

Wisconsin Department of Public Instruction
**STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES**

Rule No.: PI 1

Relating to: Revising complaint and appeals procedures

Rule Type: Permanent

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*, 2016 WI 38.

1. Finding/nature of the emergency (Emergency Rule only).

N/A

2. A description of the objective of the proposed rule.

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 will effectively cover 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 would address 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.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

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 a much wider variety 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 is pending at the time of the filing of this scope statement), 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.

4. The statutory authority for the proposed rule.

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.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

The amount of time needed for rule development by Department staff and the amount of other resources necessary are minimal.

6. A description of all of the entities that will be affected by the proposed rule.

Parties filing appeals and complaints with the Department would be affected by this rule change. Department staff would also be affected by this rule change.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses).

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Contact Information

Carl Bryan
Policy and budget team
(608) 267-9127
carl.bryan@dpi.wi.gov