

CR 86-157

CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF PUBLIC INSTRUCTION) SS

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 license revocation and reinstatement 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.

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3:10 pm GJ
Revisor of Statutes
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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 3rd day of November, 1986.


Herbert J. Grover
State Superintendent
State Department of Public Instruction

1-1-87

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

1 To repeal PI 3.04(3) and to create PI 3.045, relating to license revocation and
2 reinstatement.

Analysis by the Department of Public Instruction

Section 118.19(5), Stats., authorizes the state superintendent to revoke a license on the grounds of immoral conduct or incompetency. Section PI 3.04(3) currently contains the rules relating to such license revocation.

However, these current rules do not fully specify how and why a license may be revoked. These proposed new rules contain definitions of immoral conduct and incompetency; specify standards for revoking a license, including a requirement that there must be a nexus between the licensee's conduct and the health, welfare, safety or education of pupils; and explain procedures for conducting an investigation and hearing. The rules require that, when an investigation is initiated, the licensee must be informed of the nature of the complaint, and that upon a finding of probable cause, the public or private agency employing the licensee in a licensed capacity will be informed of the finding of probable cause and the specific charges. The rules explain that a hearing conducted for the purpose of revoking a license is a class 2 proceeding under ch. 227, Stats., and specifies time periods for conducting the hearing and making decisions regarding revocation. Also, the rules provide that a person may seek reinstatement of the license. Finally, the rules specify that the department may revoke or deny licensure to a person whose license has been suspended or revoked by another state.

3 Pursuant to the authority vested in the Department of Public Instruction by
4 s. 227.11(2)(a), Stats., as affected by 1985 Wisconsin Act 182, the state superintendent
5 of public instruction hereby repeals and creates rules interpreting s. 118.19 (5), Stats.,
6 as follows:

7 SECTION 1. PI 3.04(3) is repealed.

8 SECTION 2. PI 3.045 is created to read:

9 PI 3.045 LICENSE REVOCATION AND REINSTATEMENT.

10 (1) DEFINITIONS. In this section:

11 (a) "Immoral conduct" means conduct or behavior which is contrary to commonly
12 accepted moral or ethical standards.

1 (b) "Incompetency" means a substantial, prolonged pattern of inadequate perform-
2 ance of duties or the lack of ability, legal qualifications or fitness to discharge required
3 duties, affecting the health, welfare, safety or education of pupils.

4 (c) "Reinstatement" means restoring the rights, privileges and authority previously
5 revoked.

6 (d) To "revoke" a license means to terminate a license and all rights, privileges
7 and authority previously conferred and associated with the license, including the right to
8 renew the license.

9 (2) STANDARDS FOR REVOCATION. Under s. 118.19(5), Stats., the state superin-
10 tendent may revoke any license issued by the department for incompetency or immoral
11 conduct on the part of the holder. In making a decision to revoke a license, the state
12 superintendent shall adhere to the following standards:

13 (a) A license may be revoked for immoral conduct if there is clear and convincing
14 evidence that the person engaged in the immoral conduct and there is a nexus between
15 the immoral conduct and the health, welfare, safety or education of any pupil.

16 (b) A license may be revoked for incompetency if there is clear and convincing
17 evidence of incompetency.

18 (3) COMPLAINT AND INVESTIGATION. (a) Complaint.

19 1. The state superintendent shall, at his or her own initiative or upon receipt of a
20 written complaint, make inquiries necessary to determine whether an investigation shall
21 be conducted which may lead to revocation of a license.

22 2. The state superintendent shall acknowledge, in writing, any written complaint
23 and notify the complainant that an investigation and subsequent revocation of a person's
24 license may result.

25 (b) Investigation. 1. If the state superintendent determines that an investigation
26 shall be conducted, the state superintendent shall appoint a person to serve as the investi-

1 gator and shall notify the licensee that an investigation is proceeding and of the nature of
2 the complaint or allegation. The licensee shall have an opportunity to respond to the
3 investigator regarding the complaint or allegation.

4 2. If, based upon the investigation, the state superintendent finds no probable
5 cause for license revocation, the state superintendent shall promptly notify the licensee
6 and the complainant that the investigation is concluded and that no charges will be issued.

7 3. If, based upon the investigation, the state superintendent finds probable cause
8 for license revocation, the state superintendent shall promptly notify the licensee of the
9 specific charges, of the licensee's right to request a hearing, and of the state superinten-
10 dent's intent to revoke the license. The state superintendent shall notify the complainant
11 and the school board or other public or private agency employing the licensee in a licensed
12 capacity of the finding of probable cause and of the specific charges.

13 4. The state superintendent shall notify the licensee that within 30 days following
14 receipt of the notice the licensee may request a hearing on the revocation. The notice
15 shall inform the licensee that if a hearing is not requested within the 30 day period, his or
16 her license shall be revoked.

17 5. As authorized under ss. 19.35 (1) and 19.85 (1) (b), Stats., during the course of
18 the investigation the state superintendent, the investigator and any department employe
19 involved in the investigation shall maintain as confidential all files, communications and
20 other information pertaining to the investigation.

21 (4) HEARING. (a) The state superintendent shall schedule a hearing not later
22 than 60 days after receipt of the licensee's request for a hearing and shall provide the
23 licensee with at least 20 days written notice of the hearing. The hearing shall be conducted
24 as a class 2 proceeding under ch. 227, subch. III, Stats.

25 (b) Both parties may be requested to provide the names and addresses of persons
26 whom they intend to call as witnesses at the hearing.

1 (c) The proposed decision under s. 227.46 (2), Stats., shall be filed with the state
2 superintendent and served on the licensee not later than 30 days following the close of the
3 hearing. The licensee may file a written objection to the proposed decision with the state
4 superintendent within 10 days following receipt by the licensee of the proposed decision.

5 (d) The state superintendent shall issue a final decision under s. 227.47, Stats.,
6 within 60 days of the close of the hearing.

7 (5) REQUEST AND HEARING FOR REINSTATEMENT. (a) Upon written request
8 from a person whose license has been revoked, the state superintendent shall conduct a
9 hearing to consider reinstatement of the license. The hearing shall be conducted as a
10 class 1 proceeding under ch. 227, subch. III, Stats.

11 (b) The requestor shall submit evidence that the cause of the revocation no longer
12 exists and that reinstating the license will not be detrimental to the health, welfare, safety
13 or education of pupils.

14 (c) The state superintendent shall hold the hearing and make a final decision regarding
15 reinstatement of the license within 120 days after receipt of the request.

16 (6) LICENSES REVOKED BY OTHER STATES. (a) The state superintendent may
17 revoke the license of a person whose license has been revoked by the department of public
18 instruction of another state, following the procedures under subs. (3) and (4).

19 (b) The state superintendent may deny licensure to a person whose license has
20 been revoked in another state. A person who is denied licensure under this paragraph may
21 request a hearing and the state superintendent shall follow the procedures for a reinstatement
22 hearing under sub. (5).

The proposed rules contained in this order 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., as affected by 1985 Wisconsin Act 182.

Dated this 3rd day of November, 1986


Herbert J. Grover
State Superintendent

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CORRESPONDENCE/MEMORANDUM

-----STATE OF WISCONSIN
Department of Public Instruction

TO: Gary Poulson, Assistant Revisor
Revisor of Statutes Bureau

FROM: Mary Jo Cleaver, Administrative Rules Coordinator
Bureau for Policy and Budget 

SUBJECT: CHR 86-89, creating ch. PI 20, Disposition of Funds
CHR 86-157, amending ch. PI 3, Teacher Certification

DATE: November 7, 1986

Attached please find a copy of the following rules:

CHR 86-89, creating ch. PI 20, relating to the disposition of funds.

CHR 86-157, repealing s. PI 3.04(3) and creating s. PI 3.045, relating to license revocation and reinstatement.

This rule was filed with the Secretary of State on November 7, 1986.

We would like CHR 86-157 to be effective as soon as possible (January 1, 1987?). We are presently working on other proposed amendments to ch. PI 3 which will affect most of the chapter, so you may want to keep that in mind and not go to any lengths to realign pages as a result of this amendment.

If PI 20 can be effective on January 1 as well, that would be good, but the license revocation amendment to ch. PI 3 is the more immediate need.

If you have any questions, please call me.

Thank you.

Attachment

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