

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Note: Chapter PI 1 as it existed on December 31, 1987, was repealed and a new chapter PI 1 was created effective January 1, 1988.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. Under s. 115.28 (5), Stats., the state superintendent is charged with examining and determining all appeals that are made by law to the state superintendent. 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 and appeals authorized by statute or rule that 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 with a disability, which shall be resolved under 20 USC 1415 of the Individuals with Disabilities Education Act and subch. V of ch. 115, Stats.

(b) Appeals of a departmental decision that a teacher education program is not in compliance with ch. PI 34, which shall be resolved through the procedures under subch. III of ch. PI 34.

(c) Complaints that the state or a subgrantee is violating the Individuals with Disabilities Education Act, 20 USC Subchapter II, which shall be resolved through the procedures under CFR parts 76 and 77.

(d) Complaints, hearings, and appeals related to license revocation and reinstatement under s. 118.19 (5), Stats., and s. PI 34.35, which shall be resolved through the procedures specified under subch. XI of ch. PI 34.

(e) School district boundary appeal board hearings, which shall be conducted under ch. PI 2.

(g) Appeals relating to orders issued by the state superintendent under s. 115.7915 (8), Stats., which shall be resolved through the procedures specified under s. PI 49.15.

(h) Appeals of a school board's decision to deny an open enrollment application under s. 118.51 (9), Stats., which shall be resolved through the procedures specified under s. PI 36.14.

(i) Appeals relating to orders issued by the state superintendent under s. 118.60 (10), Stats., which shall be resolved through the procedures specified under s. PI 48.21.

(j) Appeals relating to orders issued by the state superintendent under s. 119.23 (10), Stats., which shall be resolved through the procedures specified under s. PI 35.21.

(k) Complaints related to race-based nicknames, logos, mascots, and team names under s. 118.134, Stats., which shall be resolved through the procedures specified under s. PI 45.03.

History: Cr. Register, December, 1987, No. 384, eff. 1–1–88; cr. (2) (f), Register, October, 1992, No. 442, eff. 11–1–92; corrections in (2) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522; corrections in (2) (b) and (d) made under s. 13.93 (2m) (b) 7., Stats., Register October 2001 No. 550; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register June 2004 No. 582; CR 17–052: am. (1), (2) (intro.), (a), (c), (d) to (f), cr. (2) (g) to (k) Register January 2018 No. 745 eff. 2–1–18; **CR 18–027: r. (2) (f) Register August 2018 No. 752, eff. 9–1–18; correction in (2) (b), (d) made under s. 13.92 (4) (b) 7., Stats., and correction in (2) (e) made under s. 35.17, Stats., Register August 2018 No. 752.**

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 the department or a local education agency.

(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.

(2m) “Desk review” means issuing a decision based on a review of written information submitted by the parties.

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

(3m) “Institution” means a participant in the national school lunch program, special milk program for children, school breakfast program, summer food service program, or child and adult food care program.

(4) “Local education agency” means school boards, school districts, cooperative educational service agencies, county children with disabilities 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.

(4m) “Office of legal services” means the office of legal services in the department.

(5) “Party” means the complainant or appellant and the respondent 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; CR 17–052: am. (1), cr. (2m), (3m), am. (4), cr. (4m), am. (5) Register January 2018 No. 745 eff. 2–1–18.

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 a 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 under sub. (1).

(3) The state superintendent shall dismiss a complaint or an appeal if any of the following occur:

(a) The complaint or appeal was not filed within the time period specified in the statute or rule under which the complaint or appeal was filed.

(b) The complaint or appeal is not legally sufficient to state a claim upon which relief may be granted.

(c) The state superintendent does not have jurisdiction in the matter.

(d) The complainant or appellant does not include sufficient allegations of fact that, if accepted as true, would support the complaint or appeal.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; CR 17-052: am. (1), (2), r. and recr. (3) Register January 2018 No. 745 eff. 2-1-18.

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 that the state superintendent 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.

(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) Conduct a desk review.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; CR 17-052: am. (intro.), r. and recr. (9) Register January 2018 No. 745 eff. 2-1-18.

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 superintendent 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 under subch. III of ch. 227, Stats., and this chapter.

(b) The hearing examiner shall have the powers specified under 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.

(6) **NOTICES REMAIN IN EFFECT.** Except as otherwise specified in the applicable decision and order, a decision and order of the state superintendent or department that is being reviewed under this chapter shall remain in effect until a final decision and order is issued under s. 227.47, Stats.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; CR 17-052: am. (4) (a), (b), cr. (6) Register January 2018 No. 745 eff. 2-1-18.

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 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; CR 17-052: am. Register January 2018 No. 745 eff. 2-1-18.

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 any of the following occurs:

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

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

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; CR 17-052: am. (2) (intro.), (a) Register January 2018 No. 745 eff. 2-1-18.

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.

PI 1.11 Food and nutrition appeals. (1) APPLICABILITY. Notwithstanding ss. PI 1.03, 1.04, and 1.07, this section governs appeals filed under 7 CFR part 210, 215, 220, 225, or 226.

(2) WHO MAY REQUEST. A person or institution adversely affected by an action of the department under 7 CFR part 210, 215, 220, 225, or 226 may request a desk review or a contested case hearing on that action.

(3) REQUEST FORM. In order to be considered, a request under sub. (2) shall be filed with the office of legal services within 15 days of the date of the department's action on a form provided by the department.

Note: A request for a desk review or a contested case hearing may be filed with the office of legal services at the following address:

Office of Legal Services
Wisconsin Department of Public Instruction
125 S. Webster St.
PO Box 7841
Madison, WI 53707-7841

(4) GRANTING A REQUEST. The department shall grant a request for desk review or contested case hearing if all of the following apply:

(a) The department has jurisdiction over the matter.

(b) The request for a desk review or contested case hearing complies with the requirements under subs. (2) and (3).

(c) The requestor is entitled to a desk review or contested case hearing under s. 227.42, Stats., and 7 CFR part 210, 215, 220, 225, or 226.

(5) PROCEDURES. If the department grants a desk review or contested case hearing under sub. (4), the desk review or contested case hearing shall follow procedures specified under 7 CFR part 210.18 (q), 225.13, or 226.6 (k).

History: CR 17-052: cr. Register January 2018 No. 745 eff. 2-1-18.