

CR 87-84

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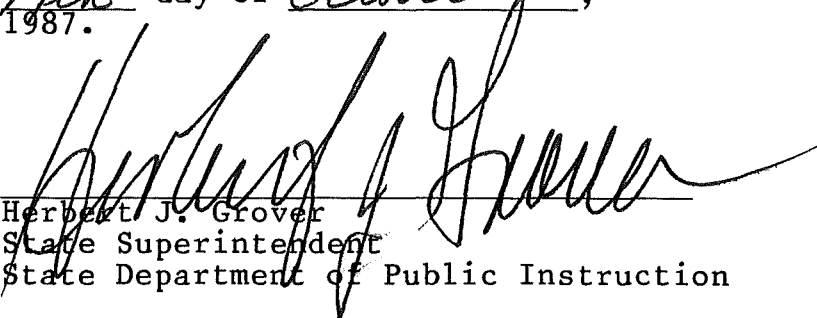
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CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said department, do hereby certify that the annexed rule relating to complaint resolution and appeals was duly approved and adopted by this Department on the first day of the month following 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 hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 19th day of October, 1987.


Herbert J. Grover
State Superintendent
State Department of Public Instruction

ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
REPEALING AND RECREATING RULES

- 1 The state superintendent of public instruction hereby repeals and recreates
2 Chapter PI 1, relating to complaint resolution and appeals.

Analysis by the Department of Public Instruction

Statutory authority: ss. 115.28 (5) and 227.11 (2), Stats.
Statutes interpreted: ss. 115.28 (5) and subch. III of ch. 227, Stats.

Section 115.28(5), Stats., requires the state superintendent to examine and determine all appeals which by law are made to him or her and prescribe rules of practice in respect to appeals. There are several federal and state statutes which require the state superintendent to hear appeals. Some of these, such as the Education of the Handicapped Act, 20 USC ss. 1411 et. seq., have specific procedures set forth in statute or regulation, while others, such as s. 118.13, Stats., relating to pupil nondiscrimination, require the state superintendent to hear appeals, but do not specify procedures. Chapter PI 1 is intended to prescribe the process for hearing appeals which do not have specific procedures already prescribed by federal or state statute, or by administrative rule or federal regulation. In addition, Chapter PI 1 specifies procedures for receiving and handling complaints.

This proposed order repeals and recreates Chapter PI 1 to include information on how a complaint or appeal will be handled by the department and which options the state superintendent will utilize in considering it. The proposed rules promote coordination with other appropriate units of government and agencies regarding complaints, and encourage the voluntary resolution of problems at the level closest to their source. The state superintendent may provide technical assistance, conduct an investigation or a hearing or both, issue a decision based on review of the record of a local education agency hearing, make a finding of probable cause, arrange for voluntary mediation, and may refer a complaint back to a local education agency if the local education agency has not had an opportunity to attempt to resolve the complaint. The state superintendent may also refer a complaint to another agency, if appropriate.

The rules specify procedures for conducting mediation, investigations and hearings; specify how hearings will be conducted; and provide that a matter will be dismissed for failure to prosecute.

1 SECTION 1. Chapter PI 1 is repealed and recreated to read:

2 Chapter PI 1

3 COMPLAINT RESOLUTION AND APPEALS

4 PI 1.01 PURPOSE AND APPLICABILITY. (1) PURPOSE. The purpose of this
5 chapter is to provide the state superintendent with a system for dealing with complaints
6 and appeals received by the department; to promote coordination with other appropriate
7 units of government and agencies regarding complaints and appeals; and to promote the
8 voluntary resolution of problems at the level closest to their source.

9 (2) APPLICABILITY. This chapter applies to all complaints received by the
10 department, and to all appeals authorized by statute which are filed with the department,
11 except that this chapter does not apply to appeals or complaints subject to other, more
12 specific, statutes or rules, including, but not limited to, the following:

13 (a) Appeals relating to the identification, evaluation, educational placement, or
14 the provision of a free appropriate public education of a child who has an exceptional
15 educational need, which shall be resolved under 20 USC s. 1415 of the Education of the
16 Handicapped Act and ch. 115, subch. V, Stats.

17 (b) Appeals of a departmental decision that a teacher education program is not in
18 compliance with ch. PI 3 or 4, which shall be resolved through the procedures under
19 s. PI 4.03.

20 (c) Complaints that the state or a subgrantee is violating subch. II of the
21 Education of the Handicapped Act, 20 USC ss. 1411-1418 and 1420, which shall be
22 resolved through the procedures under the Education Department General Administrative
23 Regulations at 34 CFR Parts 76 and 77, commonly referred to as EDGAR.

24 (d) Complaints, hearings and appeals related to license revocation and
25 reinstatement under s. 118.19 (5), Stats., and s. PI 3.045, which shall be resolved through
26 the procedures specified in s. PI 3.045.

1 (e) School district boundary appeal board hearings, which shall be conducted under
2 s. 117.03, Stats.

3 **PI 1.02 DEFINITIONS.** In this chapter:

4 (1) "Appeal" means an application to the state superintendent, as provided by
5 statute or rule, to review a decision by a local education agency.

6 (2) "Complaint" means an allegation of wrongdoing filed with the state
7 superintendent against a local education agency, its officers or employees stating essential
8 facts and demanding relief.

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

10 (4) "Local education agency" means school boards, school districts, cooperative
11 educational service agencies, county handicapped childrens' education boards, public
12 libraries, public library systems, and private schools or agencies if the private schools' or
13 agencies' actions or decisions concern programs receiving state or federal funds which are
14 administered by the department.

15 (5) "Party" means the complainant or appellant and the local education agency
16 named in the complaint or appeal.

17 (6) "Rule" means any rule in the Wisconsin Administrative Code or regulation in
18 the Code of Federal Regulations.

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

20 (8) "Statute" means any Wisconsin or United States statute.

21 **PI 1.03 RECEIPT AND FILING OF COMPLAINTS AND APPEALS.**

22 (1) All complaints and appeals shall be filed in writing specifying the grounds upon
23 which the action is brought, the facts, and any relief sought. Complaints and appeals shall
24 be signed by the complainant or appellant or the representative of the complainant or
25 appellant. If the complainant or appellant is a minor, the complaint or appeal shall also

1 be signed by his or her parent or guardian, unless the statute or rule under which the
2 complaint or appeal is filed prohibits this requirement.

3 (2) If the complaint or appeal is filed by the representative under sub. (1), the
4 representative shall file a notice of representation which shall include written consent of
5 the complainant or appellant and the parent or guardian if required in sub. (1).

6 (3) Failure of the complainant or appellant to file a complaint or appeal within
7 the time period specified in the statute or rule under which the complaint or appeal is
8 filed deprives the state superintendent of jurisdiction in the matter.

9 **PI 1.04 PROCEDURES.** Upon receipt of a written complaint or appeal filed under
10 s. PI 1.03, the state superintendent shall acknowledge receipt of the complaint or appeal
11 in writing and shall use any or all of the following procedures which he or she determines
12 to be appropriate:

13 (1) Provide technical assistance and information and attempt to resolve the
14 matter informally.

15 (2) Refer the complainant to another state agency for action or resolution.

16 (3) Conduct an investigation under s. PI 1.05.

17 (4) Conduct a hearing under s. PI 1.07.

18 (5) Issue a decision based on a review of the record of a hearing held before the
19 local education agency.

20 (6) Issue protective orders or grant temporary relief as deemed necessary by the
21 state superintendent to preserve the rights of any party prior to the issuance of a final
22 decision or order.

23 (7) Arrange for mediation under s. PI 1.06.

24 (8) Direct the complainant to exhaust any administrative remedies available
25 before the local education agency.

1 (9) Determine that the state superintendent does not have jurisdiction in the
2 matter.

3 **PI 1.05 INVESTIGATIONS.** (1) If the state superintendent determines under
4 s. PI 1.04(3) to conduct an investigation, the investigation may include an on-site review
5 or any other activity which the state superintendent deems appropriate.

6 (2) The state superintendent may determine whether reasonable grounds exist for
7 believing that the matter asserted by the complainant or appellant is probably true, and
8 may issue a finding to that effect.

9 (3) During the investigation, the state superintendent may keep the identity of the
10 complainant in confidence if, in the state superintendents' judgment, disclosure of the
11 complainant's identity would be likely to subject the complainant to retaliatory action or
12 would otherwise jeopardize the investigation.

13 **PI 1.06 MEDIATION.** (1) Prior to holding a hearing regarding a complaint or an
14 appeal, the state superintendent may attempt to resolve the matter through mediation if
15 the parties agree. The state superintendent shall appoint the mediator. If the parties
16 agree to a negotiated settlement, the mediator shall notify the state superintendent of
17 the terms of the settlement and the state superintendent shall find that the matter is
18 resolved. If the parties are unable to agree to a negotiated settlement, the state superin-
19 tendent shall determine which other procedures under s. PI 1.04 to follow.

20 (2) The mediation sessions shall be conducted at the discretion of the mediator,
21 except that if a negotiated settlement has not been reached within 90 days after the
22 mediator received the complaint or appeal, the mediator shall either request an extension
23 of time or inform the state superintendent that the mediation effort is unsuccessful.

24 **PI 1.07 HEARINGS.** (1) **WHEN HELD.** The state superintendent shall conduct a
25 hearing when required by the statute or rule under which the complaint or appeal is filed

1 or when required under s. 227.42, Stats. The state superintendent may conduct a hearing
2 in other matters if he or she deems it is appropriate.

3 (2) NOTICE. Except in case of emergency, as determined by the state
4 superintendent, at least 10 days prior to the hearing the state superintendent shall mail to
5 the parties, by certified mail, written notice of hearing stating the time, date and place
6 of the hearing, the nature of the case, a general statement of the issues to be heard and
7 the procedures to be followed. The parties may by mutual consent waive the right to
8 notice. The state superintendent may postpone the hearing in the case of exceptional
9 circumstances.

10 (3) HEARING EXAMINER. The state superintendent shall preside over the
11 hearing or appoint a hearing examiner. The state superintendent may not appoint any
12 person as hearing examiner who has been involved, either directly or indirectly, with the
13 action or decision which is the subject of the complaint or appeal.

14 (4) CONDUCT OF HEARING. (a) If the state superintendent determines that the
15 matter is a contested case under s. 227.01 (3), Stats., the hearing shall be conducted under
16 procedures specified in subch. III of ch. 227, Stats., and this chapter.

17 (b) The hearing examiner shall have the powers specified in s. 227.46, Stats.,
18 regardless of whether the matter is being treated as a contested case under ch. 227, Stats.

19 (c) If the local education agency fails to appear at the hearing, the hearing
20 examiner may proceed with the hearing.

21 (5) HEARING RECORD AND TRANSCRIPTS. The department shall ensure that a
22 stenographic or electronic record of oral proceedings is made when required under
23 ch. 227, Stats. The department shall transcribe the hearing record at the request of
24 either party if the transcript is needed for an appeal of the decision of the state
25 superintendent or hearing examiner. The department shall charge a reasonable fee for

1 transcribing the hearing record unless the state superintendent determines that the party
2 is unable to pay.

3 PI 1.08 DECISION. Following the hearing of a contested case under ch. 227, Stats.,
4 and when otherwise required by statute or rule, the decision of the state superintendent or
5 hearing examiner shall be in writing stating separate findings of fact and conclusions of
6 law. The decision may order remedies which the state superintendent or hearing examiner
7 determines appropriate, and may or may not include the relief sought by the complainant
8 or appellant. Decisions shall be served on all parties by mailing a copy to each party's last
9 known address by certified mail along with a notice of any right to further review as
10 may be provided by the statute or rule under which the complaint is filed or ss. 227.52 to
11 227.57, Stats.

12 PI 1.09 WITHDRAWAL, FAILURE TO PROSECUTE. (1) WITHDRAWAL. At any
13 time prior to the issuance of a final decision, the complainant or appellant may withdraw
14 the complaint or appeal in writing. Upon receiving such a request, the state
15 superintendent shall issue an order dismissing the matter without prejudice.

16 (2) FAILURE TO PROSECUTE. The state superintendent may dismiss any
17 complaint or appeal if:

18 (a) The complainant or appellant fails to respond within 20 days to
19 correspondence, sent by certified mail to his or her last known address, from or on behalf
20 of the state superintendent concerning the complaint or appeal, or

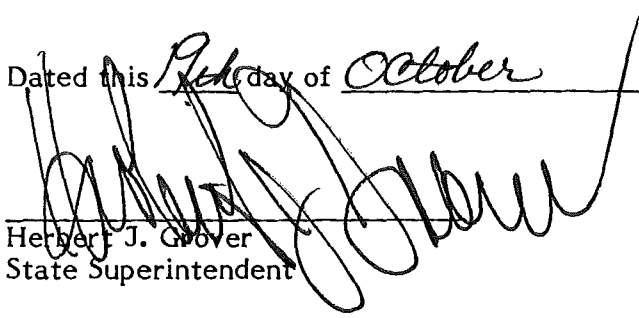
21 (b) The complainant or appellant fails to appear at the hearing.

22 PI 1.10 RIGHTS TO FURTHER REVIEW. (1) Upon the request of either party, the
23 state superintendent may reopen a complaint or appeal which was resolved informally or
24 through mediation. If the state superintendent reopens the complaint or appeal, he or she
25 shall determine which procedures under s. PI 1.04 to follow.

1 (2) Final decisions issued by the state superintendent shall specify any rights the
2 parties may have to judicial review under ch. 227, Stats., or other statute or rule.

These rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated this 24th day of October, 1987



Herbert J. Grover
State Superintendent

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