

Report From Agency

FINAL REPORT
CLEARINGHOUSE RULE 10-075
CHAPTER PI 43
EDUCATION REFORM

Analysis by the Department of Public Instruction

Statute interpreted: s. 118.42, Stats.

Statutory authority: ss. 118.42 (4) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 118.42 (4), Stats., requires the state superintendent to promulgate rules establishing criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provision of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: N/A.

Plain language analysis:

2009 Wisconsin Act 215 requires schools and school districts to implement certain provisions if they are considered in need of improvement for a certain period of time or are considered low performing. The Act also authorizes the state superintendent of public instruction to intervene in a school district if it is considered in need of improvement for a certain period of time or is considered low performing. The Act requires rules to establish criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of public schools in the state. In promulgating these rules, the state superintendent is required to consult with the school district or school board president, the school district administrator, and labor organizations representing employees of each school district that is immediately affected by the Act and legislators whose legislative districts include any portion of each school district. The department consulted with the individuals and organizations identified in the statute in developing this rule.

The proposed rule references Wisconsin's state plan that is required under 20 USC 6311 in determining districts or schools that are in need of improvement or low performing. The methods used in making these determinations are complicated and have to be approved by the U.S. Department of Education. The department prefers a consistent approach be used in making these determinations so that state rules do not unintentionally conflict with the federally approved method.

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

The Elementary and Secondary Education Act (ESEA) was first enacted in 1965 and reauthorized in 2001 as the No Child Left Behind (NCLB) Act. All school districts in Wisconsin receive some federal funding under ESEA.

To receive funding under the Act, the department is required to submit a plan to the U.S. Department of Education under 20 USC 6311. In general, the plan must demonstrate that the state has developed and is implementing a single, statewide state accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress (AYP). Under the plan, all Wisconsin school districts and individual schools within each district must meet the state's four AYP objectives each year. The first two objectives, based on Wisconsin's statewide standardized tests in reading and mathematics, have proficiency targets. The other two objectives are:

- 95 percent of enrolled students participating in statewide reading and mathematics assessments, which include the Wisconsin Knowledge and Concepts Examinations (WKCE) and the Wisconsin Alternate Assessment for Students with Disabilities (WAA-SwD).
- A high school graduation rate of at least 85 percent or growth of at least 2 percent from the prior year on these indicators and elementary and middle school attendance rates of at least 85 percent or any growth from the prior year on these indicators.

The four AYP objectives apply to all students as well as to subgroups of students of sufficient size. Schools that miss the same AYP objective for one or more student groups for two consecutive years are identified for improvement.

The department applies USDE-approved statistical procedures to ensure decision consistency in reviewing AYP and in identifying schools and districts for improvement. Student proficiency is based on the achievement of students enrolled for the full academic year. District accountability is divided into grade spans. A district must miss the same AYP target across elementary, middle, and high school for two consecutive years to be found in need of improvement. The subsequent years of school and district improvement are described in *Wisconsin Public Schools-Levels of Accountability*, available on the DPI website at <http://dpi.wi.gov/oea/doc/sifilevels.doc>.

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota do not have administrative rules relating to education reform.

Summary of factual data and analytical methodologies:

The proposed rule references Wisconsin's state plan that is required under 20 USC 6311 in determining districts or schools that are in need of improvement or low performing. The methods used in making these determinations are complicated and have to be approved by the U.S. Department of Education. The department prefers a consistent approach be used in making these determinations so that state rules do not unintentionally conflict with the federally approved method.

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)

Scott Jones, Special Assistant, Office of the State Superintendent, at burton.jones@dpi.wi.gov or (608) 267-9269.

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

The department published a hearing notice in the *Administrative Register* which included this information.

A public hearing to consider the emergency and proposed permanent rule was conducted by the department on July 27, 2010, 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, July 27, 2010

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

The following persons submitted written testimony:

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

Summary of public comments relative to the rule, the agency’s response to those comments, and changes made as a result of those comments: None.

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

Changes to the analysis or the fiscal estimate: None.

Responses to Clearinghouse Report:

1. Statutory Authority:

Recommendation accepted. A statement that the department consulted with the individuals and organizations identified in the statute in developing this rule has been added to the analysis of the rule.

5. Clarity, Grammar, Punctuation and Plainness:

a. Recommendations accepted, changes made.

b. Recommendations accepted, changes made.

c. Recommendations accepted, changes made.

d. Recommendations accepted, changes made.

e. Recommendations accepted, changes made.

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.