

## Chapter PI 9

## PUPIL NONDISCRIMINATION

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**PI 9.01 Discrimination prohibited.** This chapter establishes procedures for compliance with s. 118.13, Stats., which provides that no person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability. This chapter does not intend to prohibit the provision of special programs or services based on objective standards of individual need or performance to meet the needs of pupils, including gifted and talented, special education, school age parents, bilingual bicultural, at risk and other special programs; or programs designed to overcome the effects of past discrimination.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

**PI 9.02 Definitions.** In this chapter:

(1) "Bias" means an inclination for or against a person or group of persons based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, that inhibits impartial or objective judgment affecting pupils.

(2) "Board" means the school board in charge of the public schools of a district.

(3) "Curricular program or activity" means a particular course or courses of study within the scope of the curriculum.

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

(5) "Discrimination" means any action, policy or practice, including bias, stereotyping and pupil harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or group of persons opportunities, privileges, roles or rewards based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, or which perpetuates the effects of past discrimination.

(6) "Extracurricular program or activity" means an activity not falling within the scope of the curriculum and includes all organized pupils' activities which are approved or sponsored by the school board whether on or off school property.

(7) "National origin" includes pupils whose dominant language is other than English.

(8) "Pregnancy" includes any pregnancy related condition.

(9) "Pupil harassment" means behavior towards pupils based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability which substantially interferes with a pupil's school performance or creates an intimidating, hostile or offensive school environment.

(10) "Pupil services" means a program of pupil support services and activities including counseling, health and nursing, psychological and social work services.

(11) "Recreational program or activity" means any leisure time activity for school age children approved or sponsored by the school board and includes city recreational programs which are administered by a school board.

(12) "Sexual orientation" has the meaning defined in s. 111.32 (13m), Stats.

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

(14) "Stereotyping" means attributing behaviors, abilities, interests, values and roles to a person or group of persons on the basis, in whole or in part, of their sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

**PI 9.03 Policies.** (1) Each board shall develop policies prohibiting discrimination against pupils. The policies shall include the following areas:

(a) Admission to any school, class, program or activity. This does not prohibit placing a pupil in a school, class, program or activity based on objective standards of individual performance or need.

(b) Standards and rules of behavior, including pupil harassment.

(c) Disciplinary actions, including suspensions and expulsions.

(d) Acceptance and administration of gifts, bequests, scholarships and other aids, benefits, or services to pupils from private agencies, organizations or persons.

(e) An instructional and library media materials selection policy consistent with s. 121.02 (1) (h), Stats., and s. PI 8.01 (2) (h).

(f) Methods, practices and materials used for testing, evaluating and counseling pupils. This does not prohibit the use of special testing or counseling materials or techniques to meet the individual needs of pupils.

(g) Facilities. This does not prohibit separate locker rooms, showers and toilets for males and females, but the separate facilities must be comparable.

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(h) Opportunity for participation in athletic programs or activities. This does not prohibit separate programs in interscholastic athletics for males and females, but the programs shall be comparable in type, scope and support from the school district.

(i) School sponsored food service programs under 42 USC ss. 1751 et. seq.

(2) Existing board policies which meet the requirements of this chapter, including those adopted by the board in compliance with federal statutes such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973, may be incorporated into the policies required under this chapter. These policies shall be included in those presented for public hearing and commentary under sub. (3).

(3) The policies shall be adopted by the board following a public hearing or an opportunity for public commentary at a board meeting.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

**PI 9.04 Complaint procedure. Each board shall:**

(1) Designate an employe of the school district to receive complaints regarding discrimination under s. 118.13, Stats., and this chapter.

(2) Establish a procedure for receiving and resolving complaints from residents of the school district or aggrieved persons under s. 118.13, Stats., and this chapter, including a provision for written acknowledgement within 45 days of receipt of a written complaint and a determination of the complaint within 90 days of receipt of the written complaint unless the parties agree to an extension of time; except that:

(a) Appeals under 20 USC s. 1415 and ch. 115, Stats., relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of a child with an exceptional educational need shall be resolved through the procedures authorized by ch. 115, subch. V, Stats.

(b) Complaints under 20 USC s. 1231e-3 and 34 CFR ss. 76.780-76.782, commonly referred to as EDGAR complaints, that the state or a subgrantee is violating a federal statute or regulation that applies to a program shall be referred directly to the state superintendent.

(3) Notify a complainant of the right to appeal a negative determination by the school board to the state superintendent and of the procedures for making the appeal.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.

Note: Included with the department's order promulgating ch. PI 9 was the following applicability statement:

The policies required under ss. PI 9.03 and 9.04 shall be developed before August 1, 1987. Complaints of discrimination received by the board prior to August 1, 1987, may be handled by any existing complaint procedures provided that the time requirements of s. PI 9.04 are met. In the absence of any board complaint procedure or if the time requirements are not met, the complainant may appeal directly to the state superintendent. Negative decisions of the board may be appealed to the state superintendent under s. PI 9.08 (1) (a).

**PI 9.05 Public notice. Each board shall:**

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(1) Annually provide public notice of board policies on pupil nondiscrimination including the name and address of the designated employe under s. PI 9.04 (1) and the complaint procedure under s. PI 9.04 (2). The notice shall be a class 1 legal notice under ch. 985, Stats.

(2) Include a pupil nondiscrimination statement on pupil and staff handbooks, course selection handbooks and other published materials distributed to the public describing school activities and opportunities.

(3) Include the complaint procedure in pupil and staff handbooks.

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**PI 9.06 Evaluation.** (1) In order to provide the information necessary for the state superintendent to report on the compliance with s. 118.13, Stats., as required under s. 118.13 (3) (a) 3, Stats., each board shall evaluate the status of nondiscrimination and equality of educational opportunity in the school district at least once every 5 years on a schedule established by the state superintendent. The evaluation shall include the following:

- (a) School board policies and administrative procedures.
- (b) Enrollment trends in classes and programs.
- (c) Methods, practices, curriculum and materials used in instruction, counseling, and pupil assessment and testing.
- (d) Trends and patterns of disciplinary actions, including suspensions, expulsions, and handling of pupil harassment.
- (e) Participation trends and patterns and school district support of athletic, extracurricular and recreational activities.
- (f) Trends and patterns in awarding scholarships and other forms of recognition and achievement provided or administered by the school district.
- (g) School district efforts to achieve equality of educational opportunity and nondiscrimination.

(2) The board shall provide an opportunity for participation in the evaluation by pupils, teachers, administrators, parents and residents of the school district.

(3) The board shall prepare a written report of the evaluation which shall be available for examination by residents of the school district.

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**PI 9.07 Reporting.** Each board shall submit the following to the department:

- (1) Copies of policies and procedures under s. 118.13 (2) (a), Stats., and ss. PI 9.03 and 9.04, and notices under s. PI 9.05, upon request of the state superintendent.

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(2) An annual compliance report, including the name of the designated employe under s. PI 9.04 (1); and the number of complaints received during the year, a description of each complaint and its status.

Note: Included with the department's order promulgating ch. PI 9 was the following applicability statement: by August 1, 1987, boards shall submit the first annual report to the department as required under sub. (2) and provide public notice as required under s. PI 9.05.

(3) A copy of the written report of the evaluation conducted under s. PI 9.06.

Note: Form PI 1197, *Compliance Report — Pupil Nondiscrimination*, may be obtained from Department of Public Instruction, Division for Handicapped Children and Pupil Services, P.O. Box 7841, Madison, WI 53707.

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

PI 9.08 State superintendent. (1) The state superintendent shall:

(a) Decide appeals of board decisions made under s. 118.13 (2) (a), Stats., and this chapter as follows:

1. The complainant may appeal a negative determination of the board to the state superintendent within 30 days of the board's decision.

2. The complainant may appeal directly to the state superintendent if the board has not complied with the provisions of s. PI 9.04 (2).

3. The state superintendent shall utilize the procedures under ch. PI 1 to resolve appeals under this subsection.

4. If the state superintendent finds that the board violated s. 118.13, Stats., or this chapter, the state superintendent shall issue an order to comply which includes a requirement that the board submit a corrective action plan, including a schedule, within 30 days of the board's receipt of the order.

5. The state superintendent shall refer a complaint to the board for resolution if it has not been filed with the board or if the complaint is currently under consideration by the board under the complaint procedure required by s. PI 9.04.

(b) Include in the department's biennial report under s. 15.04 (1) (d), Stats., information on the status of school district compliance with s. 118.13, Stats., and school district progress toward providing reasonable equality of educational opportunity and nondiscrimination for all pupils in Wisconsin.

(2) The state superintendent may:

(a) Provide technical assistance to school districts.

(b) Review the policies established by the board under ss. PI 9.03 and 9.04.

(c) Review school district programs, activities and services to determine whether boards are complying with this chapter and with s. 118.13, Stats. The department may review school districts on a schedule which corresponds with the audit of compliance with school district standards under s. 121.02 (2), Stats. The scheduling of reviews does not prohibit

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the state superintendent from conducting an inquiry into compliance with this chapter upon receipt of a complaint.

History: Cr. Register, October, 1986, No. 370. eff. 11-1-86.