

CR 86-91

CERTIFICATE

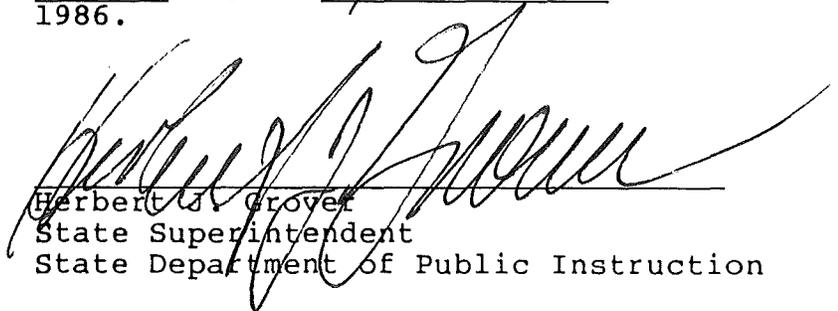
STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

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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 the prohibition of discrimination in public schools on the basis of sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability 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 16th day of September, 1986.


Herbert J. Grover
State Superintendent
State Department of Public Instruction

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ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING RULES

1 To create Chapter PI 9, relating to the prohibition of discrimination in public
2 schools on the basis of sex, race, national origin, ancestry, creed, pregnancy, marital
3 or parental status, sexual orientation or physical, mental, emotional or learning
4 disability.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

1985 Wisconsin Act 29 repealed and recreated s. 118.13 which prohibits discrimination in public schools on the basis of sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability. Section 118.13(2), Stats., requires school boards to develop policies and procedures to implement the statute including a complaint procedure. Section 118.13, Stats., requires the state superintendent to decide appeals of local school board decisions, requires the state superintendent to promulgate rules, and authorizes the state superintendent to review school district compliance and to provide technical assistance to school districts.

This chapter specifies the areas in which the school board must have policies and procedures to achieve nondiscrimination. The policies must address admissions procedures; discipline; instructional, counseling, and testing materials; facilities; and athletics. The board must notify the public of its policies and of the complaint procedure and an employee must be designated to receive complaints. School boards must submit an annual report to the state superintendent and must evaluate the status of nondiscrimination and equality of educational opportunity at least once every 5 years.

The rules specify that the state superintendent will use the procedures specified in ch. PI 1 to hear appeals under this section and that if the state superintendent finds the board in violation of s. 118.13, Stats., or ch. PI 9, that he or she will issue an order to comply and require that the board submit a corrective action plan within 30 days of receipt of the order. The state superintendent may review each school district for compliance on a five-year cycle corresponding with the audit for school district standards under s. 121.02(2), Stats.

5 Pursuant to the authority vested in the department of public instruction by
6 s. 118.13(3)(a)2., Stats., the state superintendent hereby creates rules interpreting
7 s. 118.13, Stats., as follows:

8 SECTION 1. Chapter PI 9 is created to read:

1 CHAPTER PI 9

2 PUPIL NONDISCRIMINATION

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

14 PI 9.02 DEFINITIONS. In this chapter:

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

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

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

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

23 (5) "Discrimination" means any action, policy or practice, including bias, stereo-
24 typing and pupil harassment, which is detrimental to a person or group of persons and
25 differentiates or distinguishes among persons, or which limits or denies a person or group

1 of persons opportunities, privileges, roles or rewards based, in whole or in part, on sex,
2 race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual
3 orientation or physical, mental, emotional or learning disability, or which perpetuates the
4 effects of past discrimination.

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

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

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

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

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

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

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

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

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

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

3 (a) Admission to any school, class, program or activity. This does not prohibit
4 placing a pupil in a school, class, program or activity based on objective standards of indi-
5 vidual performance or need.

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

7 (c) Disciplinary actions, including suspensions and expulsions.

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

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

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

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

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

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

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

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

3 PI 9.04 COMPLAINT PROCEDURE. Each board shall:

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

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

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

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

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

21 PI 9.05 PUBLIC NOTICE. Each board shall:

22 (1) Annually provide public notice of board policies on pupil nondiscrimination
23 including the name and address of the designated employee under s. 9.04(1) and the com-
24 plaint procedure under s. 9.04(2). The notice shall be a class 1 legal notice under
25 ch. 985, Stats.

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

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

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

11 (a) School board policies and administrative procedures.

12 (b) Enrollment trends in classes and programs.

13 (c) Methods, practices, curriculum and materials used in instruction, counseling,
14 and pupil assessment and testing.

15 (d) Trends and patterns of disciplinary actions, including suspensions, expulsions,
16 and handling of pupil harassment.

17 (e) Participation trends and patterns and school district support of athletic,
18 extracurricular and recreational activities.

19 (f) Trends and patterns in awarding scholarships and other forms of recognition
20 and achievement provided or administered by the school district.

21 (g) School district efforts to achieve equality of educational opportunity and
22 nondiscrimination.

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

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

1 PI 9.07 REPORTING. Each board shall submit the following to the department:

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

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

7 (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.

8 PI 9.08 STATE SUPERINTENDENT. (1) The state superintendent shall:

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

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

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

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

17 4. If the state superintendent finds that the board violated s. 118.13, Stats., or
18 this chapter, the state superintendent shall issue an order to comply which includes a
19 requirement that the board submit a corrective action plan, including a schedule, within
20 30 days of the board's receipt of the order.

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

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

8 (2) The state superintendent may:

9 (a) Provide technical assistance to school districts.

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

11 (c) Review school district programs, activities and services to determine whether
12 boards are complying with this chapter and with s. 118.13, Stats. The department may
13 review school districts on a schedule which corresponds with the audit of compliance with
14 school district standards under s. 121.02(2), Stats. The scheduling of reviews does not
15 prohibit the state superintendent from conducting an inquiry into compliance with this
16 chapter upon receipt of a complaint.

17 SECTION 2. INITIAL APPLICABILITY.

18 (1) By August 1, 1987, boards shall submit the first annual report to the
19 department as required under s. PI 9.07(2) and provide public notice as required under s. PI
20 9.05.

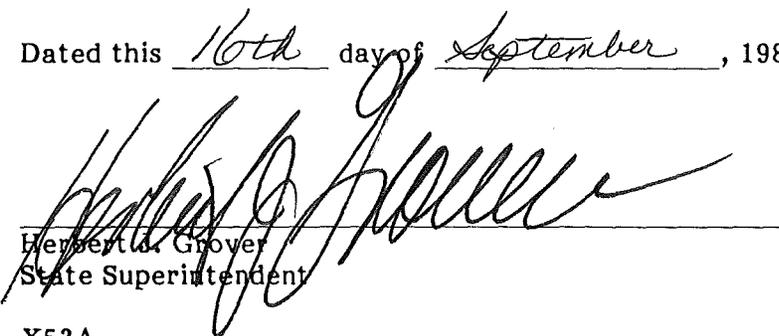
21 (2) The policies required under ss. PI 9.03 and 9.04 shall be developed before
22 August 1, 1987. Complaints of discrimination received by the board prior to August 1,
23 1987, may be handled by any existing complaint procedures provided that the time

1 requirements of s. PI 9.04 are met. In the absence of any board complaint procedure or if
2 the time requirements are not met, the complainant may appeal directly to the state
3 superintendent.

4 (3) Negative decisions of the board under sub. (2) may be appealed to the state
5 superintendent under s. PI 9.08(1)(a).

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided under s. 227.22(2)(intro.), Stats., as affected by 1985 Wisconsin Act 182.

Dated this 16th day of September, 1986.


Herbert A. Grover
State Superintendent

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