

Report From Agency

FINAL REPORT
CLEARINGHOUSE RULE 21-007
CHAPTER PI 9
PUPIL NONDISCRIMINATION

Analysis by the Department of Public Instruction

Statutory authority: s. 118.13 (3) (a) 2., Stats.

Statute interpreted: s. 118.13, Stats.

The proposed rule amends ch. PI 9 of the Wisconsin Administrative Code with respect to the administration of pupil nondiscrimination procedures under s. 118.13, Stats.

The hearing notice was published in the January 19, 2021 edition of the Wisconsin Administrative Register. A public hearing was held on February 17, 2021.

The following persons testified at the February 17, 2021 hearing:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Rachel Zellmer	Representing Self			X
Chez Ordonez	Representing Self			X
RaShunda Stephens	Parents Supporting School Equity			X
Tomika Vukovic	Glendale-River Hills School District			X

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Jo-Ellen Fairbanks	Cochrane-Fountain City School District		X	
Robert Baxter	Wisconsin Education Association Council		X	
Caroline Pate-Hefty	Whitewater Unified School District		X	
Jane Audette	Milwaukee Inner City Congregations Allied for Hope	X		
Theresa Ewald	Kettle Moraine School District		X	
Lisa Dawes	Representing Self		X	
Stephen Murley	Green Bay Area Public School District			X

Elisabeth Lambert, Angela Lang, Darnisha Garbade, Brian Juchems, Dakota Hall, Robert Smith, Clarence Nicholas, Ingrid Walker, Jenni Hofschulte, Sharlen Moore	ACLU of Wisconsin, Black Leaders Organizing for Communities, Burlington Coalition Dismantling Racism, GSAFE, Leaders Igniting Transformation, Milwaukee County Human Rights Commission, NAACP Milwaukee, Schools and Communities United, Urban Underground			X
Heather Godley	Representing Self			X
Kathryn Wurzer	Representing Self			X
John Forester	School Administrators Alliance		X	
Dan Rossmiller	Wisconsin Association of School Boards			X
Monica Murphy	Disability Rights Wisconsin	X		

Summary of public comments relative to the rule and the agency’s response to those comments:

Several individuals thanked the department for its work in developing the proposed rule and argued the proposed rule could support school districts by creating a clearer path to receiving and making determinations on complaints of discrimination. However, some individuals requested the following considerations to improve implementation of the proposed rule:

- 1) Ensuring that the proposed rule is aligned closely with existing federal laws regarding pupil nondiscrimination in order to address discrepancies between state and federal law. Further, one individual suggested changes to the proposed rule which will provide that, notwithstanding any provision of ch. PI 9, a school district that processes a written complaint alleging pupil discrimination under a written complaint procedure or grievance process or procedure adopted in compliance with federal statutes such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973, fully satisfies the complaint-related requirements of ch. PI 9, provided that the school district notifies appropriate parties of their right to appeal a negative determination by the school district to the state superintendent and of the procedures for making such appeal.

Agency Response: The department considered the relationship between state and federal nondiscrimination provisions. The procedure set out in ch. PI 9 is non-adversarial and designed purely to investigate and end discrimination. Chapter PI 9 and federal pupil nondiscrimination regulations have coexisted for more than 30 years without direct alignment and without undue burden to school districts. Existing practice at both the department and the United States Department of Education Office of Civil Rights (OCR) will minimize any conflict that might arise between ch. PI 9 and federal regulations. It has been OCR’s practice to put into abeyance any complaint investigation where a process under ch. PI 9 is already underway. Likewise, the department has always applied an overall reasonableness standard in resolving appeals under ch. PI 9, which would make it unlikely the department would find noncompliance with ch. PI 9 if the school district demonstrated it was making a good faith effort to comply with Title IX regulations. The new regulations under Title IX apply narrowly to sex discrimination, whereas ch. PI 9 and s. 118.13, Stats., apply to discrimination based on broad array of protected classes. To align ch. PI 9 with Title IX regulations would require the department to either establish two separate systems within PI 9, one for sex and one for the other protected classes, or maintain one system with all of the Title IX process requirements applying to all types of discrimination claims and would complicate complaint

processes under ch. PI 9. Further, changes to Title IX were just adopted under the previous administration and are already under consideration for significant revisions. No changes are necessary.

2) Developing criteria under which school districts could mandatorily dismiss complaints as well as factors that would lend itself to voluntary dismissals.

Agency Response: The proposed rule clarifies that verbal complaints of discrimination are to be submitted as written complaints in order to initiate the processes under ch. PI 9. The rule also provides steps that the designated employee must take in order to properly address complaints. Additional information about factors that could result in dismissal of complaints, such as allegations beyond the one-year time limit and other examples, will be provided through guidance. No changes are necessary.

3) Lengthening the time for school districts to come into compliance with the proposed rules, including delaying the effective date of the proposed rule if possible.

Agency Response: The department will delay the effective date of the proposed rule to July 1, 2022 to allow for revisions to school board policies and school district procedures.

4) Using a separate civil rights office to resolve school discrimination complaints and appeals to conform procedures to rules in adjacent states and ensure nonbiased determinations. In addition, the individual argues having a separate board could decrease the time and process for investigating complaints and ensure prompt resolution of complaints.

Agency Response: The OCR provides another avenue for filing discrimination complaints, and allows for complaints to be investigated outside the school district. As stated above, existing practice at both the department and OCR minimizes conflict between ch. PI 9 and federal regulations. No changes are necessary.

A number of individuals requested the following revisions or clarifications to the proposed rule:

1) Providing a definition for the term “complainant” in the proposed rule, which is not currently defined, and giving recognition in the rule to respondents that have an interest in the resolution of the complaint. For example, an individual respondent could be a person who receives a negative determination of a complaint who, therefore, might have a right to appeal the determination to the state superintendent. One individual believes any recognition of individual respondents in the rule should also recognize that, in some situations, there might not be any identifiable individual respondent who is distinguishable from the school board or school district as an entity, such as when a complaint alleges that a school district policy is facially discriminatory.

Agency Response: A definition of complainant is not required as the intended meaning is the one used in standard dictionary definitions. According to the Merriam-Webster dictionary, the term complainant refers to the party who makes the complaint in a legal action or proceeding. The discrimination complaint process under s. 118.13, Stats., and ch. PI 9 is not a contested hearing, but solely requires the school district to investigate upon receipt of a written complaint of discrimination. Consequently, there is no respondent in the process created under s. 118.13, Stats. and ch. PI 9. No changes are necessary.

2) Defining other key terms used in the rule, such as “complaint” and “party.” In some instances, one individual argues the proposed rule uses the term “school board” where the term “school district” may be more appropriate, and encourages the department to evaluate each instance of the use of the term “school board” for this issue.

Agency Response: A definition of complaint is not required as the intended meanings are the ones used in standard dictionary definitions. According to the Merriam-Webster dictionary, the term complaint refers to a formal allegation against a party. The department has removed the use of the word “parties” in the proposed rule to clarify that the process is not a contested hearing. Instead, the discrimination complaint process under s. 118.13, Stats., and ch. PI 9 requires investigations conducted by the school district upon receipt of a written complaint of discrimination by a resident of the school district or an aggrieved person. The department reviewed the use of board and school district in the proposed revisions and has made changes where appropriate.

3) Providing guidelines around the notification of the respondent in a discrimination complaint, including how much information should be provided regarding the complaint, a timeline to respond to the complaint, and parameters that protect the complainant from retaliation.

Agency Response: There is no respondent to a complaint filed under ch. PI 9. A complaint made under ch. PI 9 requires the school district to investigate to determine if pupil discrimination occurred. The complaint is with the school district. It is not a contested or adversarial procedure between two or more individuals and there is no requirement for any response to the complaint other than acknowledgment of the complaint and the district’s investigation, with a subsequent written determination. Section PI 9.04 (2) states the only required timelines. A school district may choose to provide additional policies or procedures setting additional timelines and may choose to require or allow an individual accused of discrimination to file a written response. The department has added a requirement to s. PI 9.03 (1) that school district policy prohibits retaliatory action against a complainant.

4) Clarifying whether s. PI 9.02 (2) applies to private or charter schools, and if not, some individuals request a rule change to protect students who attend private and charter schools, in addition to those who attend public schools, from incidents of discrimination.

Agency Response: Section 118.13, Stats., does not apply to charter schools, and is therefore outside the scope of the rule. The department also does not have any statutory authority to apply s. 118.13, Stats., to private schools. No changes are necessary.

5) Ensuring designated employees that receive written or verbal complaints under s. PI 9.04 (1) can’t ignore complaints that they deem as insignificant or unrelated to discrimination, and ensuring due process is properly monitored so that staff that are named in discrimination complaints do not counter-sue the employing school district.

Agency Response: If any disciplinary actions are taken against a particular staff member as a result of an investigation under s. 118.13, Stats., due process requirements under employment law would apply in the context of the disciplinary action proceedings. The proposed rule does not permit a school district to ignore complaints. Under the proposed revisions, all school district employees licensed under ch. PI 34 must refer any verbal or written complaint of discrimination to a designated school district employee. As previously stated, the rule provides steps that the designated employee must take in order to properly address complaints. No changes are necessary.

6) Requiring school district employees to report discrimination and harassment of which they are aware, beyond referring written and verbal complaints of discrimination and harassment to the designated employee as required under s. PI 9.04 (1), and providing the means in which staff will be notified and reminded of the requirement to bring verbal or written complaints to the designated employee. Further, some individuals have requested the rule to provide whistleblower protections for staff that witness discrimination and shall report such cases on the student’s behalf in cases where a student or parent does not know to make a verbal or written complaint.

Agency Response: The proposed revisions require a designated school district employee to assist in filing written discrimination complaints, and s. 118.13, Stats., permits residents of the school district as well as aggrieved persons to file complaints. The proposed rule was amended to require licensed school district staff under ch. PI 34 to refer any verbal or written complaint of discrimination to a designated school district employee and provides the procedures a designated employee must take. Further, a requirement that school district policy prohibits retaliatory action against a complainant, which includes any staff who make a complaint, has been added to the proposed rule.

7) Reexamining the requirement that all school district employees refer any verbal or written complaints of discrimination to the school district designated employee under s. PI 9.04 (1) out of fear that the requirement could create confusion for school district employees. Further, some individuals request training be provided for all staff in what constitutes required reporting under the rule.

Agency Response: The purpose of requiring verbal complaints to be reported is to ensure that residents of the school district or aggrieved persons are informed on how to initiate the written complaint process. School districts are responsible for ensuring employees comply with district policies and procedures. It is common for teachers and other school district staff to receive verbal complaints and refer them as appropriate. School districts have the authority and discretion to determine training for employees as it relates to nondiscrimination and the handling of complaints. In response to concerns that the referral requirement cannot be implemented with fidelity, the department has narrowed the scope of s. PI 9.04 (1m) to require all school district employees licensed under ch. PI 34 to refer any verbal or written complaint of pupil discrimination to the designated employee.

8) Amending the originally proposed s. PI 9.04 (1) to state all complaints be in writing and steered toward a building level administrator. Alternatively, another individual requested amending the provision to state that the employee shall refer the complaint “to the school district employee designated under s. PI 9.04 (1) or, to the extent expressly authorized by the school district’s written policy, to a separate licensed administrator who is employed by the school district.”

Agency Response: The department will change s. PI 9.04 (1) to allow a school district to designate “one or more employees” and will reflect that change in s. PI 9.04 (1m). The department provides the flexibility at the school district level to allow the designated employee to be chosen by the school district.

9) Changing the designated employee under s. PI 9.04 (1) to an investigator or student advocate and ensuring the employee who investigates is qualified to handle investigative practices as it relates to discrimination and does not create a situation where a school district could contract out these services.

Agency Response: Districts are responsible for ensuring the investigator has the appropriate training for meeting the requirements under s. 118.13, Stats., and ch. PI 9. No changes are necessary.

10) Providing a definition of “complaint,” with specific reference to the minimum standards needed to qualify as a “verbal complaint,” and allowing school districts to name more than one individual to receive complaints, under s. PI 9.04 (1).

Agency Response: As stated above, a definition of complaint is not required as the intended meaning is the one used in standard dictionary definitions. The department will provide supplemental guidance around examples of verbal complaints. The department will change s. PI 9.04 (1) to allow a school district to designate “one or more employees” and will reflect that change in s. PI 9.04 (1m).

11) Clarifying the means by which a school district employee shall refer complaints to the school district designee under s. PI 9.03 (1) (j) and creating mechanisms for students, parents, or witnesses to report discrimination in a safe or anonymous manner, as an alternative to the formal complaint process, in order to prevent potential bias or retaliation in the referral of complaints. Further, the individual requested prohibitions on the ability of school district staff to ask questions about the complaints or complainant to prevent the investigation from being influenced.

Agency Response: Nothing in the rule precludes an individual from making an anonymous complaint. The school district may create additional policies and procedures to create an alternate mechanism for responding to verbal or anonymous complaints. The department has also added a requirement to s. PI 9.03 (1) that school district policy prohibits retaliatory action against a complainant.

12) Clarifying s. PI 9.03 (1) (j) to provide that written complaints of discrimination may follow the federal and state Equal Employment Opportunity Commission guidelines and United Nations Human Rights intake process for receiving written complaints.

Agency Response: This rule chapter is subject to legislative review and is best suited to administer state statutory requirements under s. 118.13, Stats. No changes are necessary.

13) Requiring school boards to hear all discrimination complaints under s. PI 9.04 in order to prevent situations where discrimination complaints are decided at the building level and are appealed to the department without board knowledge or action.

Agency Response: In developing policies and procedures required by the rule, school boards may elect to include the school board in the investigative and decision making process. Under this rule, the department is establishing a biennial review process, which replaces the five-year review process that currently exists, in order to provide greater transparency. No changes are necessary.

14) Clarifying s. PI 9.04 (1) to specify whether the school district designee shall be required to assist the complainant in filing written complaints to the school district only, or if this includes assisting in filing appeals with the department. One individual also asked if the rule provides a timeline for this process to ensure that the complainant is assisted in a timely manner.

Agency Response: The proposed rule does not require the designee to assist the complainant in filing an appeal with the department. The proposed rule does not provide a timeline for assisting the complainant. No changes are necessary.

15) Amending s. PI 9.04 (1) in order to avoid potential liability concerns, such as if the designated employee assists in writing a complaint that is ultimately dismissed or determined to be unfounded, or if assisting or writing a complaint may jeopardize the designated employee's ability to be impartial or to conduct an unbiased investigation.

Agency Response: The rule does not create civil liability for designated employees. Further, the department believes that even if civil liability did somehow attach to the conduct of designated employees, that the department could not eliminate or limit such liability through the rulemaking process. No changes are necessary.

16) Modifying s. PI 9.04 (1) to state that the designated employee shall respond to procedural inquiries received from any complainant or respondent, to designate one or more employees of the school district to receive

complaints, and adding discretionary authority to substitute or join a real party in interest, such as a person alleged to have been discriminated against, for an initial complainant who is not a person aggrieved under s. 118.13, Stats.

Agency Response: The department will modify s. PI 9.04 (1) to indicate a district may designate one or more employees to receive complaints and must contact the complainant upon receipt of a written or verbal complaint. The proposed rule addresses receiving and investigating complaints for the purpose of substantiating discrimination so the district may take appropriate steps to end such discrimination. The existing rule and proposed rule does not establish liability or culpability. Therefore, adding provisions regarding the substitution or joinder of parties would be inappropriate. No changes are necessary.

17) Requiring school districts to reduce a verbal complaint to writing before deciding to resolve a complaint through its informal complaint procedures, to ensure that the full scope of the complaint is clear to all parties, and requiring school districts to obtain voluntary, informed consent from both the complainant and the respondent before attempting to resolve the complaint informally.

Agency Response: The proposed rule does require the district to assist complainants in reducing verbal complaints to writing. There is no respondent or parties under the rule. The proposed rule permits school boards to establish local policies and procedures that are consistent with the general provisions of the rule and which may include informal resolution. The department leaves the details of local policies and procedures to the judgment of the school boards with input from district residents. No changes are necessary.

18) Clarifying that all complaints received by the complaint officer under s. PI 9.04 (1) must be reported under s. PI 9.07 (2), whether they are written or verbal, whether they are submitted directly to the complaint officer or referred by another district employee, and whether they are formally or informally resolved.

Agency Response: Section PI 9.07 (2) was revised to clarify that only written complaints received during the year be included in the annual compliance report. The purpose of the report specified by s. PI 9.07 (2) is to collect the number of written complaints of pupil discrimination received by the school district. Requiring school districts to report verbal as well as written complaints in the annual report would cause confusion and limit the usefulness of the data collected. The rule was revised to provide this clarification.

19) Providing uniform guidance to school boards under s. PI 9.04 (2) about how to conduct adequate investigations of discrimination and provide adequate resolution of complaints, as well as establishing criteria for corrective action plans prompted by substantiated complaints of discrimination, even if that discrimination was not alleged in the original complaint. Further, some individuals argue the rules should provide the means for school districts to properly ascertain whether the complainant experienced discrimination and address individual resolutions of discrimination and potential systemic issues resulting from discrimination. For example, some individuals ask what would stop a school district from removing a child from a particular class and deeming the issue resolved rather than addressing underlying issues.

Agency Response: The department believes that existing state and federal guidance is sufficient to inform school districts on how to respond in a prompt, fair, and equitable manner to complaints of pupil discrimination. The department will also issue additional information on these topics as necessary. The proposed rule requires that a determination state the relevant facts and policy provisions considered so that the complainant is reasonably informed of the basis for the determination of whether discrimination has occurred. If the school district determines that it is more likely than not that discrimination has occurred, the final written determination shall also state the steps the school district will take to end the discrimination and remedy its effects. No further changes are necessary.

20) Aligning s. PI 9.04 (2) with the identification, evaluation and placement for special education and the provision of a free, appropriate public education to be processed according to the complaint procedures established under the Individuals with Disabilities Education Act.

Agency Response: The department removed a redundant reference to the complaint procedures for special education under s. PI 9.04 (2) as this is already provided under the Individuals with Disabilities Education Act. Removing this reference provides greater clarity for the procedures that should be followed for special education complaints under 34 CFR 300.151-153. Additionally, state and federal law describe mediation and due processes that also govern complaints around special education. No changes are necessary.

21) Modifying the language in s. PI 9.04 (2) regarding extensions of any deadline for reaching a final determination, whether 60 days or 90 days, to grant authority to the school district to implement an extension of the default deadline.

Agency Response: The proposed rule has been changed to clarify that the complainant and the school district must agree to an extension of time. Additionally, the proposed rule was amended to provide that if the complainant does not respond after the school district makes three attempts to contact the complainant, the school district may extend the time for providing to the complainant a final written determination and shall provide the complainant with written notice of the extension.

22) Adding open enrolled non-resident students, when referring for whom school districts must establish nondiscrimination policy and procedures, in addition to residents of the school district or aggrieved persons under s. PI 9.04 (2).

Agency Response: Section 118.13 (1), Stats., provides “no person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.” The department interprets “person” to include open enrolled non-resident students and therefore no further clarification in the proposed rule is necessary.

23) Requiring a shorter length of time for school districts to receive complaints of discrimination under s. PI 9.04 (2) (a).

Agency Response: The one year time limit for filing complaints specified in the proposed rule is generally consistent with time limits specified in other state and federal nondiscrimination laws and regulations. No changes are necessary.

24) Amending s. PI 9.04 (2) (c) to require a school district, in addition to stating the steps that it will take to end discrimination where it has been found and to remedy its effects, to undertake a rigorous examination of the effects of the discrimination and to craft a tailored response which considers appropriate interventions for individual perpetrators of discrimination or harassment, systemic interventions for the school community, and supports or services for the victims of the discrimination or harassment.

Agency Response: The department believes the proposed rule establishes clear standards for a school district's response to substantiated instances of discrimination. The specific response to individual instances of discrimination is determined on a case by case basis. School boards may specify additional response criteria in the policies and procedures developed under s. PI 9.03 and 9.04. No changes are necessary.

25) Amending s. PI 9.04 (2) (c) to state the final determination shall state the relevant facts and policy provisions considered so that the complainant is reasonably informed of the basis for the determination “of whether discrimination has occurred or not.”

Agency Response: The department has revised s. PI 9.04 (2) (c) to clarify that the final written determination addresses whether it is more likely than not that discrimination has occurred. The language “whether discrimination has occurred” includes determinations of nondiscrimination, and consequently, the additional phrase “or not” is not required. No further revisions are necessary.

26) Ensuring that s. PI 9.04 (2) (e), which requires a copy of the school district’s written determination of complaints be filed with the school board, is aligned with s. 118.125, Stats., and the Family Educational Rights and Privacy Act, which provides that pupil record information be shared with school district employees on a need to know basis only.

Agency Response: School districts must comply with the provisions of s. 118.125, Stats., and the Family Educational Rights and Privacy Act in all activities involving pupil records and personally identifiable information. Adding an additional requirement to the proposed rule regarding the confidentiality of pupil records would be redundant. No changes are necessary.

27) Amending s. PI 9.04 (3) to recognize complaint procedures in this chapter should consider the possibility that, in some cases, a school district may have a legitimate basis for dismissing a complaint, or specific allegations included within a complaint, at some point between the complaint being submitted and actually reaching a final determination on the merits. To the extent a complainant with an appeal right disagrees with such a dismissal decision, one individual believes such a complainant could be permitted to treat the dismissal as a negative determination that the complainant may appeal to the state superintendent. Additionally, the individual argues dismissal and complaint procedures under this chapter should not prohibit a school district from otherwise addressing a matter through other processes. As such, the individual believes any such dismissal for purposes of this rule may include a decision to redirect the issues raised in the complaint to another internal procedure.

Agency Response: The proposed s. PI 9.04 (2) (c) requires a school district to issue a final written determination for all written complaints. Under s. PI 9.08 (1), the state superintendent may hear appeals of any final written determination. No changes are necessary.

28) Providing that contact information for the school district designee be made available to the public under s. PI 9.05 (1).

Agency Response: The proposed s. PI 9.05 (1) provides for public notice of the contact information for the designated school district employee. The rule will be amended to require email and telephone contact information in addition to name and address of the designated employee.

29) Amending s. PI 9.05 (1) to provide a print copy of the current school board policy in each parent-student handbook, in order to avoid accessibility concerns with displaying the policy on the school district’s website, under the proposed rule.

Agency Response: The proposed s. PI 9.04 (1) requires a school district’s designated employee to provide a copy of the school board policy to a complainant. Section PI 9.05 (3) requires discrimination complaint procedures to be published in parent-student handbooks. No changes are necessary.

30) Revising the requirement under s. PI 9.06 that school districts shall conduct an evaluation of the status of nondiscrimination and educational opportunity on an annual basis, rather than once every five years under the current rule, due to concerns about school districts' capacity to conduct such evaluations and whether an annual evaluation would yield new or actionable information related to nondiscrimination in the school district. Some individuals indicated their preference for keeping the evaluation requirement every five years under the current rule.

Agency Response: The department received feedback from other stakeholders that the annual self-evaluation of nondiscrimination according to specified criteria is an important step towards transparency and accountability. A more frequent review allows for continuing monitoring and review to ensure that there are no policies, practices, and procedures resulting in discrimination, and that there is an equitable educational opportunity afforded to all students. A more frequent review also allows for addressing any concerns through prompt corrective action. This review can be conducted efficiently and without undue burden by updating the report rather than recreating a report each time. Maintaining the five year review, does not allow for continuous monitoring so that concerns can be quickly addressed through prompt action steps. In response to concerns that an annual evaluation might not yield much in new or actionable information, however, the proposed rule language was revised to require the evaluation to be conducted biennially, rather than annually. The rule offers flexibility to school districts in the construction of the report, including the timing of when components may be reported over the two-year cycle, and does not dictate a standard method for how this information is reported to the department. The only requirements for the report are specified in the rule.

31) Amending the reporting requirement under s. PI 9.06 to cross-file the school district report with the department as well as a third-party agency to ensure independence and transparency.

Agency Response: The proposed rule requires that the district report be posted in a prominent location on the school district's website and that the school board consider public comment on the report to ensure independence and transparency. No changes are necessary.

32) Providing guidelines to help school districts meaningfully evaluate their methods, practices, curricula, and materials in s. PI 9.06 (1), as well as replacing the word "equality" with "equity."

Agency Response: The department will provide assistance, if requested, to school districts in evaluating their methods, practices, curriculum. As a result of public comment, "Equality of educational opportunity" has been replaced with "equitable educational opportunity" in the proposed rule.

33) Ensuring that the school district evaluation requirement under s. PI 9.06 (1) is aligned with the current biennial reporting requirements instituted by the OCR in order to allow for more meaningful evaluations.

Agency Response: The purpose of the biennial Civil Rights Data Collection is to obtain data authorized under the statutes and regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and under the Department of Education Organization Act (20 U.S.C. § 3413). This differs from the purpose of proposed s. PI 9.06 (1), which is to promote self-evaluation of an individual school district's status of nondiscrimination and educational opportunity. The proposed rule has been changed to require an evaluation at least once every two years.

34) Reexamining the requirement to report disaggregated data in s. PI 9.06 (1) to ensure the data does not conflict with FERPA and s. 118.125, Stats., due to concerns the resulting data may be personally-identifiable within the meaning of those laws.

Agency Response: School districts must comply with the provisions of s. 118.125, Stats., and the Family Educational Rights and Privacy Act in all activities involving pupil records and personally identifiable information. Adding an additional requirement to the proposed rule regarding the confidentiality of pupil records would be redundant. No changes are necessary.

35) Clarifying s. PI 9.06 (1) to clarify what is meant by counseling, such as academic counseling or mental health services.

Agency Response: School districts must prevent discrimination in curricular, extracurricular, pupil services, recreational or other programs or activities. Counseling provided in the context of these activities is properly the subject of the self-evaluation specified in s. PI 9.06 (1) (cg), and no further clarifications are required. No changes are necessary.

36) Creating an additional self-assessment criterion, as a possible s. PI 9.06 (1) (i), to include data related to harassment, disaggregated by the protected status of the pupil, together with the district's responses to such incidents.

Agency Response: This information is currently collected through the report required by s. PI 9.07 (2). The proposed s. PI 9.06 (1) (i) requires that this data be reviewed as part of the self-evaluation process, and is included as part of the review under s. PI 9.06. No changes are necessary.

37) Providing clarity to s. PI 9.06 (3) to specify what oversight will be in place to audit school district reports, and to require that such findings be included in school report cards to ensure that school districts are attentive to these issues. Additionally, some individuals ask what is meant by the requirement that the school board shall consider public comment upon completing its evaluation, and in what method shall public comment be submitted.

Agency Response: The proposed rule's requirement that the report of the self-evaluation be posted in a prominent position on the district's website, and that the school board accept public comment on the self-evaluation, ensures the school district is responsive to these matters. School boards are charged under the rule to determine an effective method for receiving public comment on the self-evaluation report. No changes are necessary.

38) Amending s. PI 9.06 (3) to provide alternative means to notify parents of inviting public comment on the school district's annual report, in order to avoid accessibility concerns with displaying such notices on the internet, under the proposed rule.

Agency Response: School districts must independently comply with state public records law and federal civil rights laws regarding effective communication with persons with limited English proficiency and communication disabilities. No changes are necessary.

39) Amending s. PI 9.07 (2) to require school districts to report on incidents of which they learned via staff, employee, or other third-party reports as well as incidents identified in verbal or written complaints from students or parents.

Agency Response: The proposed rule requires school districts to include all written complaints regarding pupil discrimination on the report described in s. PI 9.07 (2). The proposed rule does not restrict who may file complaints to pupils and parents only. No changes are necessary.

40) Providing guidance in how complaints appealed to the state superintendent are investigated under s. PI 9.08 (1), and whether guidance is available on how the complainant must be notified of a negative determination.

Agency Response: Procedures used to resolve appeals filed with the state superintendent are specified in ch. PI 1 of the Wisconsin Administrative Code. No changes are necessary.

41) Amending s. PI 9.08 (1) to state when a district has rendered a decision that no discrimination has occurred, the complainant may appeal to the state superintendent within 30 days of the school district's decision.

Agency Response: The department will amend s. PI 9.08 (1) of the proposed rule to indicate an appeal may be filed within 30 days of the date of the district's final written determination.

42) Amending s. PI 9.08 (1) (a) 2. to allow a direct appeal where a school district fails to comply with the proposed rule's requirements for handling complaints.

Agency Response: Section PI 9.08 (1) (a) 2. was revised to allow for a complainant to appeal directly to the state superintendent if the school district fails to comply with the provisions of s. PI 9.04. No further changes are necessary.

43) Clarifying whether the results of the annual compliance report under s. PI 9.08 (2) (d) is available at no charge.

Agency Response: The annual compliance reports are public records and available to the public under the provisions of Wisconsin's public records laws. No changes are necessary.

Changes made as a result of oral or written testimony:

- The department will delay the effective date of the proposed rule to July 1, 2022 to allow for revisions to school board policies and school district procedures.
- Section 9.03 (1) of the proposed rule has been revised to require that school district policy prohibits retaliatory action against a complainant.
- The department has removed the one use of the word "parties" in the proposed rule to reflect that the process is not a contested hearing.
- The department reviewed the use of board and school district in the proposed revisions and has made changes where appropriate.
- Section 9.04 (1) has been amended to state that the designated employee must contact the complainant upon receipt of a written or verbal complaint,
- Sections 9.04 (1) and (1m) of the proposed rule have been revised to allow a school district to designate "one or more employees" to receive complaints of discrimination.
- Section 9.04 (1m) has been revised to require all school district employees licensed under ch. PI 34 to refer any verbal or written complaint of pupil discrimination to the designated employee under s. PI 9.04 (1).
- Section 9.04 (2) (c) has been revised to provide that if the complainant does not respond after the school district makes three attempts to contact the complainant, the school district may extend the time for providing to the complainant a final written determination and shall provide the complainant with written notice of the extension.
- Section PI 9.07 (2) of the proposed rule has been revised to clarify that only written complaints received during the year be included in the annual compliance report.
- Section PI 9.04 (2) (c) of the proposed rule has been revised to clarify that the final written determination addresses whether it is more likely than not that discrimination has occurred.
- Section 9.04 (2) of the proposed rule has been revised to clarify that the complainant and the school district must agree to an extension of time.

- Section 9.05 (1) of the proposed rule has been revised to require email and telephone contact information in addition to name and address of the designated employees.
- Section 9.06 of the proposed rule has been revised to require the evaluation under s. PI 9.06 to be conducted once every two years, rather than annually.
- Section 9.06 (1) of the proposed rule has been revised to replace the term “equality of educational opportunity” with “equitable educational opportunity.”
- Section PI 9.08 (1) of the proposed rule has been revised to indicate an appeal may be filed within 30 days of the date of the district’s final written determination.

Changes to the analysis or the fiscal estimate:

No changes were made.

Responses to Clearinghouse Report:

5. Clarity, Grammar, Punctuation and Plainness:

- a. The changes are accepted. The term “procedure” was changed to “procedures.”
- b. The changes are accepted.
- c. The provision was restated to state the data required in pars. (d) and (e) in the report shall be disaggregated by the pupil’s sex, race, national origin or disability. With regard to the comment about school district support of athletics and extracurricular activities, the phrase relates to the school district’s accommodations of each pupil’s participation in athletics and extracurricular activities based on their sex, race, national origin or disability.
- d. The provision was amended to strike out the word “negative” to provide that the complainant may appeal a determination of the school district to the state superintendent within 30 days of the school district’s decision.
- e. The changes are accepted.