

Wisconsin Legal Updates

State Superintendent's Conference on Special Education and Pupil Services Leadership Issues

February 16, 2021

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Annual Pupil Nondiscrimination Report is Due February 26, 2021

- Complaints received July 1, 2019 through June 30, 2020
- Reporting system continues to use WAMSid and password
- Access to prior year's reports
- More information: <https://dpi.wi.gov/sped/pupil-nondiscrimination/pi9-07>

School Year 2018-19 Results

Protected Class/Basis of Complaint	2017-2018 School Year
Ancestry	49
Disability	280
Pregnancy, Marital or Marital Status	10
National Origin	61
Race	700
Religion/Creed	42
Sex	983
Sexual Orientation	360
TOTAL	2488

Wisconsin Pupil Discrimination Appeals Findings

Eight pupil discrimination appeals have been filed with the department since late 2019. All appeals alleged discrimination based on race. Two of the appeals were settled by the parties prior to a final decision by the department. Three appeals remain under consideration. The remaining three appeals affirmed the district's decision.

- Complaints regarding the evaluation, identification, and provision of FAPE for students with disabilities are not an appropriate subject matter for 118.13 appeals
- Whether the district has responded appropriately to substantiated instances of discrimination is an appropriate subject matter for 118.13 appeals

Revisions to PI 9

To address concerns that pupil discrimination complaints are not being consistently identified and processed:

- Adds a requirement that all district employees refer written or verbal complaints of discrimination to the district employee designated to receive complaints (118.13 designee)
- Adds a requirement the 118.13 designee explain district policy and complaint procedure to complainants and assist complainants in filing a written complaint
- Adds a requirement that complaints be filed in writing and within 1 year of the date of the alleged discrimination

To address concerns about the length of the complaint process:

- Reduces the time in which a district must acknowledge a complaint from 45 days to 10 days
- Reduces the time in which a school district must issue a final written decision on the complaint from 90 days to 60 days

To address concerns about the clarity of final complaint determinations by the district:

- Adds a requirement the determination shall state the relevant facts and policy provisions considered so that the complainant is reasonably informed of the basis for the determination
- Adds a requirement the determination shall state the steps the school district will take to end the discrimination and remedy its effects
- Adds a requirement that the determination be provided to the school board

To address concerns that pupil nondiscrimination policies are not readily available to parents:

- Adds a requirement that districts continually post nondiscrimination policies in a prominent location of the district's website. Replaces the requirement to post policies annually as a Class I legal notice

To address concerns about the effectiveness of self-evaluation activities:

- Increases the frequency of self-evaluation activities from every five years to annually
- Adds a requirement to post a report of the self-evaluation in a prominent location on the district's website

Your comments are welcome through 2/17/21:

https://docs.legis.wisconsin.gov/code/chr/all/cr_21_007

Title IX Final Rule on Sex Harassment and Sexual Violence

- Applies to sexual harassment occurring after August 14, 2020
- Any employee with notice of sexual harassment, including allegations, must report and district must respond.
- Sexual harassment defined as:
 - Any instance of *quid pro quo* harassment by a school's employee;
 - Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
 - Any instance of sexual assault (as defined in the Cleary Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA)
- Must have a Title IX coordinator
- Mandatory Response
 - Deliberate indifference
 - Supportive measures
 - Grievance procedures
 - Due process
 - K-12 hearings optional, written questions required

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

<https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20200506-t9-final-rule-k12-educators.pdf>

The department has determined at this time PI 9 will not be modified to align with the Title IX rule.

- PI 9 has fewer procedural requirements
- Harassment defined as, “behavior towards pupils based on a protected class that substantially interferes with a pupil’s school performance or creates an intimidating, hostile, or offensive school environment.”

Office for Civil Rights Issues Questions and Answers Regarding OCR’s Interpretation of Title IX and Single Sex Scholarships, Clubs, and other Programs

https://www2.ed.gov/about/offices/list/ocr/docs/qa-single-sex-20210114.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

United States Department of Education Comments on *Bostock v. Clayton*

- In *Bostock v. Clayton*, the U.S. Supreme Court held that Title VII’s prohibition on sex discrimination encompasses homosexuality and gender identity.
- Department points out that *Bostock* holding applies only to Title VII, not Title IX

<https://www2.ed.gov/about/offices/list/ocr/correspondence/other/ogc-memorandum-01082021.pdf>

<https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20200901-concerned-women-for-america.pdf>

<https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20200901-family-policy-alliance.pdf>