pi043_EmR1023.pdf **Public Instruction – Creates Ch. PI 43 – EmR1023**

Publication Date: **June 28, 2010**
Effect Dates: **June 28, 2010 through November 24, 2010**

ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING EMERGENCY RULES

The state superintendent of public instruction hereby creates Chapter PI 43, relating to education form.

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 they are considered in need of improvement for a certain period of time or are 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 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. 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 will publish a hearing notice in the *Administrative Register* which will include this information.

SECTION 1. Chapter PI 43 is created to read:

CHAPTER PI 43
EDUCATION REFORM

PI 43.01 Applicability and purpose. (1) Section 118.42, Stats., states all of the following:

(a) If the state superintendent determines that a school district has been in need of improvement for four consecutive years, the school board must implement the provisions under s. 118.42 (1), Stats.

(b) If the state superintendent determines that a particular public school was among the lowest performing 5 percent of public schools in the state in the previous school year and is located in the school district that has been in need of improvement for four consecutive years, the school board shall implement the provisions under s. 118.42 (2), Stats., in that school.

(c) If the state superintendent determines that a school district has been in need of improvement for four consecutive years, the state superintendent may direct the school board to implement the provisions under s. 118.42 (3), (a) Stats.

(d) If the state superintendent determines that a public school is located in the school district that has been in need of improvement for four consecutive years, and if the school has been in need of improvement for five consecutive school years, or was among the lowest performing 5 percent of public schools in the state in the previous school year, the state superintendent may, after consulting with the school board, the school district superintendent, and the collective bargaining units, direct the school board to implement the provisions under s. 118.42 (3) (b), Stats.

(2) This chapter establishes 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.

PI 43.02 Definitions. In this chapter:

(1) "AYP" means adequate yearly progress described in Wisconsin's state plan required under 20 USC 6311 and approved by the U.S. Department of Education.

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

(2) "School year" means the time commencing with July 1 and ending with the next succeeding June 30.

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

NOTE: Wisconsin's state plan required under 20 USC 6311 is available at: http://dpi.wi.gov/esea/pdf/wiaw.pdf.

PI 43.03 Determination of in need of improvement and lowest performing. (1) SCHOOL DISTRICT DETERMINATION. A school district shall be considered in need of improvement if the school district does not meet adequate yearly progress in the objective criteria described in Wisconsin's state plan required under 20 USC 6311 and approved by the U.S. Department of Education.

(2) PUBLIC SCHOOL DETERMINATION. (a) A public school shall be considered in need of improvement if the school does not meet adequate yearly progress in the objective criteria described in Wisconsin's state plan required under 20 USC 6311 and approved by the U.S. Department of Education.

(b) A public school shall be considered among the lowest performing 5 percent of public schools in the state in the previous school year if it meets the definition of persistently lowest-achieving schools provided in Wisconsin's school improvement fund application approved by the U.S. Department of Education and funded subject to meeting school improvement requirements under 20 USC 6303(g).

SECTION 2. Initial applicability. Section PI 43.03 first applies to school districts and public schools which were identified by the department under the state plan required under 20 USC 6311 as in need of improvement on or after the 2003-04 school year or lowest performing on or after the 2009-10 school year.

FINDING OF EMERGENCY

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

2009 Wisconsin Act 215 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. The Act became effective May 14, 2010 and review by the various interest groups was completed June 18, 2010. Rules must be in place as soon as possible to establish identification criteria prior to the upcoming school year.

The rules contained in this order shall take effect upon publication as an emergency rule pursuant to the authority granted by s. 227.24, Stats.

Dated this _____ day of _____, 2010

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Tony Evers, PhD
State Superintendent