

Clearinghouse Rule 17-056

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

The scope statement for this rule, SS 055-17, was published in Register No. 738A2, on June 12, 2017, and approved by State Superintendent Tony Evers on June 22, 2017. 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 to repeal ss. PI 2.02 (5) (g) and (Note), PI 2.03 (4) (e) and (Note), PI 2.06, and PI 9.04 (2) (b); to amend ss. PI 2.05 (1) (b), PI 9.01, PI 9.02 (1), (5), (9), and (14), PI 9.04 (2) (intro.) and (a), PI 14.03 (2) (a) 1. and 2. c., (c) 3., and (d) 6., and PI 14 Appendix; and to create ss. PI 9.06 (1) (h) and 14.03 (1) (c); relating to Red Tape Review of rules governing school district boundary appeals, pupil nondiscrimination, and school finance.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: ss. 117.35 (2), 118.13, and 120.14, Stats.

Statutory authority: ss. 118.13 (3) (a) 2., 120.14 (4), and 227.11 (2) (a) (intro.), Stats.

Explanation of agency authority:

- **PI 02:** Under s. 227.11 (2) (a) (intro.), Stats., “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” As such, a rule is required to effectively establish procedures for school district boundary appeals under s. 117.35 (2), Stats.
- **PI 09:** Section 118.13 (3) (a) 2., Stats., requires the state superintendent to promulgate rules necessary to implement pupil nondiscrimination under s. 118.13, Stats.
- **PI 14:** Under s. 120.14 (4), Stats., the Department is required to establish by rule a standard school district audit contract and minimum standards for school district audits performed under s. 120.14, Stats.

Related statute or rule: N/A

Plain language analysis:

As a result of the Assembly Education Committee's Red Tape Review of administrative rules held on May 18, 2017, the Department proposes to make the following rule changes as requested by the committee:

- **PI 02:** The requested changes is a technical change that removes past dates from rules governing school district boundary appeals under PI 2 of the Wisconsin Administrative Code.
- **PI 09:** The requested change adds information related to school technology in the school board's evaluation of the status of nondiscrimination and equality of educational opportunity.

Additionally, the requested change makes technical changes to 1) update the references to federal law under s. PI 9.04 (2); and 2) add religion to the list of characteristics for which a person may not be denied admission or participation in a public school.

- **PI 14:** The requested change revises the rule provisions governing minimum standards for audits and school district audit contracts to conform the rule to changes in federal guidance, generally accepted accounting principles, and current practice. The requested change will also update the sample school district audit contract (contained in the PI 14 appendix), in accordance with these changes.

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

Comparison with rules in adjacent states:

- **School District Boundary Appeals (PI 2):**
 - Illinois: Illinois School Code 105 ILCS 5/Article 7 governs the types of appeals to regional boards of school trustees in determining school district boundary disputes.
 - Iowa: Iowa Code 275.15 governs hearings by local education agency boards in determining school district boundary disputes.
 - Michigan: Michigan Statutes Section 380.971 governs appeals by resident owners of land to the state board of education in determining school district boundary disputes.
 - Minnesota: Minnesota Statutes Section 123A.49 governs the types of appeals by any aggrieved person or school district to the relevant district court in determining school district boundary disputes.
- **Pupil Nondiscrimination (PI 9):**
 - Illinois: Illinois School Code 105 ILCS 5/22-19 governs the procedures for filing complaints with the State Board of Education concerning exclusion or segregation from school activities on account of the pupil's color, race, nationality, sex, religion or religious affiliation, or that any employee of or applicant for employment with any school district has been questioning concerning the person's color, race, nationality, sex, religion or religious affiliation or subjected to discrimination by reason thereof.
 - Iowa: Iowa Code 216.9 provides that it is a discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any program or activity. Iowa Code 216.15 further provides the complaint and hearing procedures for any person claiming to be aggrieved by a discriminatory practice.
 - Michigan: Section 2 of Article VIII of the Michigan State Constitution provides that every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.
 - Minnesota: Minnesota Statutes Section 121A.03-121A.0695 govern pupil discrimination and harassment and require school boards to adopt a written sexual, religious, and racial harassment and violence policy that conforms to statute.
- **School Finance (PI 14):**
 - Illinois: 23 Illinois Administrative Code Section 100.110 requires that annual audits be conducted in accordance with generally accepted governmental auditing standards, and each audit report shall state that the audit was performed in accordance with those standards. The scope of the annual audit shall depend on the class of school district subject to the rule.
 - Iowa: Iowa Administrative Code Section 11.6 requires that school districts are audited annually and are conducted in accordance with generally accepted accounting principles and the standards applicable to financial audits contained in Governmental Accounting Standards, as issued by the Comptroller General of the United States.
 - Michigan: Michigan Statutes Section 141.427 provides that the state treasurer shall prescribe minimum auditing procedures for local units of government and standards that shall conform as nearly as practicable to generally accepted governmental auditing standards.
 - Minnesota: Minnesota Statutes Section 123B.77 Subd. 3 requires that the annual school district audit and financial statements included in the audit must be based on generally accepted governmental auditing standards, the federal Single Audit Act, and the Minnesota Legal Compliance Guide issued by the Office of the State Auditor.

Summary of factual data and analytical methodologies:

- **PI 02:** Chapter PI 2 describes the procedures for those wishing to appeal a boundary change due to school district reorganization as a result of consolidation, creation, or dissolution of school districts or the transfer of large territory. The rule, which has not been amended since 1990, contains references to requests for reviews by a school district boundary appeal board (or “SDBAB”) under s. 121.78 (1) (c), Stats., which is now obsolete. Additionally, PI 2 provides that members of the SDBAB who were regular and alternate members on January 1, 1990 shall be appointed regular members to serve the remainder of their terms, and that by May 1, 1990, the State Superintendent shall appoint four new members, with two members appointed to terms which expire on May 1, 1990 and two members appointed to terms which expire on May 1, 1992. Finally, PI 2 provides that the chapter applies to all petitions or resolutions for reorganization filed on or after January 1, 1990, which is the effective date of 1989 Wisconsin Act 114. The proposed technical change will eliminate requirements related to past dates which are no longer relevant to the implementation of the rule. Without a rule change, the Department will continue to administer the rule as it exists in PI 2.
- **PI 09:** 1985 Wisconsin Act 29 repealed and recreated s. 118.13, Stats., which prohibits discrimination in public schools on the basis of sex, race, religion, 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 (3), 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. Chapter PI 9 specifies the 20 areas in which the school board must have policies and procedures to achieve nondiscrimination. Additionally, 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 Assembly Education Committee requested that information related to school technology be added to the rule as a part of the school board’s evaluation of the status of nondiscrimination and equality of educational opportunity.

Federal code governing complaints and appeals to the state superintendent relating to pupil nondiscrimination has since been updated and the rule contains references to US code which no longer exist. Further, the statutes were updated with 1991 Wisconsin Act 131, which prohibited discrimination in public schools on the basis of religion. Because the rule had not been revised since these changes took place, the proposed changes will add religion to the list of pupil characteristics for which a person may not be denied admission or participation in a public school. This rule change would reflect how the Department is currently required to administer the rule due to the statutory language referenced above.

- **PI 14:** Chapter PI 14 discusses school financial matters including determining the official pupil enrollment of each school, specifying how school districts can contract with each other for services, and the standards for auditing school district accounts. Recent federal guidance, generally accepted accounting principles, and regulations regarding minimum audit standards and standard contracts have changed in 2014 and the rule must be updated to reflect those recent changes. This rule change would align Department work to current requirements.

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
(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. The Department will publish a hearing notice in the *Administrative Register* that will provide information on the deadline for the submission of comments.

SECTION 1. PI 2.02 (5) (g), and (Note), and 2.03 (4) (e), and (Note) are repealed.

SECTION 2. PI 2.05 (1) (b) is amended to read:

PI 2.05 (1) (b) Members of the SDBAB shall be appointed to staggered 2-year terms. ~~Persons who were regular and alternate members on January 1, 1990, shall be appointed regular members to serve the remainder of their terms. By May 1, 1990, the state superintendent shall appoint 4 new members, as specified in sub. (2), to bring membership of the SDBAB into conformance with s. 15.375 (2), Stats. Two of these members shall be appointed to terms which expire on May 1, 1990, and 2 shall be appointed to terms which expire on May 1, 1992.~~

SECTION 3. PI 2.06 is repealed.

SECTION 4. PI 9.01, 9.02 (1), (5), (9), and (14), and 9.04 (2) (intro.) and (a) are amended to read:

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

PI 9.02 (1) "Bias" means an inclination for or against a person or group of persons based, in whole or in part, on sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, that inhibits impartial or objective judgment affecting pupils.

(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 sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, or which perpetuates the effects of past discrimination.

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

(14) "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 sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

PI 9.04 (2) Establish a procedure for receiving and resolving complaints from residents of the school district or aggrieved persons under s. 118.13, Stats., and this chapter, including a provision for written acknowledgement within 45 days of receipt of a written complaint and a determination of the complaint within 90 days of receipt of the written complaint unless the parties agree to an extension of time, except that:

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

SECTION 5. PI 9.04 (2) (b) is repealed.

SECTION 6. PI 9.06 (1) (h) is created to read:

PI 9.06 (1) (h) School district technology, including electronic communications by school district staff.

SECTION 7. PI 14.03 (1) (c) is created to read:

PI 14.03 (1) (c) “Uniform grants guidance” means the provisions of the United States office of management and budget, uniform administrative requirements, cost principles, and audit requirements for federal awards under CFR, part 200.

SECTION 8. PI 14.03 (2) (a) 1., and 2. c., (c) 3., and (d) 6. are amended to read:

PI 14.03 (2) (a) 1. The auditor shall conduct an examination of the ~~combined general purpose~~ basic financial statements including ~~all funds~~ the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the school district for the fiscal year.

2. c. ~~The applicable provisions of the United States office of management and budget, circular A-133, audits of states, local governments and non-profit organizations, issued pursuant to the single audit act amendments of 1996 at 31 USC sections 503, 1111, and 7501 et seq~~ Uniform grants guidance.

(c) 3. The auditor shall observe on school district premises the adequacy of the systems of internal control for all funds of the school district, including those concerned with maintaining compliance with legal provisions related to finance. If material weaknesses are noted, the auditor shall review appropriate recommendations with the appropriate administrator and shall include them in a separate letter to the school board.

(d) 6. Membership ~~audit~~ agreed upon procedures report, prepared in accordance with standards for attestation engagements promulgated by the American institute of certified public accountants, if required by the department under s. 115.28 (18), Stats.

SECTION 9. PI 14.03 (2) (d) 3m. is created to read:

PI 14.03 (2) (d) 3m. Auditor’s communication with those charged with governance, including any significant findings or issues from the audit.

SECTION 10. PI 14 Appendix is amended to read:

STANDARD SCHOOL DISTRICT AUDIT CONTRACT

This agreement is entered into this day of , 20_, between (school board on behalf of named school district) hereafter referred to as the district, and (name of auditor), hereafter referred to as the auditor. The parties agree as follows:

AUDIT SCOPE

The auditor shall conduct an examination of the ~~combined general purpose~~ basic financial statements, including ~~all funds~~ the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the school district as of, and for the year ended June 30, 20__.

The auditor's examination shall be made in accordance with the following:

(a) Generally accepted auditing standards. The procedures necessary to comply with the generally accepted auditing standards, for purposes of this contract, include the applicable procedures outlined by the American Institute of Certified Public Accountants including the Industry Audit Guide, AUDITS OF STATE AND LOCAL GOVERNMENTAL UNITS; and by the Department of Public Instruction in the WISCONSIN SCHOOL DISTRICT AUDIT MANUAL.

(b) The standards for financial and compliance audits contained in the STANDARDS FOR AUDITS OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS, issued by the Comptroller General of the United States;

(c) ~~The provisions of the United States Office of Management and Budget, Circular A-133, AUDITS OF STATES, LOCAL GOVERNMENTS AND NON-PROFIT ORGANIZATIONS, issued pursuant to single audit act amendments of 1996 at 31 USC sections 503, 1111, and 7501 et. seq~~ Uniform grants guidance.

Financial statements presented in the auditor's report shall comply with generally accepted accounting principles and conform to the accounting system prescribed by the Department of Public Instruction.

The auditor shall express an opinion on the financial statements of all funds covered in the scope of this audit engagement. If the auditor is unable to express an unqualified opinion, the auditor shall state fully the reasons for qualification or disclaimer of opinion. The district recognizes it has the responsibility to correct any deficiency which results in a qualification or disclaimer of opinion.

INDEPENDENCE

Implicit in the auditor's expressions of an unqualified opinion on financial statements is the auditor's representation of independence with respect to those statements.

TIMING, LOCATION AND CONDUCT OF AUDIT WORK

The district recognizes that its appropriate officers have the responsibility for the proper recording of transactions in the books of account, for the safeguarding of assets and for the substantial accuracy of the financial statements. These district officers have the responsibility to close and balance all accounts and to have prepared the financial statements for all funds to be examined by the auditor.

The audit shall be conducted on district premises at a mutually agreeable time, and the district shall provide space deemed adequate by the auditor to conduct the examination officially.

The auditor shall observe on district premises the adequacy of the systems of internal control for all funds of the district, including those concerned with maintaining compliance with finance-related legal provisions. If material weaknesses are noted, appropriate recommendations shall be reviewed with the appropriate administrator and then included in a separate letter to the district's school board.

Audit workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the Department of Public Instruction or the United States Department of Education to extend the retention period. The district authorizes the auditor to respond directly to inquiries from the Department of Public Instruction or the United States Department of Education, including requests to review audit workpapers. The auditor shall notify the school board of any such inquiries or requests and of the auditor's reply thereto.

REPORTS

The auditor shall submit to the district's school board the following reports, with copies of each for transmittal to the Department of Public Instruction and other agencies as required:

(a) Auditor's report on the school district's financial statements prepared according to Generally Accepted Accounting Principles as promulgated by the Governmental Accounting Standards Board, as of, and for the year ended June 30, 20__, with supplemental information as required by the Department of Public Instruction or requested by the district.

(b) Financial audit statement for the year ended June 30, 20__, as required by the Department of Public Instruction.

(c) Management letter, commenting on material weaknesses in internal control and identifying possible noncompliance with finance-related legal provisions with appropriate recommendations.

(e) Federal program audit reports and schedules, as required.

(f) State program audit reports and schedules, as required.

(g) Membership audit agreed upon procedures report, prepared in accordance with standards for attestation engagements promulgated by the American Institute of Certified Public Accountants, as required by the Department of Public Instruction.

(h) Auditor's communication with those charged with governance, including any significant findings or issues from the audit.

~~(hi)~~ Other (specify):

~~(ij)~~ Other (specify):

COMPENSATION AND TERMS OF PAYMENT

Fees shall be based on the time required by the individuals assigned by the auditor plus direct expenses. Individual hourly rates vary according to the degree of responsibility involved and the skill required. (NOTE: Other payment terms may be agreed upon in the contract. This is provided as an example).

, certified public accountant, is the owner or partner in charge of all work performed and is responsible for all aspects of this engagement.

The auditor estimates the fee for this examination and above-listed reports will range from \$_____ to \$_____. Should unforeseen difficulties be encountered during the examination which would require additional work by the auditor, an

estimate of the cost of such additional work shall be brought to the board's attention prior to the performance of the additional work.

The auditor may submit bills as work progresses and as expenses are incurred.

(Typed Name and Title) Signature
Contracting District Officer

(Typed Name and Title) Signature
Audit Firm

(Typed Name and Title) Signature
Partner (Owner)

SECTION 11. 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

Tony Evers, PhD
State Superintendent