

Clearinghouse Rule 21-007

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

The scope statement for this rule, SS 132-20, was published in Register No. 778A3, on October 19, 2020, and approved by State Superintendent Carolyn Stanford Taylor on November 2, 2020.

The State Superintendent of Public Instruction hereby proposes an order to repeal s. PI 9.04 (3), 9.06 (1) (h), and 9.07 (3); to renumber and amend s. PI 9.04 (1) (intro.) and (2); to amend s. PI 9.02 (2), 9.04 (intro.), 9.05 (intro.), (1) and (2), 9.06 (1) (intro.), (1) (a), (c) to (e) and (g), 9.07 (2) and (3) (Note), and 9.08 (1) (a) (intro.), 1., 2., 4., 5. and (b), (2) (b) and (c); and to create s. PI 9.03 (1) (j), 9.04 (1) (a) to (c), (1m) and (2) (a) to (e), 9.06 (1) (cg), (cr), and (i), and 9.08 (1) (c), relating to revisions to pupil nondiscrimination procedures.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.13, Stats.

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

Explanation of agency authority:

Under s. 118.13 (3) (a) 2., Stats., the state superintendent has the authority to promulgate rules necessary to implement and administer pupil nondiscrimination procedures under s. 118.13, Stats.

Related statute or rule:

N/A

Plain language analysis:

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.

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

The United States Department of Education Office for Civil Rights (OCR) enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal funds from the Department of Education. These laws prohibit discrimination on the basis of race, color, and national origin, sex, disability, and on the basis of age. These laws extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. OCR also has responsibilities under Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by public entities, whether or not they receive federal financial assistance. In addition, as of January 8, 2002, OCR enforces the Boy Scouts of America Equal Access Act under Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. Under the Boy Scouts of America Equal Access Act, no public elementary or secondary school or State or local education agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society, that wishes to meet at the school.

Complaints of discrimination must be received within 180 days. Complainants may use the school district's internal grievance process. If a complainant elects to use the internal grievance process, the complainant must file with OCR within 60 days of the close of the internal grievance. Further, each school district is required to provide public notice of its nondiscrimination policy, and each school district is required to designate an employee to receive complaints.

Summary of any public comments and feedback on the statement of scope for the proposed rule that the agency received at a preliminary public hearing and comment period held and a description of how and to what extent the agency took those comments into account and drafting the proposed rule:

The Department held a preliminary public hearing and comment period on October 30th, 2020, and did not receive any comments on the statement of scope for the proposed rule.

Comparison with rules in adjacent states:

Illinois: Under Illinois Compiled Statutes section 775 ILCS 5, K-12 public schools are prohibited from discriminating on the basis of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service. Complaints and appeals may be resolved by the Illinois Department of Human Rights. Complaints must be filed within 300 days.

Iowa: Under Iowa Code section 216.9, K-12 public schools are prohibited from discriminating on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any academic, extracurricular, research, occupational training, or other program or activity (except athletic programs). Complaints and appeals are resolved by the Iowa Civil Rights Commission. Complaints must be filed within 300 days.

Michigan: Michigan Compiled Laws section 37.2402 prohibits discrimination in K-12 public schools on the basis of religion, race, color, national origin, or sex. Complaints and appeals are resolved by the Michigan Department of Civil Rights. Complaints must be filed within 180 days.

Minnesota: Under Minnesota Statutes section 121A.03, school boards are required to adopt a written sexual, religious, and racial harassment policy and a written sexual, religious, and racial violence policy conforming to the Minnesota Human Rights Act. The Commissioner of the Minnesota Department of Education is required to develop a model policy that school boards may adopt. School boards are further required to develop a process for discussing the policy with students and employees and submit the policy to the Commissioner. The Minnesota Human Rights Act prohibits discrimination on the basis of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability. The Minnesota Human Rights Department is responsible for resolving complaints of discrimination arising in the public schools. Complaints must be filed within one year.

Summary of factual data and analytical methodologies:

Chapter PI 9 of the Wisconsin Administrative Code governs the procedures for pupil nondiscrimination under s. 118.13, Stats., and specifies the areas in which the school board must have policies to address discrimination complaints. Section 118.13 (3), Stats., requires the state superintendent to decide appeals of local school board determinations, requires the state superintendent to promulgate rules, and authorizes the state superintendent to review school district compliance and to provide technical assistance to school districts. Since the rule was promulgated, the Department has identified areas that would improve the rule's implementation of the authorizing statute. The areas addressed by the proposed rule under this statement of scope are as follows:

1. The current rule provides for a class 1 legal notice annually and does not specifically provide for notice of policies and procedures to individual complainants. The proposed rule will require school districts to provide notice via district website and require school districts to provide policies and procedures to individual complainants upon initiation of a complaint.
2. The current rule contains a timeline of 90 days for full resolution of complaints. The proposed rule shortens the timeline to ensure prompt resolution of complaints.
3. The current rule provides no criteria to school districts as to the sufficiency of a response to allegations of discrimination. The proposed rule will establish criteria for written determinations, including an evidentiary standard.

4. The current rule's reporting requirements are designed to allow the department to meet its requirement under s. 118.13, Stats., to report on the status of pupil nondiscrimination to the Legislature. The proposed rule will ensure school districts are engaging in meaningful assessments and that the data reported is useful to both the department and the Legislature.

The effect of the proposed rule will be to ensure accessibility of school district pupil nondiscrimination policies and procedures for parents and pupils; prompt resolution of discrimination complaints and appeals; clarification around school district responsibilities to address pupil discrimination substantiated through the complaint process; and clarification around school district self-evaluation and data reporting requirements.

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)

Carl Bryan
Administrative Rules Coordinator
Wisconsin Department of Public Instruction
adminrules@dpi.wi.gov
(608) 266-3275

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at adminrules@dpi.wi.gov. The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

RULE TEXT

SECTION 1. PI 9.02 (2) is amended to read:

PI 9.02 (2) "Board" means the school board in charge of the public schools of a school district.

SECTION 2. PI 9.03 (1) (j) is created to read:

PI 9.03 (1) (j) Prohibition of any retaliatory action by a school district or school district employee against a complainant who makes a verbal or written complaint regarding discrimination under s. 118.13, Stats., and this chapter.

SECTION 3. PI 9.04 (intro.) is amended to read:

PI 9.04 Complaint Procedures. Each ~~board~~ school district shall:

SECTION 4. PI 9.04 (1) is renumbered PI 9.04 (1) (intro.) and amended to read:

(1) Designate ~~an employee~~ one or more employees of the school district to receive complaints regarding discrimination under s. 118.13, Stats., and this chapter. A designated employee shall:

SECTION 5. PI 9.04 (1) (a) to (c) are created to read:

- (a) Contact the complainant upon receipt of a verbal or written complaint.
- (b) Provide the complainant a copy of the school district's discrimination policy and procedures.
- (c) Assist the complainant in filing a written complaint which meets the procedural requirements specified in this section.

SECTION 6. PI 9.04 (1m) is created to read:

PI 9.04 (1m) Require all school district employees licensed under ch. PI 34 to refer any verbal or written complaint of pupil discrimination to an employee designated under s. PI 9.04 (1).

SECTION 7. PI 9.04 (2) is renumbered PI 9.04 (2) (intro.) and amended to read:

PI 9.04 (2) Establish a procedure for receiving and resolving written complaints from residents of the school district or aggrieved persons under s. 118.13, Stats., and this chapter; ~~including a provision for written acknowledgement within 45 days of receipt of a written complaint and a determination of the complaint within 90 days of receipt of the written complaint unless the parties agree to an extension of time, except that appeals under 20 USC 1415 and ch. 115, Stats., relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of a child with an exceptional educational need shall be resolved through the procedures authorized by ch. 115, subch. V, Stats.~~ The procedure shall:

SECTION 8. PI 9.04 (2) (a) to (e) are created to read:

- PI 9.04 (2) (a)** Specify that the provisions of this subsection apply only to a written complaint that is received within one year of the alleged discrimination.
- (b) Require a written acknowledgement of the written complaint be provided to the complainant within 15 days of receipt of the complaint.
- (c) Require a final written determination of the written complaint be provided to the complainant within 60 days of receipt of the written complaint, unless the complainant and the school district agree in writing to an extension of time. 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. The final written 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. 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.
- (d) Provide written notice to the complainant of the right to appeal the school district's final written determination to the state superintendent and the procedures for making the appeal.
- (e) Require a copy of the school district's final written determination of the complaint be filed with the board.

SECTION 9. PI 9.04 (3) is repealed.

SECTION 10. PI 9.05 (intro.), (1) and (2) are amended to read:

PI 9.05 Public Notice. Each ~~board~~ school district shall:

- (1) ~~Annually provide~~ Provide public notice of board policies on pupil nondiscrimination including the name, ~~and address,~~ electronic mail address and telephone number of the designated ~~employee~~ employees under s. PI 9.04 (1) and the complaint procedure under s. PI 9.04 (2). ~~The notice shall be a class 1 legal notice under ch. 985, Stats.~~ The notice shall be posted in a prominent location on the school district's website.
- (2) Include a pupil nondiscrimination statement ~~on~~ in pupil and staff handbooks, course selection handbooks and other published materials distributed to the public describing school activities and opportunities.

SECTION 11. PI 9.06 (1) (intro.), (a) and (c) are amended to read:

~~PI 9.06 (1) In order to provide the information necessary for the state superintendent to report on the compliance with s. 118.13, Stats., as required under s. 118.13 (3) (a) 3., Stats., each~~ Each board shall evaluate the status of nondiscrimination and ~~equality of equitable~~ educational opportunity in the school district at least once every 5 years on a schedule established by the state superintendent. The evaluation shall include the following:

(a) School board policies and ~~administrative~~ school district complaint procedures required under this chapter.

(c) Methods, practices, curriculum and materials used in instruction, ~~counseling, and pupil assessment and testing~~ evaluated for potential bias or stereotyping.

SECTION 12. PI 9.06 (1) (cg) and (cr) are created to read:

PI 9.06 (1) (cg) Methods, practices, curriculum and materials used in counseling, evaluated for potential bias or stereotyping.

(cr) Methods, practices, and materials used in pupil assessment and testing, evaluated for potential bias or stereotyping.

SECTION 13. PI 9.06 (1) (d), (e) and (g) are amended to read:

PI 9.06 (1) (d) Trends and patterns of disciplinary actions, including suspensions, and expulsions, and handling of pupil harassment disaggregated by the pupil's sex, race, national origin and disability.

(e) Participation trends and patterns and school district support of athletic, extracurricular and recreational activities, disaggregated by the pupil's sex, race, national origin and disability.

(g) School district efforts to achieve ~~equality of equitable~~ educational opportunity and nondiscrimination.

SECTION 14. PI 9.06 (1) (h) is repealed.

SECTION 15. PI 9.06 (1) (i) is created to read:

PI 9.06 (1) (i) The report submitted to the department under s. PI 9.07 (2) of this chapter.

SECTION 16. PI 9.06 (3) is amended to read:

PI 9.06 (3) The board shall prepare a written report of the evaluation which shall be available for examination posted in a prominent location on the school district's website and the board shall consider public comment on the evaluation by residents of the school district.

SECTION 17. PI 9.07 (2) is amended to read:

PI 9.07 (2) An annual compliance report, including the name of the designated ~~employee~~ employees under s. PI 9.04 (1); and the number of written complaints received during the year, a description of each complaint and its status, on a form provided by the department.

SECTION 18. PI 9.07 (3) is repealed.

SECTION 19. PI 9.07 (3) (Note) is amended to read:

(3) Note: ~~Form PI 1197, Compliance Report — Pupil Nondiscrimination, Copies of the form for the annual compliance report required under s. PI 9.07 (2) may be obtained from Department of Public Instruction, Division for Handicapped Children and Pupil Services, P.O. Box 7841, Madison, WI 53707 at no charge from the Wisconsin department of public instruction's webpage at <https://dpi.wi.gov/sped/pupil-nondiscrimination/pi9-07>.~~

SECTION 20. PI 9.08 (1) (a) (intro.), 1., 2., 4., 5., and (b) are amended to read:

PI 9.08 (1) (a) Decide appeals of ~~board decisions~~ school district determinations made under s. 118.13 (2) (a), Stats., and this chapter as follows:

1. The complainant may appeal a ~~negative final~~ written determination of the ~~board~~ school district to the state superintendent within 30 days of the ~~board's decision~~ date of the school district's written determination.

2. The complainant may appeal directly to the state superintendent if the ~~board~~boardschool district has not complied with the provisions of s. PI 9.04.

4. If the state superintendent finds that the ~~board~~boardschool district violated s. 118.13, Stats., or this chapter, the state superintendent shall issue an order to comply which includes a requirement that the ~~board~~boardschool district submit a corrective action plan, including a schedule, within 30 days of the ~~board's~~boardschool district's receipt of the order.

5. The state superintendent shall refer a complaint to the ~~board~~boardschool district for resolution if it has not been filed with the ~~board~~boardschool district or if the complaint is currently under consideration by the ~~board~~boardschool district under the complaint procedure required by s. PI 9.04.

(b) Include in the department's biennial report under s. 15.04 (1) (d), Stats., information on the status of school district compliance with s. 118.13, Stats., and school district progress toward providing ~~reasonable equality of~~equitable educational opportunity and nondiscrimination for all pupils in Wisconsin.

SECTION 21. PI 9.08 (1) (c) is created to read:

PI 9.08 (1) (c). Make available on the department's website the annual compliance reports submitted under s. PI 9.07 (2).

SECTION 22. PI 9.08 (2) (b) and (c) are amended to read:

9.08 (2) (b) Review the policies established by the board under ~~ss.~~s. PI 9.03 and the procedures established by the school district under s. PI 9.04.

(c) Review school district programs, activities and services to determine whether ~~boardschool districts~~ are complying with this chapter and with s. 118.13, Stats. ~~The department may review school districts on a schedule which corresponds with the audit of compliance with school district standards under s. 121.02 (2), Stats. The scheduling of reviews does not prohibit the state superintendent from conducting an inquiry into compliance with this chapter upon receipt of a complaint.~~

SECTION 23. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on July 1, 2022.

Dated this _____ day of _____, 2021

Carolyn Stanford Taylor
State Superintendent