.35(2) that "The state superintendent shall by rule establish guidelines for the identification of gifted and talented pupils." These rules shall provide more detailed and objective guidelines than are currently set forth in Wis. Admin. Code § PI 8.01(t). The remaining requests in Plaintiff's Motion for Summary Judgment are hereby denied and dismissed. However, the Court holds it unnecessary to decide the arguments raised by Plaintiff concerning the "uniformity clause" of the Constitution.

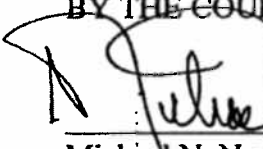
IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that a writ of mandamus issue out of and under the seal of this Court, and such writ is hereby issued, requiring and commanding DPI and State Superintendent Elizabeth Burmaster to fulfill their obligations pursuant to Wis. Stat. § 118.35(2) to promulgate rules establishing guidelines for the identification of gifted and talented pupils. This rulemaking process shall be initiated within three (3) months of issuance of this Writ and conclude with submission of final rules to the Legislature no later than twelve (12) months from the date of this Writ.

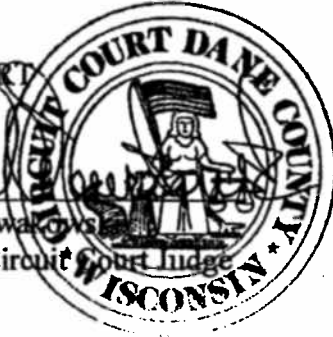
IT IS FURTHER ORDERED that judgment be entered partially against the Plaintiff and partially against the Defendants as set forth above. Further, to the extent Plaintiff intends to request statutory costs and disbursements, such request must be submitted within 10 days of this order and Defendants shall have an additional 10 days to object to such a request.

Non-compliance with this Writ may subject Defendants to penalties including contempt of court.

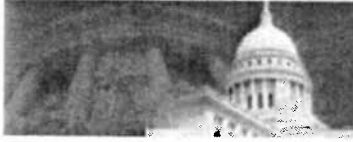
Dated this 24th day of January, 2007.

BY THE COURT

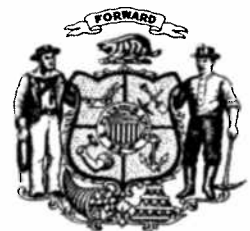

Michael N. Nowak
Dane County Circuit Court Judge
Branch 13







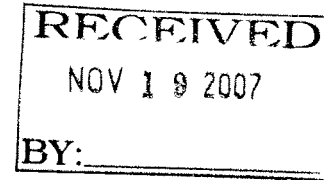
WISCONSIN STATE LEGISLATURE



November 16, 2007

VIA EMAIL TO Sen.Lehman@legis.wisconsin.gov
AND FIRST CLASS MAIL

Senator John Lehman
Chair, Senate Education Committee
Room 310 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882



RE: Clearinghouse Rule 07-057—Gifted and Talented Pupil Identification

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Due to these deficiencies, I respectfully request that your committee either object to the proposed rule for failing to comply with legislative intent, being contrary to state law,

being arbitrary and capricious, or imposing an undue hardship on school districts. Alternatively, I ask that your committee request that DPI modify the proposed rule to provide more detailed and objective guidelines for school districts to use in the identification of gifted pupils.

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In this regard, the proposed rule lacks *any* “detailed and objective guidelines” to be used to by school districts in the identification of gifted pupils. In fact, the new rule actually provides *less* guidance to school districts than the rule that was already held to be invalid.

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The word “uniform” in the context of art. X, § 3 plainly refers to the “character of instruction” provided in the public schools...

...from our earliest jurisprudence on, we have construed the uniformity clause to relate to the “character of instruction: offered in the public schools, and not the size, boundaries, or composition of the school districts. (Emphasis added)

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The framers unequivocally and specifically provided for a mode of distribution of state funds to districts in other sections of art. X; the uniformity provision thus could only have been intended to assure that those resources distributed equally on a per-pupil basis were applied in such a manner as to assure that the “character” of instruction was as uniform as practicable. **Viewed in this regard,**

Senator John Lehman
Chair, Senate Education Committee
November 16, 2007
Page 4

the “character” of instruction which is constitutionally compelled to be uniform is legislatively regulated by sec. 121.02, Stats., regarding, for example, minimum standards for teacher certification, minimal number of school days, and standard school curriculum. (Emphasis added)

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Under Clearinghouse Rule 07-057, each school board would continue to independently define its own guidelines for identifying gifted students. This “hodge podge” of guidance would be the antithesis of the “uniformity” that is required by the State Constitution. The amended rule leaves 426 disparate political bodies (*i.e.*, school boards) with no detailed or objective guidance to interpret and administer vague, ill-defined requirements.

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CONCLUSION

For the foregoing reasons, I request that your committee either object to Clearinghouse Rule 07-057 or request that DPI undertake modifications to provide the detail listed above.

Sincerely,



Todd Palmer
W5505 Spring Valley Road
New Glarus, WI 53574
(608) 252-9368

Attachment

TODD PALMER,

Plaintiff,

v.

THE STATE OF WISCONSIN
DEPARTMENT OF PUBLIC
INSTRUCTION and
ELIZABETH BURMASTER,

Defendants.

COPY

Case No: 06CV0672

Case Code: 30920, 30701, 30607

ORDER AND WRIT OF MANDAMUS

Plaintiff Todd Palmer having served and filed a Motion for Summary Judgment in the above-captioned matter, and the same having come on for hearing before the Court on January 12, 2007, the appearances being as follows:

- Todd Palmer, Esq., on behalf of himself;
- Thomas Bellavia, Esq., on behalf of Defendants, Department of Public Instruction (“DPI”) and State Superintendent Elizabeth Burmaster; and

AND, the Court having read and considered the affidavits, briefs and oral arguments of counsel, and being fully-advised in the premises;

AND, the Court having orally rendered findings of fact, conclusions of law and a decision from the bench on such motion on January 12, 2007;

NOW, THEREFORE, upon the records and proceedings had therein and for the reasons stated by the Court on January 12, 2007;

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment is GRANTED with respect to requiring and commanding Defendants to comply with the requirement in Wis. Stat. § 118.35(2) that "The state superintendent shall by rule establish guidelines for the identification of gifted and talented pupils." These rules shall provide more detailed and objective guidelines than are currently set forth in Wis. Admin. Code § PI 8.01(t). The remaining requests in Plaintiff's Motion for Summary Judgment are hereby denied and dismissed. However, the Court holds it unnecessary to decide the arguments raised by Plaintiff concerning the "uniformity clause" of the Constitution.

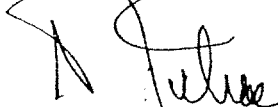
IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that a writ of mandamus issue out of and under the seal of this Court, and such writ is hereby issued, requiring and commanding DPI and State Superintendent Elizabeth Burmaster to fulfill their obligations pursuant to Wis. Stat. § 118.35(2) to promulgate rules establishing guidelines for the identification of gifted and talented pupils. This rulemaking process shall be initiated within three (3) months of issuance of this Writ and conclude with submission of final rules to the Legislature no later than twelve (12) months from the date of this Writ.

IT IS FURTHER ORDERED that judgment be entered partially against the Plaintiff and partially against the Defendants as set forth above. Further, to the extent Plaintiff intends to request statutory costs and disbursements, such request must be submitted within 10 days of this order and Defendants shall have an additional 10 days to object to such a request.

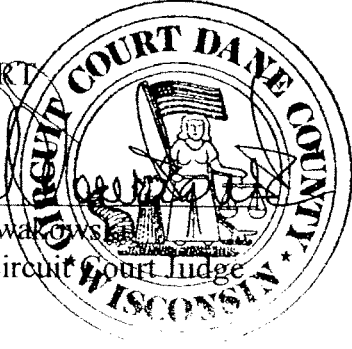
Non-compliance with this Writ may subject Defendants to penalties including contempt of court.

Dated this 24th day of January, 2007.

BY THE COURT

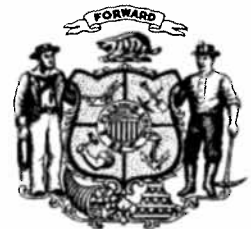


Michael N. Nowak
Dane County Circuit Court Judge
Branch 13





WISCONSIN STATE LEGISLATURE



Stromme, Denise

From: Sen.Lehman
Sent: Monday, November 19, 2007 3:57 PM
To: Browne, Michael; Buhardt, Jeff; Emerson, James; Genrich, Eric; Hogan, Rebecca; Kammerud, Jennifer A - DPI; Knutson, Tryg; Sen.Erpenbach; Sen.Grothman; Sen.Hansen; Sen.Kreitlow; Sen.Lazich; Sen.Lehman; Sen.Olsen; Sieg, Tricia; Whitesel, Russ
Subject: Senate Education Committee/CHR-07-057
Attachments: 07-057-0.pdf

Date: November 19, 2007
TO: Members of the Senate Committee on Education
FROM: Senator John Lehman
RE: Clearinghouse Rule 07-057

The following clearinghouse rule has been referred to the Senate Committee on Education:

CR Senate 07-057 Am order to amend PI 8.01 (2)(1)2., relating to the identification of gifted and talented pupils. **Submitted by the Department of Public Instruction.**

Received in committee on 11/9/07.

A copy of the rule is attached for your reference. If you would like to submit comments or request a hearing, please contact Sara in my office by 11/28/07. Thank you.



07-057-0.pdf (392 KB)

Office of Senator John Lehman
310 South, State Capitol
Madison, WI 53708

608.266.1832

Clearinghouse Rule 07-057

REPORT TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE GIFTED AND TALENTED PUPIL IDENTIFICATION SECTION PI 8.01 (2) (t) 2., WISCONSIN ADMINISTRATIVE CODE

Statute interpreted: Section 121.02 (1) (t), Stats.

Statutory authority: Sections 118.35 (2), 121.02 (5), and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 118.35 (2) requires the state superintendent to establish guidelines for the identification of gifted and talented pupils by rule.

Section 121.02 (5), Stats., requires the department to promulgate rules to implement and administer the 20 school district standards under s. 121.02 (1), Stats. Gifted and talented is one of those standards.

Court decisions directly relevant : TODD PALMER V. THE STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION

Related statute or rule: N/A

Plain language analysis:

In TODD PALMER V. THE STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, the Court instructed the department to promulgate a rule establishing guidelines for identifying gifted and talented pupils as required under s. 118.35 (2), Stats., because its current rule under s. PI 8.01 (2) (t), is not sufficient.

Therefore, the department is modifying s. PI 8.01 (2) (t) to establish more specific guidelines for the identification of gifted and talented pupils. The rule requires the school district board to identify pupils in grades kindergarten through grade 12 in the five areas specified in statute. Multiple measures must be used to build a pupil profile, instruments and measures must be validated for the specific purposes for which they are being used, and the identification process and tools must be responsive to the pupil's economic conditions, race, gender, culture, native language, developmental differences, handicapping conditions, and other factors.

Summary of, and comparison with, existing or proposed federal regulations: N/A

Comparison with rules in adjacent states:

- **Illinois** – Illinois' rules apply only to locally developed GT programs for which state funding are sought. Illinois State Code requires the use of multiple measures (3 or more); the measures must be valid for their purpose; the process must be fair and impartial; and assessment instruments must be sensitive to inclusion of underrepresented groups. Illinois also requires an appeals process. Illinois' State Code allows any "area of aptitude" to be identified, but there is "an emphasis on" language arts and math (the top 5% locally must be identified in these two areas). The identification process must be of equal rigor in each area of aptitude but does not specify identification can be in more than one area. Finally, a procedure for notifying parents of identification results must be provided and there must be an annual report to the parents and community.
- **Iowa** – Iowa requires a school improvement plan be in place for each district. The plan must include valid and systematic procedures including multiple selection criteria and goals and performance measures. GT policies must be

free from discrimination practices in the education program. Iowa does not specify areas of identification; and does not specify whether identification can be in more than one category.

- **Michigan** – No rule requirements for gifted identification criteria or programs.
- **Minnesota** – No rule requirements to identify or serve gifted students.

Summary of factual data and analytical methodologies:

The primary reference source for developing the proposed rule is the document, *Pre-K-Grade 12 Gifted Program Standards*, published by the National Association for Gifted Children (NAGC). The NAGC supports and develops policies and practices that encourage and respond to the diverse expressions of gifts and talents in children and youth from all cultures, racial and ethnic backgrounds, and socioeconomic groups. It supports and engages in research and development, staff development, advocacy, communication, and collaboration with other organizations and agencies who strive to improve the quality of education for all students. The NAGC standards were developed in 1998 and represent consensus from professionals in the field on critical practice in gifted education. In addition, the proposed rule is consistent with the state superintendent's commitment to the children and youth of Wisconsin found in *The New Wisconsin Promise*.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A.

Anticipated costs incurred by private sector: N/A

Effect on small business:

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

Agency contact person (including email and telephone):

Chrystyna Mursky, Gifted and Talented Coordinator, (608) 267-9273, chrystyna.mursky@dpi.state.wi.us.

Place where comments are to be submitted and deadline for submission:

The department will be publishing a hearing notice in the *Administrative Register* which will include this information.

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): N/A

FISCAL ESTIMATE ORIGINAL UPDATED

LRB or Bill No./Adm. Rule No.
s. PI 8.02 (2) (t) 2., Wis. Admin. Code

DOA-2048 (R10/92) CORRECTED SUPPLEMENTAL

Amendment No. If Applicable

Subject: Identification of Gifted and Talented Pupils

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

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

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

Local: No local government costs

- 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 VTAE Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules establish more specific guidelines for the identification of gifted and talented pupils. The size of the population of children identified as gifted and talented as a result of this rule is indeterminate. However, these rules are not expected to have a significant local or state fiscal effect. School districts may have to purchase some additional assessment materials if they need to use a tool they don't already have and assign staff to administer any new screening or testing that takes place.

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

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Department of Public Instruction
Lori Slauson (608) 267-9127

Authorized Signature/Telephone No.

Michael Bormett (608) 266-2804

Date

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

The state superintendent of public instruction hereby proposes to amend s. PI 8.01 (2) (t) 2., relating to the identification of gifted and talented pupils.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: Section 121.02 (1) (t), Stats.

Statutory authority: Sections 118.35 (2) and 121.02 (5), Stats.

Explanation of agency authority:

Section 118.35 (2) requires the state superintendent to establish guidelines for the identification of gifted and talented pupils by rule.

Section 121.02 (5), Stats., requires the department to promulgate rules to implement and administer the 20 school district standards under s. 121.02 (1), Stats. Gifted and talented is one of those standards.

Related statute or rule: Section 118.35, Stats., programs for gifted and talented pupils.

Plain language analysis:

In *TODD PALMER V. THE STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION*, the Court instructed the department to promulgate a rule establishing guidelines for identifying gifted and talented pupils as required under s. 118.35 (2), Stats., because its current rule under s. PI 8.01 (2) (t), is not sufficient.

Therefore, the department is modifying s. PI 8.01 (2) (t) to establish more specific guidelines for the identification of gifted and talented pupils. The rule requires the school district board to identify pupils in grades kindergarten through grade 12 in the five areas specified in statute. Multiple measures must be used to build a pupil profile, instruments and measures must be validated for the specific purposes for which they are being used, and the identification process and tools must be responsive to the pupil's economic conditions, race, gender, culture, native language, developmental differences, handicapping conditions, and other factors.

Summary of, and comparison with, existing or proposed federal regulations: n/a.

Comparison with rules in adjacent states:

- **Illinois** – Illinois' rules apply only to locally developed GT programs for which state funding are sought. Illinois State Code requires the use of multiple measures (3 or more); the measures must be valid for their purpose; the process must be fair and impartial; and assessment instruments must be sensitive to inclusion of underrepresented groups. Illinois also requires an appeals process. Illinois' State Code allows any "area of aptitude" to be identified, but there is "an emphasis on" language arts and math (the top 5% locally must be identified in these two areas). The identification process must be of equal rigor in each area of aptitude but does not specify identification can be in more than one area. Finally, a procedure for notifying parents of identification results must be provided and there must be an annual report to the parents and community.
- **Iowa** – Iowa requires a school improvement plan be in place for each district. The plan must include valid and systematic procedures including multiple selection criteria and goals and performance measures. GT policies must be

free from discrimination practices in the education program. Iowa does not specify areas of identification; and does not specify whether identification can be in more than one category.

- **Michigan** – No rule requirements for gifted identification criteria or programs.
- **Minnesota** – No rule requirements to identify or serve gifted students.

Summary of factual data and analytical methodologies:

The primary reference source for developing the proposed rule is the document, *Pre-K-Grade 12 Gifted Program Standards*, published by the National Association for Gifted Children (NAGC). The NAGC supports and develops policies and practices that encourage and respond to the diverse expressions of gifts and talents in children and youth from all cultures, racial and ethnic backgrounds, and socioeconomic groups. It supports and engages in research and development, staff development, advocacy, communication, and collaboration with other organizations and agencies who strive to improve the quality of education for all students. The NAGC standards were developed in 1998 and represent consensus from professionals in the field on critical practice in gifted education. In addition, the proposed rule is consistent with the state superintendent's commitment to the children and youth of Wisconsin found in *The New Wisconsin Promise*.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: n/a.

Anticipated costs incurred by private sector: None.

Effect on small business:

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

Agency contact person: (including email and telephone)

Chrystyna Mursky, Gifted and Talented Coordinator, (608) 267-9273, chrystyna.mursky@dpi.state.wi.us.

Place where comments are to be submitted and deadline for submission:

The department will be publishing a hearing notice in the *Administrative Register* which will include this information.

SECTION 1. PI 8.01 (2) (t) 2. is amended to read:

PI 8.01 (2) (t) 2. Each school district board shall establish a plan and designate a person to coordinate the gifted and talented program. Gifted and talented ~~students~~ pupils shall be identified as required in s. 118.35 (1), Stats. This identification shall ~~include multiple criteria that are appropriate for the category of gifted including intelligence, achievement occur in kindergarten through grade 12 in general intellectual, specific academic, leadership, creativity, product evaluations, and nominations~~ and visual and performing arts. A pupil may be identified as gifted or talented in one or more of the categories under s. 118.35 (1), Stats. The school district board shall use multiple measures to build a pupil profile and instruments and measures shall be validated for the specific purpose for which they are being employed. The identification process and tools shall be responsive to pupils' economic conditions, race, gender, culture, native language, developmental differences, handicapping conditions, and other factors that mitigate against fair practice. The school district board shall provide access, without charge for tuition, to appropriate programs for pupils identified as gifted or

talented as required under ss. 118.35 (3) and 121.02 (1) (t), Stats. The school district board shall provide ~~an opportunity~~ for parental ~~participation in the planning~~ notification of the proposed identification and resulting program.

NOTE: A Gifted and Talented Resource Guide is available at <http://dpi.wi.gov/cal/gifted.html>.

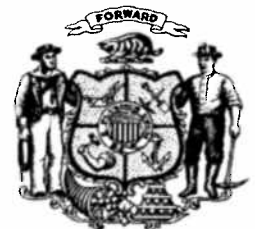
The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this ____ day of June, 2007

Elizabeth Burmaster
State Superintendent



WISCONSIN STATE LEGISLATURE

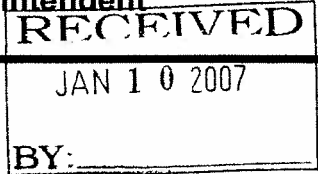


A QUALITY
EDUCATION
FOR
EVERY
CHILD



State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent



January 4, 2008

The Honorable Brett Davis, Chair
Assembly Committee on Education
Room 308 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Davis:

Thank you for meeting with department staff on Tuesday, December 18, 2007, to discuss Clearinghouse Rule 07-057, relating to the identification of gifted and talented pupils. Based on the issues discussed at that meeting and pursuant to s. 227.19 (4) (b) 3., Stats., the department intends to revise the rule to modify the sentence requiring the "school district board" to build a student profile. The department will also make some minor, technical modifications. The rule is attached with the changes highlighted for your review.

Thank you for your consideration of this proposed rule. If you have any questions or concerns about these modifications, please contact Anthony Evers, Deputy State Superintendent, at (608) 266-1771.

Sincerely,

A handwritten signature in cursive script that reads "E. Burmaster (al)".

Elizabeth Burmaster
State Superintendent

ae:ls

cc: Senator John Lehman, Chair, Senate Education Committee

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
AMENDING RULES**

The state superintendent of public instruction hereby proposes to amend s. PI 8.01 (2) (t) 2., relating to the identification of gifted and talented pupils.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: Section 121.02 (1) (t), Stats.

Statutory authority: Sections 118.35 (2) and 121.02 (5), Stats.

Explanation of agency authority:

Section 118.35 (2) requires the state superintendent to establish guidelines for the identification of gifted and talented pupils by rule.

Section 121.02 (5), Stats., requires the department to promulgate rules to implement and administer the 20 school district standards under s. 121.02 (1), Stats. Gifted and talented is one of those standards.

Related statute or rule: Section 118.35, Stats., programs for gifted and talented pupils.

Plain language analysis:

In **TODD PALMER V. THE STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION** (Dane County Circuit Case No. 06 C 0672), the Court instructed the department to promulgate a rule establishing guidelines for identifying gifted and talented pupils as required under s. 118.35 (2), Stats., because its current rule under s. PI 8.01 (2) (t), is not sufficient.

Therefore, the department is modifying s. PI 8.01 (2) (t) to establish more specific guidelines for the identification of gifted and talented pupils. The rule requires the school district board to identify pupils in grades kindergarten through 12 in the five areas specified in statute. Multiple measures must be used to build a pupil profile, and the identification tools must be responsive to the pupil's economic conditions, race, gender, culture, native language, developmental differences, and identified disabilities as described under Subch. V of Chapter 115, Stats. The rules give examples of multiple measures that may be used.

The rules also clarify that school boards must provide an opportunity for parents to participate in their child's identification and resultant programming.

Summary of, and comparison with, existing or proposed federal regulations: n/a.

Comparison with rules in adjacent states:

- **Illinois** – Illinois’ rules apply only to locally developed GT programs for which state funding are sought. Illinois State Code requires the use of multiple measures (3 or more); the measures must be valid for their purpose; the process must be fair and impartial; and assessment instruments must be sensitive to inclusion of underrepresented groups. Illinois also requires an appeals process. Illinois’ State Code allows any “area of aptitude” to be identified, but there is “an emphasis on” language arts and math (the top 5% locally must be identified in these two areas). The identification process must be of equal rigor in each area of aptitude but does not specify identification can be in more than one area. Finally, a procedure for notifying parents of identification results must be provided and there must be an annual report to the parents and community.
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Summary of factual data and analytical methodologies:

The primary reference source for developing the proposed rule is the document, *Pre-K-Grade 12 Gifted Program Standards*, published by the National Association for Gifted Children (NAGC). The NAGC supports and develops policies and practices that encourage and respond to the diverse expressions of gifts and talents in children and youth from all cultures, racial and ethnic backgrounds, and socioeconomic groups. It supports and engages in research and development, staff development, advocacy, communication, and collaboration with other organizations and agencies who strive to improve the quality of education for all students. The NAGC standards were developed in 1998 and represent consensus from professionals in the field on critical practice in gifted education. In addition, the proposed rule is consistent with the state superintendent’s commitment to the children and youth of Wisconsin found in *The New Wisconsin Promise*.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: n/a.

Anticipated costs incurred by private sector: None.

Effect on small business:

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

Agency contact person: (including email and telephone)

Chrystyna Mursky, Gifted and Talented Coordinator, (608) 267-9273, chrystyna.mursky@dpi.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rules received no later than September 24, 2007, were given the same consideration as testimony presented at the hearing. Comments were submitted via email to lori.slauson@dpi.state.wi.us or by writing to Lori Slauson, Administrative Rules and Federal Grants Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707.

SECTION 1. PI 8.01 (2) (t) 2. is amended to read:

PI 8.01 (2) (t) 2. Each school district board shall establish a plan and designate a person to coordinate the gifted and talented program. Gifted and talented ~~students~~ pupils shall be identified as required in s. 118.35 (1), Stats. This identification shall ~~include multiple criteria that are appropriate for the category of gifted including intelligence, achievement occur in kindergarten through grade 12 in general intellectual, specific academic, leadership, creativity, product evaluations, and nominations and visual and performing arts.~~ A pupil may be identified as gifted or talented in one or more of the categories under s. 118.35 (1), Stats. The identification process shall result in a pupil profile based on multiple measures, including but not limited to standardized test data, nominations, rating scales or inventories, products, portfolios, and demonstrated performance. Identification tools shall be appropriate for the specific purpose for which they are being employed. The identification process and tools shall be responsive to factors such as, but not limited to, pupils' economic conditions, race, gender, culture, native language, developmental differences, and identified disabilities as described under Subch. V of Ch. 115, Stats. The school district board shall provide access, without charge for tuition, to appropriate programming for pupils identified as gifted or talented as required under ss. 118.35 (3) and 121.02 (1) (t), Stats. The school district board shall provide an opportunity for parental participation in the ~~planning of the proposed program~~ identification and resultant programming.

NOTE: A Gifted and Talented Resource Guide is available at <http://dpi.wi.gov/cal/gifted.html>.

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 ____ day of November, 2007

Elizabeth Burmaster
State Superintendent