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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 02-032

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. Section 118.30, Stats., requires the administration of 4th, 8th, and 10th grade knowledge and concepts examinations (KCE) and high school graduation examinations to pupils in public schools and charter schools. This statute requires the State Superintendent of Public Instruction (State Superintendent) to adopt or approve 4th, 8th, and 10th grade KCEs and to develop a graduation examination. However, a school board and the operator of a charter school under s. 118.40 (2r), Stats. (“(2r) charter school”), may develop or adopt its own 4th or 8th grade KCE or graduation examination and notify the Department of Public Instruction (DPI) that it has done so.

Section 118.30 (3) (a), Stats., provides that the *State Superintendent* must allow a person to view an examination required to be administered under s. 118.30, Stats. (that is, any KCE or graduation examination), if the person submits a timely written request to the *State Superintendent*. In contrast, s. PI 28.02 (1) (a) indicates that a person may view the test if he or she submits a written request to the State Superintendent *and* the school board. There does not appear to be statutory authority for the additional requirement to make a request to the school board. (Moreover, s. PI 28.02 (2) (a) refers to the school board *or* DPI receiving the written request. This internal inconsistency should be remedied.)

If it were appropriate to include a role for school boards, the rule should explain the role of operators of (2r) charter schools. For example, s. PI 28.02 (1) indicates that a person may

view a test if a request is submitted to the State Superintendent and the school board. What if a (2r) charter school were involved?

Is the point of including references in s. PI 28.02 (2) to duties of DPI *or* the school board to make viewing a test more convenient for the requester--for example, so that a person may request to view a test locally instead of traveling to DPI offices in Madison? If so, this should be clearly stated. Moreover, the rule should be clarified so that the respective roles of a school board and local staff (and (2r) charter schools) and DPI and its staff are understood if a person is permitted to have a choice of viewing locations. For example, the requirement in s. PI 28.02 (2) (d) that the school board or DPI ensure that the test viewer is accompanied by a qualified staff member at all times could be redrafted to impose this duty on DPI if the viewing occurs at DPI in Madison and on the school board or operator of a (2r) charter school if the viewing occurs locally.

While this appears to be the approach taken in the rule, it should be noted that s. 118.30 (3) (a), Stats., requires the State Superintendent to allow a person to view an examination if the person submits a timely request to the State Superintendent. Therefore, it is not clear that the State Superintendent has statutory authority to impose these duties (such as providing a qualified staff member to accompany the viewer) on a school board or the operator of a (2r) charter school.

Or is the point of including references in s. PI 28.02 (2) to duties of DPI or a school board to differentiate between requests to view a test adopted or approved by the State Superintendent versus a test developed or adopted by a school board or the operators of a (2r) charter school? If so, this should be clarified.

b. Section PI 28.02 (2) provides that a school board or DPI must allow a person to view a test after certain requirements are met. One of the requirements is that DPI or the school board has filed a confirmation of destruction/security agreement with the test publisher. This implies that DPI or a school board could refuse to allow a test to be viewed by the simple expedient of failing to file confirmation of the destruction/security agreement. However, s. 118.30 (3) (a), Stats., requires that the State Superintendent allow a person to review a test if a timely written request is made. If it is necessary to include a provision about filing the destruction/security agreement, the rule should be revised to require that the appropriate entity immediately file the confirmation (if filing has not already occurred) so that the person may be permitted to view a test.

## **2. Form, Style and Placement in Administrative Code**

a. There are two provisions numbered s. PI 28.01 (Authority and purpose; and Definitions). One of them should be renumbered.

b. In s. PI 28.01 (1) (first entry), “s. 118.30 (3),” should be changed to “s. 118.30 (3), Stats.,”. [See s. 1.07 (2), Manual.]

c. Section PI 28.01 (1) (first entry) indicates that the “rules” do not apply to an examination that is being developed or validated. It should indicate that “this chapter” does not apply to an examination that is being developed or validated. [See s. 1.07 (1) (a), Manual.] However, this provision could be deleted inasmuch as it is repetitious of the provision in s. PI 28.02 (1) (b).

d. A period should be inserted at the end of the title in s. PI 28.02 (1).

In addition, s. PI 28.02 (1) is titled “TEST VIEWER REQUIREMENTS.” However, a significant requirement is that the requester sign the confidentiality agreement in s. PI 28.02 (2) (c). It would be preferable to include this viewer requirement in s. PI 28.02 (1) and include a reference to this provision in s. PI 28.02 (2). For example, s. PI 28.02 (2) (a) could be redrafted to additionally require that DPI (or the school board or operator of a (2r) charter school) has received a copy of the signed confidentiality agreement required in s. PI 28.02 (1).

e. The note following s. PI 28.02 appropriately indicates that the agreements may be obtained from DPI. If the forms are also available on the Internet (as appears to be the case), the note also should indicate the web site. [See s. 1.09 (2), Manual.]

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Section PI 28.01 (2) (first entry) states that ch. PI 28 establishes requirements for “school boards” providing the tests. (As noted above, it is not clear that DPI has authority to impose these requirements on school boards; also, (2r) charter schools are not included.) At a minimum, it is unclear why s. PI 28.01 (2) (first entry) does not indicate that ch. PI 28 imposes requirements on DPI.

Moreover, it is not clear what “providing” the tests means. Does it mean: (1) tests that the school board (or (2r) charter school) administers if the tests have been adopted or approved by DPI; (2) tests that the school board (or (2r) charter school) developed on its own; or (3) both?

b. In ss. PI 28.01 (2) (first entry) and 28.02 (1) (a) and (2) (intro.), changing the references to allowing a person to “view” a test, rather than “review” a test, would make these provisions consistent with the statutes and with s. PI 28.01 (1) (first entry).

c. Sections PI 28.01 (1) (first entry) and 28.02 (1) (a) and (2) (intro.) refer to a “person” who requests to view a test. However, ss. PI 28.01 (2) (first entry) and 28.02 (2) (c) refer to “individuals” who request to view the tests. “Person” and “individual” are sometimes interpreted as having different meanings. Although that likely would not occur with respect to ch. PI 28, it would be preferable to change “individual” to “person” to be consistent with the remainder of ch. PI 28 and s. 118.30 (3) (a), Stats.

d. Section PI 28.02 (2) (intro.) indicates that a school board or DPI must allow a person to view a test “after it meets all of the following requirements:”. The meaning of “it” is unclear. Consideration could be given to changing this phrase to “if all of the following apply:”.

e. In s. PI 28.02 (2) (c) (intro.), “, in part,” should be deleted because it is superfluous.

f. Section PI 28.02 (2) (b) and the note following s. PI 28.02 refer to a “destruction/security agreement.” The document provided is titled “Confirmation of Destruction.” It would be preferable to select one term and use it consistently in order to avoid confusion as to whether this is the same form.

g. The rule does not address any deadline for DPI (or a school board or operator of a (2r) charter school) to respond to a request. Was this omission intentional?

h. The rule does not address whether DPI (or a school board or operator of a (2r) charter school) may charge the viewer a fee for the cost of staff time to accompany the viewer. Was this omission intentional?