

PI 1

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said department, do hereby certify that the annexed rules relating to complaint resolution and appeals were duly approved and adopted by this department on the first day of the month following its publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this department and the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 126 Langdon Street in the city of Madison, this 19th day of June, A.D., 1979.

Barbara Thompson
Barbara Thompson
State Superintendent
State Department of Public Instruction

STATE OF WISCONSIN
RECEIVED AND FILED

JUN 19 1979

VEL PHILLIPS
SECRETARY OF STATE

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JUN 19 1979
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REVISOR OF STATUTES
BUREAU

ORDER OF THE
DEPARTMENT OF PUBLIC INSTRUCTION
ADOPTING RULES

STATE OF WISCONSIN
RECEIVED AND FILED

JUN 19 1979

VEL PHILLIPS
SECRETARY OF STATE

Pursuant to the authority vested in the State Superintendent of Public Instruction by Sections 227.014(2)(b) and 227.02(1)(a), Wis. Stats., the State of Wisconsin, Department of Public Instruction, hereby adopts rules as follows:

Chapter PI 1, Wisconsin Administrative Code, is repealed and recreated to read:

Chapter PI 1 COMPLAINT RESOLUTION AND APPEALS

1.01 Applicability. Subject to the requirements of sec. PI 1.08, the following provisions apply to complaints, petitions and appeals filed with the state superintendent pursuant to secs. 115.96(5)(b), 118.13, 118.15(3)(a)3, 118.20, 120.13(1)(c), 121.54(9)(am) and (b), Wis. Stats., and P.L. 95-561 secs. 168 and 507, regarding actions or decisions of local educational agencies.

1.02 Definitions. In this chapter: (1) Aggrieved Party. "Aggrieved party" means a petitioner, complainant, or appellant bringing a matter before the state superintendent under this chapter.

(2) Local educational agency. "Local educational agency" includes school boards, school districts, and such other offices and agencies as whose actions or decisions may be brought before the state superintendent on complaint, appeal, or petition for resolution under this chapter.

(3) Probable cause. "Probable cause" means facts or circumstances sufficient to warrant a reasonably prudent person in believing that the matter asserted is probably true.

(4) State Superintendent. "State superintendent" includes the deputy state superintendent acting in accordance with sec. 15.04(2), Stats., or any

officer or employe of the department to whom a lawful function has been delegated by the state superintendent pursuant to sec. 15.02(4), Stats.

(5) Statute. "Statute" includes the Wisconsin statutes, acts of the United States Congress or federal administrative regulations promulgated in furtherance of an act of congress.

1.03 Filing. All complaints, petitions and appeals shall be filed in writing specifying with particularity the grounds upon which the action is brought, the attendant facts, and the relief sought. Complaints, petitions and appeals shall be signed by the aggrieved party or individual acting as such party's representative in which case the individual acting as representative shall file a notice of representation along with the complaint, petition or appeal. If the aggrieved party is a minor, the complaint, petition or appeal shall be signed by the aggrieved party's parent or guardian. Failure of the aggrieved party to comply with such statutory time limits as to filing as are applicable shall deprive the state superintendent of jurisdiction over the matter.

1.04 Investigations. (1) In any matter brought to the state superintendent under this chapter, the state superintendent shall direct an investigation into the circumstances surrounding the matter. At the discretion of the state superintendent such investigation may take the form of an on site review, an evidentiary hearing, or such other form as the state superintendent deems appropriate provided all parties have been afforded reasonable opportunity to present evidence and dispute the evidence of adverse parties.

(2) No final decision or order disposing of a complaint, petition or appeal nor any finding of probable cause of discrimination prohibited by secs. 118.13 or 118.20, shall be issued by the state superintendent until the investigation is completed, except as provided by secs. PI 1.06 and PI 1.07.

(3) Where a hearing on the matter has been provided to the aggrieved party by the local education agency, at the discretion of the state superintendent, the investigation may be confined to a review of the record of the local education agency hearing or an examiner may be directed to conduct a hearing on behalf of the state superintendent. The hearing may be either de novo as to the merits or limited to such issues as the state superintendent determines require further clarification beyond that reflected by the record of the local education agency hearing.

1.05 Hearings. (1) When required. Prior to the issuance of a final decision or order as to the merits of a matter brought before the state superintendent under this chapter, the state superintendent shall conduct an evidentiary hearing when:

(a) In the state superintendent's judgment, justice demands the provision of a hearing and a material question of fact exists.

(b) In matters before the state superintendent under secs. 118.13 and 118.20, Stats., conciliation has failed or has been waived following a finding of probable cause.

(c) A hearing is expressly required by statute.

(2) Notice. Except in case of emergency, the state superintendent or designated examiner shall provide the parties with at least 10 days written notice of hearing stating the time, date and place of the hearing, the nature of the case and a general statement of the issues to be heard. The parties may by mutual consent waive the right to notice. Continuances and postponements may be granted only in case of exceptional circumstances entirely beyond the control of the party requesting a continuance or postponement.

(3) Hearing examiner. The state superintendent may preside over the hearing or may designate a hearing examiner for that purpose. The state superintendent may, by order issued prior to the taking of testimony, direct that

the examiner's decision be the final decision as to the merits of the matter. Subject to the provisions of this chapter, the hearing examiner shall have the powers specified in sec. 227.09(1), Stats.

(4) Evidence and Witnesses. Parties appearing at the hearing shall be afforded reasonable opportunity to call witnesses, present evidence, and to confront and cross examine adverse witnesses. Statutory and common law rules of evidence shall not be binding as to issues of admissability. The state superintendent or designated examiner may admit all testimony having reasonable probative value but shall exclude irrelevant, immaterial or unduly repetitious testimony. No material finding of fact shall be made unless supported by competent evidence in the record.

(5) Record. All testimony at the hearing shall be given under oath and taken down by a stenographer or a recording machine but need not be transcribed unless a party requests a transcript prior to the expiration of the party's right to further review, pursuant to statute, and pays a fee to cover the cost of its preparation.

(6) Decision. All decisions following a hearing shall be in writing stating separate findings of fact and conclusions of law. Decisions shall be served on all parties by mailing a copy to each party's last known address along with a notice of such right to further review as is provided by statute.

1.06 Withdrawal and Settlement. (1) At any time prior to the issuance of a final decision, an aggrieved party may request in writing that the party's appeal or complaint be withdrawn. Upon receiving such a request, the state superintendent shall promptly issue an order dismissing the matter without prejudice.

(2) Parties to proceedings under this chapter may settle disputed matters by compromise and conciliation, except as prohibited by law. Upon receiving

written notice that a settlement has been achieved, the state superintendent may dismiss the matter upon such terms as the parties consent to in writing.

1.07 Diligent Prosecution; Dismissals. (1) Parties shall prosecute matters before the state superintendent pursuant to this chapter with due diligence. The state superintendent or designated examiner shall dismiss any matter for failure to prosecute, unless such failure was due entirely to circumstances beyond the control of the aggrieved party, where:

(a) The aggrieved party fails to respond within 20 days to correspondence from or on behalf of the state superintendent concerning the matter, provided that the correspondence was sent by certified mail to that party's last known address, or

(b) The aggrieved party fails to appear at the hearing, provided due notice of the hearing was mailed to the party's last known address.

(2) Prior to the commencement of proceedings for further review pursuant to statute, an order of dismissal issued under par. (1) shall be set aside where:

(a) That party files a written request for reconsideration with supporting information showing probable cause that the failure was due entirely to circumstances beyond that party's control, and

(b) An investigation under sec. PI 1.04(1) establishes that the failure was for such reason.

(3) If a party other than the aggrieved party fails to appear at the hearing, the state superintendent or designated examiner shall proceed with the hearing, provided that due notice of the hearing was mailed to that party's last known address, and may issue the decision without further hearing. Such a decision may be set aside by the procedure and on the grounds specified in sub. pars. (2)(a) and (b).

1.08 Requirements as to specific matters. The following provisions shall supercede conflicting provisions in this chapter as to the stated specific matters.

(1) In matters brought to the state superintendent pursuant to P.L. 95-561 §§ 168 and 507, the state superintendent shall complete such investigation as is necessary and issue a decision within 60 days after receiving the aggrieved party's complaint or appeal, unless exceptional circumstances exist. Decisions in such matters shall be final unless a party files a written appeal with the U.S. Commissioner of Education within 30 days of receipt of the decision.

(2) In appeals brought to the state superintendent pursuant to sec. 115.96 (2)(b), the state superintendent shall review the record of the local educational agency hearing and issue a decision within 10 days of the filing of the notice of appeal or, if the record is not filed until after the filing of the notice of appeal, within 10 days of the filing of the record, unless exceptional circumstances exist.

(3) In complaints of discrimination brought before the state superintendent under sec. 118.13 or 118.20, Stats., the state superintendent may maintain the identity of the complainant in confidence prior to the issuance of a finding of probable cause where, in the state superintendent's judgment, disclosure of the complainant's identity would be likely to subject the complainant to retaliatory action or where disclosure would otherwise jeopardize the investigation. Where a finding of probable cause is issued, the state superintendent shall forthwith endeavor to eliminate the discrimination by conference, conciliation, or persuasion. If the practice complained of cannot be so eliminated, or if conciliation is waived, the state superintendent shall conduct an evidentiary hearing as to the merits of the complaint as provided by sec. PI 1.05. The hearing shall be held in the county where the discrimination is alleged to have occurred.

1.09 Temporary orders. The state superintendent may issue such protective order or grant such temporary relief as is necessary to preserve the rights of

any party to a matter subject to this chapter prior to the issuance of a final decision or order.

Dated this 19th day of June, 1979.

Barbara Thompson
Barbara Thompson
State Superintendent