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Details: Emergency Rule extension requests by Department of Public Instruction.
(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

December 7, 2009

The Honorable Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North, State Capitol
Madison, WI 53702

The Honorable Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, State Capitol
Madison, WI 53702

Dear Representative Zepnick and Senator Holperin:

The Department of Public Instruction is submitting this letter as a petition to extend for 60 days the effective period of the emergency rule relating to [REDACTED]

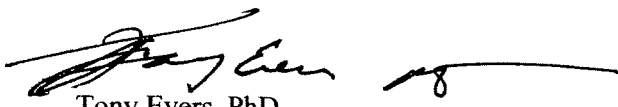
2009 Wisconsin Act 28, the 2009-11 biennial budget bill, made several modifications to the Milwaukee parental choice program under s. 119.23, Stats. One of those modifications requires the department to develop a rule to establish a nonrefundable fee to cover the cost of employing one full-time DPI auditor for the program. Each private school intending to participate in the program in the 2010-11 school year must pay the fee no later than February 1, 2010.

The rules 1) require the department to establish the nonrefundable fee by December 1, 2009, for the 2010-11 school year and annually thereafter for subsequent school years; 2) set the nonrefundable fee by establishing a fee formula; 3) require that the private schools pay the nonrefundable fee to the department by cashier's check by February 1, 2010 for the 2010-11 school year and annually thereafter for subsequent school years; and 4) allows the state superintendent to bar a private school from participating in the choice program if the private school fails to pay the nonrefundable fee.

Emergency rules were promulgated effective September 1, 2009, as required under the Act. The emergency rules will expire January 28, 2010. The proposed permanent rules were submitted to the Legislative Council Rules Clearinghouse on September 4, 2009. The department held a public hearing on October 26, 2009. Notice of rules in final draft form will be submitted to the presiding officers of each house of the legislature in December. We hope to have permanent rules in place by April 1, 2010.

We are requesting this extension to ensure that procedures relating to the fee and program participation remain in place during the legislative review period of the proposed permanent rules. If you have any questions relating to this request, please contact Robert Soldner, Director, School Management Services, at (608) 266-7475 or robert.soldner@dpi.wi.gov. Thank you for your consideration of this request.

Sincerely,



Tony Evers, PhD
State Superintendent

AE:lls



December 7, 2009

The Honorable Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North
State Capitol
Madison, WI 53702

The Honorable Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol
Madison, WI 53702

Dear Representative Zepnick and Senator Holperin:

The Department of Public Instruction is submitting this letter as a petition to extend for 60 days the effective period of the emergency rule relating to [REDACTED]

2009 Wisconsin Act 28, the 2009-11 biennial budget bill, created a revenue limit exemption that allows a school district to increase its revenue limit by the amount spent by the school district in that school year on energy efficiency measures, and renewable energy products, that result in the avoidance of, or reduction in, energy costs.

The proposed rule establishes eligibility standards and procedures for school districts to follow when implementing revenue limit exemptions for energy efficiency measures.

Emergency rules were promulgated effective September 4, 2009. The emergency rules will expire January 31, 2010. The proposed permanent rules were submitted to the Legislative Council Rules Clearinghouse on September 3, 2009. The department held a public hearing on November 9, 2009. Notice of rules in final draft form were submitted to the presiding officers of each house of the legislature on November 20, 2009. We hope to have permanent rules in place by March 1, 2010.

We are requesting this extension to ensure that procedures relating to the revenue limit exemption remain in place during the legislative review period of the proposed permanent rules. If you have any questions relating to this request, please contact David Carlson, Director, School Financial Services, at (608) 266-6968 or david.carlson@dpi.state.wi.us. Thank you for your consideration of this request.

Sincerely,



Tony Evers, PhD
State Superintendent

AE:lls



September 15, 2010

The Honorable Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North
State Capitol
Madison, WI 53702

The Honorable Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol
Madison, WI 53702

Dear Representative Zepnick and Senator Holperin:

The Department of Public Instruction is submitting this letter as a petition to extend for 60 days the effective period of the emergency rule relating to the use of race-based nicknames, logos, mascots, and team names by school boards.

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent. If a complaint objects to the use of a nickname or team name by a school board, the state superintendent must immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based.

If the state superintendent determines that the use of the nickname, logo, mascot or team name is unambiguously race-based, the school board has the burden of proving by clear and convincing evidence that the use of the race-based nickname, logo, mascot or team name does not promote discrimination, pupil harassment, or stereotyping as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based but that the use of the nickname or team name in connection with a logo or mascot is race-based, at the hearing the school board has the burden of providing by clear and convincing evidence that the use of the nickname or team name in connection with the logo or mascot does not promote discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based, the use of the nickname or team name by the school board is presumed to be not race-based and at the hearing the school district resident who filed the complaint has the burden of proving by clear and convincing evidence that the use of the nickname or team name promotes discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the school board receives approval from a specific, federally recognized American Indian tribe to use the nickname, logo, mascot or team name, the state superintendent may determine that no contested case

hearing is necessary or that a hearing date may be postponed for the purpose of obtaining additional information.

Under the Act, the state superintendent is required to promulgate rules to define whether the use of the nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping and other rules necessary to implement and administer this provision.

The rules specify that the use of any of the following nicknames or team names are unambiguously race-based and presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces clear and convincing evidence refuting this presumption.

- A nickname or team name is unambiguously race-based if it includes any of the following terms:
 1. the full or partial name of any specific, federally recognized American Indian tribe, 2. Indians, 3. Braves, or 4. Redmen.

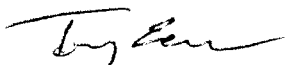
- A nickname or team name is unambiguously race-based if it includes any of the terms arrows, blackhawks, chiefs, chieftains, hatchets, raiders, red raiders, warriors, or warhawks and is used in connection with any of the following logos or mascots: 1. A depiction of an American Indian person or persons, 2. Feathers or feather headdress, 3. Arrows, bows, spears, tomahawks, stone hatchets, or other historical or traditional American Indian weapons or tools, or 4. Historical or traditional American Indian drums, pipes, beadwork, clothing or footwear.

The rules establish procedural timelines as to when and what information must be submitted to the state superintendent by a school board and when a contested case hearing may or may not be scheduled.

Emergency rules were promulgated effective June 1, 2010, and will expire October 28, 2010. The proposed permanent rules were submitted to the Legislative Council Rules Clearinghouse on June 16, 2010. The department held a public hearing on July 29, 2010, in Madison. Notice of rules in final draft form were submitted to the presiding officers of each house of the legislature on August 9, 2010. We hope to have permanent rules in place by January 1, 2011.

We are requesting this extension to ensure that procedures relating to the complaint process remain in place during the legislative review period of the proposed permanent rules. If you have any questions relating to this request, please contact Carolyn Stanford Taylor, Division Administrator, Division for Learning Support: Equity and Advocacy, at (608) 266-1649 or carolyn.stanfordtaylor@dpi.wi.gov. Thank you for your consideration of this request.

Sincerely,


Tony Evers, PhD
State Superintendent

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The state superintendent of public instruction hereby creates Chapter PI 45, relating to the use of race-based nicknames, logos, mascots, and team names by school boards.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.134, Stats.

Statutory authority: s. 118.34 (2) (a), (b) 1. and 2 and (4), Stats.

Explanation of agency authority:

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent.

Under s. 118.34 (4), the state superintendent is required to promulgate rules necessary to implement and administer this provision.

Specifically under s. 118.34 (2) (a) and (b) 1. and 2., Stats., rules must define whether the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping.

Related statute or rule: Chapter PI 9, pupil discrimination.

Plain language analysis:

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent. If a complaint objects to the use of a nickname or team name by a school board, the state superintendent must immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based.

If the state superintendent determines that the use of the nickname, logo, mascot or team name is unambiguously race-based, the school board has the burden of proving by clear and convincing evidence that the use of the race-based nickname, logo, mascot or team name does not promote discrimination, pupil harassment, or stereotyping as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based but that the use of the nickname or team name in connection with a logo or mascot is race-based, at the hearing the school board has the burden of providing by clear and convincing evidence that the use of the nickname or team name in connection with the logo or mascot does not promote discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based, the use of the nickname or team name by the school board is presumed to be not race-based and at the hearing the school district resident who filed the complaint has the burden of proving by clear and convincing evidence that the use of the nickname or team name promotes discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the school board receives approval from a specific, federally recognized American Indian tribe to use the nickname, logo, mascot or team name, the state superintendent may determine that no contested case hearing is necessary or that a hearing date may be postponed for the purpose of obtaining additional information.

Under the Act, the state superintendent is required to promulgate rules to define whether the use of the nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping and other rules necessary to implement and administer this provision.

The rules specify that the use of any of the following nicknames or team names are unambiguously race-based and presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces clear and convincing evidence refuting this presumption.

- A nickname or team name is unambiguously race-based if it includes any of the following terms: 1. the full or partial name of any specific, federally recognized American Indian tribe, 2. Indians, 3. Braves, or 4. Redmen.
- A nickname or team name is unambiguously race-based if it includes any of the terms arrows, blackhawks, chiefs, chieftains, hatchets, raiders, red raiders, warriors, or warhawks and is used in connection with any of the following logos or mascots: 1. A depiction of an American Indian person or persons, 2. Feathers or feather headdress, 3. Arrows, bows, spears, tomahawks, stone hatchets, or other historical or traditional American Indian weapons or tools, or 4. Historical or traditional American Indian drums, pipes, beadwork, clothing or footwear.

The rules establish procedural timelines as to when and what information must be submitted to the state superintendent by a school board and when a contested case hearing may or may not be scheduled.

Rules must be submitted to legislative council staff no later than November 1, 2010. The department intends to promulgate these rules as emergency rules.

Summary of, and comparison with, existing or proposed federal regulations: N/A.

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota do not have administrative rules relating to Indian nicknames, logos, mascots, and team names.

Summary of factual data and analytical methodologies:

Current law, s. 118.13, Stats., prohibits discrimination against pupils on a number of grounds, including race and ancestry. Complaints relating to race-based names, logos, mascots and team names have been filed under this statute in the past. Under s. 118.13, Stats., the burden of proof is on the complainant to prove by a preponderance of the evidence that use of a nickname, logo, mascot, or team name results in pupil discrimination. In addition, the complaint first must be filed with the school board and then appealed to the department. 2009 Wisconsin Act 250 provides that a school district resident may object to a school board's use of a race-based name, nickname, logo, mascot, or team name by filing a complaint directly with the state superintendent of public instruction. This Act creates a presumption that use of a race-based nickname, logo, mascot, or team name promotes discrimination and requires school boards to provide clear and convincing evidence to refute that presumption.

2009 Wisconsin Act 250 is supported by the 11 tribal governments in Wisconsin, the Great Lakes Inter-Tribal Council, the Wisconsin Indian Education Association, the Wisconsin Education Association Council, other Indian nations and organizations across the country, various national non-profit and faith-based organizations, and most recently the National Collegiate Athletic Association (NCAA).

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)

Carolyn Stanford Taylor, Division Administrator, Division for Learning Support: Equity and Advocacy, carolyn.stanfordtaylor@dpi.wi.gov, or (608) 266-1649.

Place where comments are to be submitted and deadline for submission:

The department will be publishing a hearing notice in the *Administrative Register* which will include this information.

SECTION 1. Chapter PI 45 is created to read:

CHAPTER PI 45

USE OF RACE-BASED NICKNAMES, LOGOS, MASCOTS, AND TEAM NAMES

BY SCHOOL BOARDS

PI 45.01 Purpose. (1) Section 118.134 (1), Stats., allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent.

(2) Under s. 118.134 (4), Stats., the state superintendent is required to promulgate rules necessary to implement and administer this provision.

(3) Under s. 118.134 (2) (a), (b) 1. and 2., Stats. rules must define whether the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping.

(4) This chapter identifies specific nicknames or team names that used alone or with a combination of logos or mascots are unambiguously race-based and presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces clear and convincing evidence refuting this presumption. The rules also establish procedural timelines as to when and what information must be submitted to the state superintendent by a school board and when a contested case hearing may or may not be scheduled.

PI 45.02 Definitions. In this chapter:

(1) "Approval by a specific, federally recognized American Indian tribe" means approval by the governing body of that tribe for the specific use of a nickname, logo, mascot, or team name which is a reference to, or depiction or portrayal of, or the name of the tribe and which is factually traced to and claimed exclusively by that tribe.

(2) "Bias" means an inclination for or against a person or group of persons based, in whole or in part, on race that inhibits impartial or objective judgment affecting pupils.

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

(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 race, or which perpetuates the effects of past discrimination based in whole or in part on race.

(6) "Logo" means any written, printed, graphic, photographic, badge, emblem, caricature, image, statue, artifact or other symbolic depiction representative of or in any way connected to the identity of a school, district or board.

(7) "Mascot" means a person, costume, insignia, dance, song, rhythmic beat, or any other object or thing representative of or in any way connected to the identity of a school, district or board.

(8) "Nickname" means any name, title, label, word, or any other designation of any kind representative of or in any way connected to the identity of a school, district or board, but does not include the official name of a school or school district.

(9) "Pupil harassment" means behavior towards pupils based, in whole or in part, on race, which substantially interferes with a pupil's school performance or creates an intimidating, hostile or offensive school environment.

(10) "School district" has the meaning defined under s. 115.01 (3), Stats.

(11) "Specific, federally recognized American Indian tribe" means a tribal entity recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian tribe.

(12) "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 race.

(13) "Use" includes adoption of nicknames, logos, mascots, or team names by a school district board as representative of or in any way connected to the identity of a school, district or board or the display of nicknames, logos, mascots, or team names at any school or school sponsored event.

PI 45.03 Complaint procedures. (1) A complaint filed under s. 118.134 (1), Stats., shall be submitted to the state superintendent in writing and include all of the following information:

(a) The complainant's contact information.

(b) A statement that the complainant is a resident of the school district to which the complaint is directed.

(2) Upon receipt of a complaint, the state superintendent shall notify the school district of the complaint. A complaint received under this section shall include a review by the department of all nicknames, logos, mascots, or team names in use in the school district.

(3) (a) Within 10 business days of receiving the notice under sub. (2), the school board shall submit to the state superintendent a list of all nicknames or team names in use in the school district and a photograph, copy or other accurate description or depiction of any logo or mascot in use in the school district. Upon receipt of this information, the state superintendent shall notify the school board of the state superintendent's determination regarding whether the use of the nickname or team name alone or in connection with a logo or mascot is unambiguously race-based.

(b) If applicable, within 10 business days of receiving the notice under sub. (2), the school board shall submit evidence that it has received approval from a specific, federally recognized American Indian tribe to use the nickname, logo, mascot or team name in a specific manner used by the school board and in the manner to which the school district resident objects in the complaint filed under sub. (1) and that the tribe has not rescinded that approval.

(4) (a) Except as specified under par. (b), the state superintendent shall schedule a contested case hearing within 45 days after the complaint is filed.

(b) Under s. 118.134 (1m) (a), Stats., the state superintendent may determine that no contested case hearing is necessary or that a hearing date may be postponed for the purpose of obtaining additional information under sub. (3) (b) from the school board.

PI 45.04 Discrimination, harassment or stereotyping. (1) The use of any of the unambiguously race-based nicknames or team names listed under this section is presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces clear and convincing evidence refuting this presumption.

(2) A nickname or team name is unambiguously race-based if it includes any of the following terms:

(a) The full or partial name of any specific, federally recognized American Indian tribe.

(b) Indians.

(c) Braves.

(d) Redmen.

(3) (a) A nickname or team name is unambiguously race-based if it includes any of the terms arrows, blackhawks, chiefs, chieftains, hatchets, raiders, red raiders, warriors, or warhawks and is used in connection with any of the following logos or mascots:

1. A depiction of an American Indian person or persons.

2. Feathers or feather headdress.

3. Arrows, bows, spears, tomahawks, stone hatchets, or other historical or traditional American Indian weapons or tools.

4. Historical or traditional American Indian drums, pipes, beadwork, clothing or footwear.

FINDING OF EMERGENCY

Pursuant to SECTION 3 of the nonstatutory provisions of 2009 Wisconsin Act 250, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

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

Dated this 1st day of June, 2010

Tony Evers, PhD
State Superintendent



September 29, 2010

The Honorable Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North
State Capitol
Madison, WI 53702

The Honorable Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol
Madison, WI 53702

Dear Representative Zepnick and Senator Holperin:

The Department of Public Instruction is submitting this letter as a petition to extend for 60 days the effective period of the emergency rule relating to education reform.

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 it is considered in need of improvement for a certain period of time or is 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 five 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 department consulted with the individuals and organizations identified in the statute in developing this rule.

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.

Emergency rules were promulgated effective June 28, 2010, and will expire November 24, 2010. The proposed permanent rules were submitted to the Legislative Council Rules Clearinghouse on June 21, 2010. The department held a public hearing on July 27, 2010, in Madison. Notice of rules in final draft form were submitted to the presiding officers of each house of the legislature on August 9, 2010. We hope to have permanent rules in place by January 1, 2011.

We are requesting this extension to ensure that procedures relating to the education reform process remain in place during the legislative review period of the proposed permanent rules. If you have any questions relating to this request, please contact Scott Jones, Special Assistant, Office of the State Superintendent, at (608) 267-9269 or burton.jones@dpi.wi.gov. Thank you for your consideration of this request.

Sincerely,

Tony Evers, PhD
State Superintendent

TE:lls

**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

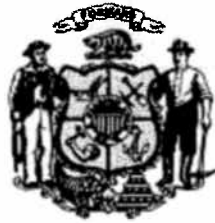
Tony Evers, PhD
State Superintendent



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REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

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Wednesday, October 20, 2010

Anthony Evers, State Superintendent
Department of Public Instruction
P.O. Box 7841
Madison, WI 53707

Dear State Superintendent Evers:

The Joint Committee for the Review of Administrative Rules met in Executive Session on October 20, 2010 and adopted the following two motions:

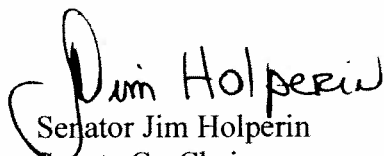
Moved by Representative Hebl, seconded by Representative Hubler that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Public Instruction, relating to the use of race-based nicknames, logos, mascots, and team names by school boards (EmR1018), for a period of 60 days through December 27, 2010.


Motion Passed 6-4.

Moved by Representative Hebl, seconded by Representative Hubler that That the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Public Instruction, relating to education reform (EmR1023), for a period of 60 days through January 23, 2011.

Motion Passed 10-0.

Sincerely,


Senator Jim Holperin
Senate Co-Chair


Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council