

## Clearinghouse Rule 17-052

# PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 043-16, was published in Register No. 725B on May 31, 2016, and approved by State Superintendent Tony Evers, on June 14, 2016. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, 368 Wis.2d 444.

The State Superintendent of Public Instruction hereby proposes an order to amend ss. PI 1.01 (1), (2) (intro.) and (b), (c), (d), (e), and (f), PI 1.02 (1), (4), and (5), PI 1.03 (1) and (2), PI 1.04 (intro.), PI 1.07 (4) (a) and (b), PI 1.08, and PI 1.09 (2) (a); to repeal and recreate ss. PI 1.03 (3) and PI 1.04 (9); and to create ss. PI 1.01 (2) (g), (h), (i), (j), and (k), PI 1.02 (3m), PI 1.07 (6), and PI 1.11, relating to revising complaint and appeals procedures.

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## ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

**Statute interpreted:** s. 115.28 (5), Stats.

**Statutory authority:** ss. 73.035, 115.28 (5), 227.10 (1), and 227.44 (8), Stats.

### Explanation of agency authority:

Pursuant to s. 115.28 (5), Stats., the state superintendent shall "examine and determine all appeals which by law are made to the state superintendent and prescribe rules of practice in respect thereto, not inconsistent with law." In addition, under s. 227.10 (1), Stats., "Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule." Finally, the Department is permitted under 227.44 (8), Stats., to establish "rules relating to the transcription of the record into a written transcript." As such, a rule is required to examine and determine all appeals made to the state superintendent or the Department.

**Related statute or rule:** N/A

### Plain language analysis:

The purpose of this rule would be to update the chapter, which has not been updated since 1987 with the exception of s. PI 1.01, to conform with statute. This rule covers all of the types of appeals and complaints that the Department is required by law to hear, unless another administrative rule or a statute provides more specific procedures (e.g.; ch. PI 11, children with disabilities). In addition, the rule addresses the procedures related to contested case hearings under s. 227.42, Stats., specify the requirements for a proper appeal, and specify who is responsible for paying for a transcript in a contested case hearing under s. 227.44 (8), Stats.

### Summary of, and comparison with, existing or proposed federal regulations:

The federal government has established procedures to govern administrative appeals, such as those provided in Child and Adult Food Care Program appeals under 7 C.F.R. § 226.6 (k).

### Comparison with rules in adjacent states:

Many other states establish procedures to govern administrative appeals (e.g., Minnesota Board of Teaching appeals under Minn. R. 8710.0900; Illinois Charter School Appeal Process under 105 ILCS 5/27A; Michigan Educator Effectiveness appeals under s. 380.1249(2)(1); Iowa appellate review by the state board of education, the director of education, or the department of education under 281—Iowa Administrative Code 6).

**Summary of factual data and analytical methodologies:**

Chapter PI 1 specifies the procedures for the Department to hear appeals and complaints related to decisions by school districts. Since the rule was last updated, the Department has been charged with hearing additional types of complaints and appeals, not all of which relate to decisions by school districts. The revised rule would be modeled after the existing ch. PI 1, the revised ch. PI 35 (CHR 16-004, which became effective on August 1, 2016), and approaches taken by other state agencies (e.g., ATCP Ch. 1). Other states and the federal government establish procedures to govern administrative appeals (e.g., Child and Adult Food Care Program appeals under 7 C.F.R. § 226.6 (k); Minnesota Board of Teaching appeals under Minn. R. 8710.0900). There is no policy alternative because the Department is required by law to hear appeals.

**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)**

Carl Bryan  
Budget and Policy Analyst  
Wisconsin Department of Public Instruction  
[Carl.Bryan@dpi.wi.gov](mailto:Carl.Bryan@dpi.wi.gov)  
(608) 267-9127

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at [adminrules@dpi.wi.gov](mailto:adminrules@dpi.wi.gov). The Department will publish a hearing notice in the *Administrative Register* that will provide information on the deadline for the submission of comments.

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**SECTION 1. PI 1.01 (1) and (2) (intro.), (b), (c), (d), (e), and (f) are amended to read:**

**PI 1.01 (1) PURPOSE.** Under s. 115.28 (5), Stats., the state superintendent is charged with examining and determining all appeals that are made by law to the state superintendent. The purpose of this chapter is to provide the state superintendent with a system for dealing with complaints and appeals received by the department; to promote coordination with other appropriate units of government and agencies regarding complaints and appeals; and to promote the voluntary resolution of problems at the level closest to their source.

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

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

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

(d) Complaints, hearings, and appeals related to license revocation and reinstatement under s. 118.19 (5), Stats., and s. PI 34.35-, which shall be resolved through the procedures specified ~~in~~ under s. PI 34.35.

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

(f) Appeals relating to the granting of high school credit and number of high school credits to be awarded to a pupil participating in the ~~postsecondary enrollment~~ youth options program under ch. PI 40, which shall be resolved through the procedures under s. PI 40.08.

**SECTION 2. PI 1.01 (2) (g), (h), (i), (j), and (k) are created to read:**

**PI 1.01 (2) (g)** Appeals relating to orders issued by the state superintendent under s. 115.7915 (8), Stats., which shall be resolved through the procedures specified under s. PI 49.15.

**(h)** Appeals of a school board's decision to deny an open enrollment application under s. 118.51 (9), Stats., which shall be resolved through the procedures specified under s. PI 36.14.

**(i)** Appeals relating to orders issued by the state superintendent under s. 118.60 (10), Stats., which shall be resolved through the procedures specified under s. PI 48.21.

**(j)** Appeals relating to orders issued by the state superintendent under s. 119.23 (10), Stats., which shall be resolved through the procedures specified under s. PI 35.21.

**(k)** Complaints related to race-based nicknames, logos, mascots, and team names under s. 118.134, Stats., which shall be resolved through the procedures specified under s. PI 45.03.

**SECTION 3. PI 1.02 (1) is amended to read:**

**PI 1.02 (1)** "Appeal" means an application to the state superintendent, as provided by statute or rule, to review a decision by the department or a local education agency.

**SECTION 4. PI 1.02 (3m) is created to read:**

**PI 1.02 (3m)** "Institution" means a participant in the national school lunch program, special milk program for children, school breakfast program, or child and adult food care program.

**SECTION 5. PI 1.02 (4) and (5) are amended to read:**

**PI 1.02 (4)** "Local education agency" means school boards, school districts, cooperative educational service agencies, county ~~handicapped childrens'~~ children with disabilities education boards, public libraries, public library systems, and private schools or agencies if the private schools' or agencies' actions or decisions concern programs receiving state or federal funds which are administered by the department.

**(5)** "Party" means the complainant or appellant and the ~~local education agency~~ respondent named in the complaint or appeal.

**SECTION 6. PI 1.03 (1) and (2) are amended to read:**

**PI 1.03 (1)** All complaints and appeals shall be filed in writing specifying the grounds upon which the action is brought, the facts, and any relief sought. Complaints and appeals shall be signed by the complainant or appellant or the representative of the complainant or appellant. If the complainant or appellant is a minor, the complaint or appeal shall also be signed by ~~his or her~~ parent or guardian, unless the statute or rule under which the complaint or appeal is filed prohibits this requirement.

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

**SECTION 7. PI 1.03 (3) is repealed and recreated to read:**

**PI 1.03 (3)** The state superintendent shall dismiss a complaint or an appeal if any of the following occur:

**(a)** The complaint or appeal was not filed within the time period specified in the statute or rule under which the complaint or appeal was filed or, if no time period is specified, within 180 days of the action being contested.

**(b)** The complaint or appeal is not legally sufficient to state a claim upon which relief may be granted.

**(c)** The state superintendent does not have jurisdiction in the matter.

**(d)** The complainant or appellant does not include sufficient allegations of fact that, if accepted as true, would support the complaint or appeal.

**SECTION 8. PI 1.04 (intro.) is amended to read:**

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

**SECTION 9. PI 1.04 (9) is repealed and recreated to read:**

**PI 1.04 (9)** Provide the parties the opportunity to submit written documentation. Upon review of the documentation, the state superintendent shall issue a decision based on a review of the documentation.

**SECTION 10. PI 1.07 (4) (a) and (b) are amended to read:**

**PI 1.07 (4) (a)** If the state superintendent determines that the matter is a contested case under s. 227.01 (3), Stats., the hearing shall be conducted under procedures specified ~~under~~ subch. III of ch. 227, Stats., and this chapter.

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

**SECTION 11. PI 1.07 (6) is created to read:**

**PI 1.07 (6) NOTICES REMAIN IN EFFECT.** Except as otherwise specified in the applicable decision and order, a decision and order of the state superintendent or department that is being reviewed under this chapter shall remain in effect until a final decision and order is issued under s. 227.47, Stats.

**SECTION 12. PI 1.08 is amended to read:**

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

**SECTION 13. PI 1.09 (2) (a) is amended to read:**

**PI 1.09 (2) (a)** The complainant or appellant fails to respond within 20 days to correspondence, sent by ~~certified~~ U.S. mail or electronic mail to his or her last known address, from or on behalf of the state superintendent concerning the complaint or appeal, or

**SECTION 14. PI 1.11 is created to read:**

**PI 1.11 Food and nutrition appeals. (1) APPLICABILITY.** Notwithstanding ss. PI 1.03, 1.04, and 1.07, this section governs appeals filed under 7 CFR part 210, 215, 220, or 226.

**(2) WHO MAY REQUEST.** A person or institution adversely affected by an action of the department under 7 CFR part 210, 215, 220, or 226 may request a desk review or a contested case hearing on that action.

**(3) REQUEST FORM.** In order to be considered, a request under sub. (2) shall be filed with the office of legal services within 15 days of the date of the department's action on a form provided by the department.

**Note:** A request for a desk review or a contested case hearing may be filed with the office of legal services at the following address:

Office of Legal Services  
Wisconsin Department of Public Instruction  
125 S. Webster St.  
PO Box 7841  
Madison, WI 53707-7841

**(4) GRANTING OR DENYING REQUEST.** The department shall grant or deny a request for desk review or contested case hearing if all of the following apply:

**(a)** The department has jurisdiction over the matter.

**(b)** The request for a desk review or contested case hearing complies with the requirements under subs. (2) and (3).

**(c)** The requestor is entitled to a desk review or contested case hearing under s. 227.42, Stats., and 7 CFR part 210, 215, 220, or 226.

**(5) PROCEDURES.** If the department grants a desk review or contested case hearing under sub. (4), the desk review or contested case hearing shall follow procedures specified under 7 CFR part 210.18 (q) or 226.6 (k).

**SECTION 15. EFFECTIVE DATE:**

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017

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Tony Evers, PhD  
State Superintendent