

Chapter PI 1

COMPLAINT RESOLUTION AND APPEALS

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Note: Chapter PI 1 as it existed on December 31, 1987, was repealed and a new chapter PI 1 was created effective January 1, 1988.

PI 1.01 Purpose and applicability. (1) **PURPOSE.** 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 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, which shall be resolved under 20 USC s. 1415 of the Education of the Handicapped Act and ch. 115, subch. V, Stats.

(b) Appeals of a departmental decision that a teacher education program is not in compliance with ch. PI 3 or 4, which shall be resolved through the procedures under s. PI 4.03.

(c) Complaints that the state or a subgrantee is violating subch. II of the Education of the Handicapped Act, 20 USC ss. 1411-1418 and 1420, which shall be resolved through the procedures under the Education Department General Administrative Regulations at 34 CFR 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 3.045, which shall be resolved through the procedures specified in s. PI 3.045.

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

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.02 Definitions. In this chapter:

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

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(2) "Complaint" means an allegation of wrongdoing filed with the state superintendent against a local education agency, its officers or employees stating essential facts and demanding relief.

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

(4) "Local education agency" means school boards, school districts, cooperative educational service agencies, county handicapped childrens' 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 named in the complaint or appeal.

(6) "Rule" means any rule in the Wisconsin Administrative Code or regulation in the Code of Federal Regulations.

(7) "State superintendent" means the state superintendent of public instruction.

(8) "Statute" means any Wisconsin or United States statute.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.03 Receipt and filing of complaints and appeals. (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 in sub. (1).

(3) Failure of the complainant or appellant to file a complaint or appeal within the time period specified in the statute or rule under which the complaint or appeal is filed deprives the state superintendent of jurisdiction in the matter.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

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 determines to be appropriate:

(1) Provide technical assistance and information and attempt to resolve the matter informally.

(2) Refer the complainant to another state agency for action or resolution.

(3) Conduct an investigation under s. PI 1.05.

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- (4) Conduct a hearing under s. PI 1.07.
- (5) Issue a decision based on a review of the record of a hearing held before the local education agency.
- (6) Issue protective orders or grant temporary relief as deemed necessary by the state superintendent to preserve the rights of any party prior to the issuance of a final decision or order.
- (7) Arrange for mediation under s. PI 1.06.
- (8) Direct the complainant to exhaust any administrative remedies available before the local education agency.
- (9) Determine that the state superintendent does not have jurisdiction in the matter.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.05 Investigations. (1) If the state superintendent determines under s. PI 1.04 (3) to conduct an investigation, the investigation may include an on-site review or any other activity which the state superintendent deems appropriate.

(2) The state superintendent may determine whether reasonable grounds exist for believing that the matter asserted by the complainant or appellant is probably true, and may issue a finding to that effect.

(3) During the investigation, the state superintendent may keep the identity of the complainant in confidence if, in the state superintendents' judgment, disclosure of the complainant's identity would be likely to subject the complainant to retaliatory action or would otherwise jeopardize the investigation.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.06 Mediation. (1) Prior to holding a hearing regarding a complaint or an appeal, the state superintendent may attempt to resolve the matter through mediation if the parties agree. The state superintendent shall appoint the mediator. If the parties agree to a negotiated settlement, the mediator shall notify the state superintendent of the terms of the settlement and the state superintendent shall find that the matter is resolved. If the parties are unable to agree to a negotiated settlement, the state superintendent shall determine which other procedures under s. PI 1.04 to follow.

(2) The mediation sessions shall be conducted at the discretion of the mediator, except that if a negotiated settlement has not been reached within 90 days after the mediator received the complaint or appeal, the mediator shall either request an extension of time or inform the state superintendent that the mediation effort is unsuccessful.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.07 Hearings. (1) **WHEN HELD.** The state superintendent shall conduct a hearing when required by the statute or rule under which the complaint or appeal is filed or when required under s. 227.42, Stats. The state superintendent may conduct a hearing in other matters if he or she deems it is appropriate.

(2) **NOTICE.** Except in case of emergency, as determined by the state superintendent, at least 10 days prior to the hearing the state superin-

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tendent shall mail to the parties, by certified mail, written notice of hearing stating the time, date and place of the hearing, the nature of the case, a general statement of the issues to be heard and the procedures to be followed. The parties may by mutual consent waive the right to notice. The state superintendent may postpone the hearing in the case of exceptional circumstances.

(3) **HEARING EXAMINER.** The state superintendent shall preside over the hearing or appoint a hearing examiner. The state superintendent may not appoint any person as hearing examiner who has been involved, either directly or indirectly, with the action or decision which is the subject of the complaint or appeal.

(4) **CONDUCT OF HEARING.** (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 in subch. III of ch. 227, Stats., and this chapter.

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

(c) If the local education agency fails to appear at the hearing, the hearing examiner may proceed with the hearing.

(5) **HEARING RECORD AND TRANSCRIPTS.** The department shall ensure that a stenographic or electronic record of oral proceedings is made when required under ch. 227, Stats. The department shall transcribe the hearing record at the request of either party if the transcript is needed for an appeal of the decision of the state superintendent or hearing examiner. The department shall charge a reasonable fee for transcribing the hearing record unless the state superintendent determines that the party is unable to pay.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

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.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.09 Withdrawal, failure to prosecute. (1) **WITHDRAWAL.** At any time prior to the issuance of a final decision, the complainant or appellant may withdraw the complaint or appeal in writing. Upon receiving such a request, the state superintendent shall issue an order dismissing the matter without prejudice.

(2) **FAILURE TO PROSECUTE.** The state superintendent may dismiss any complaint or appeal if:

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(a) The complainant or appellant fails to respond within 20 days to correspondence, sent by certified mail to his or her last known address, from or on behalf of the state superintendent concerning the complaint or appeal, or

(b) The complainant or appellant fails to appear at the hearing.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.10 Rights to further review. (1) Upon the request of either party, the state superintendent may reopen a complaint or appeal which was resolved informally or through mediation. If the state superintendent reopens the complaint or appeal, he or she shall determine which procedures under s. PI 1.04 to follow.

(2) Final decisions issued by the state superintendent shall specify any rights the parties may have to judicial review under ch. 227, Stats., or other statute or rule.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.