

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING RULES**

The state superintendent of public instruction hereby proposes to create ch. PI 28, relating to providing access to the 4th, 8th, and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 118.30 (3) (b) and 227.11 (2) (a), Stats.

Statute interpreted: s. 118.30 (3), Stats.

Since 1992, when the knowledge and concepts examinations were first instituted in Wisconsin, the state superintendent has been required to make available, upon request, within 90 days of the date of administration, any of the required pupil assessments under s. 118.30, Stats. This requirement also applied to the high school graduation test when it was added in 1997. The department has provided guidance on proper test use and review in a document titled, "DPI Guidelines for Appropriate Testing Procedures."

2001 Wisconsin Act 16 created s. 118.30 (3) (b), Stats., requiring the state superintendent to promulgate rules establishing procedures to allow a person to view these tests. The proposed rules codify the requirements in the guidelines. Specifically, the rules:

- Do not allow a person to review a test that is being developed or validated.
 - Require the test viewer to submit a written request and a signed confidentiality agreement to the state superintendent within 90 days after the date of administration of the test. In addition if a person wants to view a test at a charter school under s. 118.40 (2r), Stats., [(2r) charter school] or school, require the test viewer to submit a written request and signed confidentiality agreement to the charter school or school board of the school.
 - Require the school board, (2r) charter school or the department to file a confirmation of destruction with the test publisher before allowing a test to be viewed.
 - Require the school board, (2r) charter school or the department to ensure that the individual making the request signs a confidentiality agreement.
 - Require the school board, (2r) charter school or the department to ensure the test viewer is accompanied by a staff member who is aware of the confidentiality requirements associated with the test.
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SECTION 1. Chapter PI 28 is created to read:

Chapter PI 28

TEST ACCESS

PI 28.01 Authority and purpose. (1) Under s. 118.30 (3), Stats., the state superintendent is required to promulgate rules to allow a person to view the 4th, 8th and 10th grade Wisconsin knowledge and concepts examinations and the high school graduation examination. This chapter does not apply to an examination being developed or validated. To the extent possible, the rules shall protect the security and confidentiality of the examinations.

(2) This chapter establishes requirements for school boards, charter schools and the department providing the tests under sub. (1) and procedures for persons requesting to view the tests under sub. (1).

PI 28.02 Definitions. In this chapter:

(1) "Date of administration of the test" means the date a pupil completes taking all of the parts of a test or the date the department releases the statewide test results to the public or news media.

(2) "Charter school" means a charter school established under s. 118.40 (2r), Stats.

(3) "Department" means the Wisconsin department of public instruction.

(4) "School board" has the meaning defined in s. 115.001 (7), Stats.

(5) "State superintendent" means the Wisconsin state superintendent of public instruction.

(6) "Test" means the 4th, 8th and 10th grade Wisconsin knowledge and concepts examinations and the high school graduation examination administered under s. 118.30, Stats.

PI 28.03 Test access. (1) TEST VIEWER REQUIREMENTS. (a) Except as specified under par. (b), a person may view a test under this chapter if he or she submits a written request and a signed confidentiality agreement to the state superintendent within 90 days after the date of administration of the test. If a person wants to view a test at a charter school or school, he or she shall also submit a written request and signed confidentiality agreement to the charter school or school board of the school.

(b) A person may not view a test while it is being developed or validated.

(2) SCHOOL BOARD, CHARTER SCHOOL AND DEPARTMENT REQUIREMENTS. (a) A school board or charter school may, but is not required to, provide for viewing a test. A school board or charter school that receives a request under sub. (1) but does not provide for viewing a test, shall notify the department. A school board, charter school or department that provides for the viewing of the test under this chapter shall allow a person to view a test if all of the following apply:

1. The school board, charter school or department has received the written request and a copy of the signed confidentiality agreement under sub. (1) (a). The agreement shall include the following provisions:

a. The test viewer may not discuss, disseminate, describe or otherwise reveal the contents of the test to any third party with the intent to violate the copyright or compromise the validity of the test.

b. The test viewer may not make copies of the test or any test items, take notes, or otherwise reproduce the test or test items.

c. The test viewer may not publish, or cause to be published, the test or any of the test items.

2. The school board, charter school or department shall file, if it has not already filed, a confirmation of destruction/security agreement with the test publisher.

3. The school board, charter school or department shall ensure the test viewer is accompanied at all times by a staff member who is aware of the confidentiality requirements associated with the test. In addition, a qualified staff member who is aware of the confidentiality requirements associated with the test and can explain the proper use of the test, the purposes of the Wisconsin student assessment system, and the meaning of test results shall be available at all times that the viewer is present but need not physically accompany the viewer at all times.

(b) The school board, charter school or department that receives a request under sub. (1) (a) shall acknowledge and provide for viewing the test within 90 days of receipt of the request.

NOTE: The Confirmation of Destruction is available on the department's web site at <http://www.dpi.state.wi.us/dpi/oea/pdf/dacgui02.pdf> (see Appendix A). The Confidentiality Agreement is available on the department's web site at http://www.dpi.state.wi.us/dpi/oea/kc_conf.html. Both forms may be obtained at no charge from the Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

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, 2002

Elizabeth Burmaster
State Superintendent