

Wisconsin Legal Updates

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

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Annual Pupil Nondiscrimination Report was Due December 23, 2021. As of 2/2/2022, 242 of 421 districts have submitted the report.

- Complaints received July 1, 2020 through June 30, 2021
- 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 2019-20 Results

Protected Class/Basis of Complaint	2019-2020 School Year
Ancestry	21
Disability	290
Pregnancy, Marital or Marital Status	12
National Origin	56
Race	617
Religion/Creed	31
Sex	764
Sexual Orientation	320
TOTAL	2111

Wisconsin Pupil Discrimination Appeals Findings

10 pupil discrimination appeals have been filed with the department since early 2021. Seven of the appeals alleged discrimination based on race with the remaining three alleging discrimination based on sex, religion, and disability respectively. Five of the appeals remain under consideration. One of the appeals was referred to the district for a final resolution. The remaining four appeals have been resolved.

- Race discrimination. During a period of remote instruction, a teacher inadvertently sent a student's parent a text message in which the teacher referred to the student as a "dummy" and stated, "I want to slap them through the phone." The teacher resigned three days later. The parent filed a formal discrimination complaint some months later. The department determined the district responded appropriately to the complaint by:
 - Referring the parent to the IDEA complaint process for resolution of IEP implementation concerns.
 - Following its written complaint resolution process.
 - Interviewing the parent and the teacher's supervisor.
 - Inquiring as to whether previous discrimination complaints had been filed related to the teacher or the school building.
 - Issuing a final written determination which adequately informed the parent of the basis for the decision that discrimination had not occurred.

The district did not issue a decision within the 90 days required by PI 9 and did not secure the parent's agreement to extend the timeline. The district submitted a corrective action plan to address compliance with the timeline.

- Race discrimination. In a complaint to the district, parent alleged a student had praised Kyle Rittenhouse and stated he would like to drive a vehicle through a Black Lives Matter protest, that the N-word was frequently heard in the hallways, and that students displayed the Confederate flag on vehicles in the parking lot. The department determined the district did not respond appropriately to the complaint:
 - By not following its own written procedures for discrimination complaints.
 - By failing to develop sufficient facts to necessary to make a determination as to whether a racially hostile environment existed.

The department directed the district to develop a corrective action plan to ensure compliance with its written policies and completion of the investigation into the alleged racially hostile environment.

The district has appealed the department's order to circuit court.

- Race discrimination. In a complaint to the district, the parent alleged the district had discriminated against her children in the application of the district's COVID-19 quarantine policy. The parent alleged four incidents in which students who had "close contact" with a person who had tested positive for COVID-19 were not required to quarantine as her children had been. The department determined the district responded appropriately only in part to the complaint by:

- Investigating each of the four incidents and making a determination reasonably based on the facts available.
- Failing to follow its own written policies in not interviewing the parent, developing a written report of the investigation, or notifying the parent of the right to appeal the final determination to the state superintendent.

The district has submitted a corrective action plan to review and revise policies as necessary and provided training to staff those policies and procedures.

- Sex discrimination. In a complaint to the district the parent alleged the district has failed to provide equality of opportunity to a female athlete. The district conducted an investigation in which it applied federal Title IX guidance and compared the support provided to the boys team to the support provided to the girls team. The district concluded the cost of transportation was a burden on the female athlete and offered to reimburse the parent transportation costs. The department determined the student should also be reimbursed the cost of her uniform. The district reimbursed the student for uniform costs.

Revisions to PI 9

The revisions to PI 9 discussed in our last updates are still in the rule-making phase.

Five Year Self Evaluation

To be completed during the 2022-23 school year. Look for instructions from the department this spring.

PI 9.06 requires:

Each board shall evaluate the status of nondiscrimination and equality of educational opportunity in the school district at least once every 5 years on a schedule established by the state superintendent. The evaluation shall include the following:

- School board policies and administrative procedures.
- Enrollment trends in classes and programs.
- Methods, practices, curriculum and materials used in instruction, counseling, and pupil assessment and testing.
- Trends and patterns of disciplinary actions, including suspensions, expulsions, and handling of pupil harassment.
- Participation trends and patterns and school district support of athletic, extracurricular and recreational activities.
- Trends and patterns in awarding scholarships and other forms of recognition and achievement provided or administered by the school district.
- School district efforts to achieve equality of educational opportunity and nondiscrimination.

- School district technology, including electronic communications by school district staff.

PI 9.06 further requires:

- The board shall provide an opportunity for participation in the evaluation by pupils, teachers, administrators, parents and residents of the school district.
- The board shall prepare a written report of the evaluation which shall be available for examination by residents of the school district.

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)

[Questions and Answers on the Title IX Regulations on Sexual Harassment \(July 2021\) - Department of Education](#)

- “Notice” in elementary and secondary school settings. A school must respond when any school employee has notice of sexual harassment. Notice may be through oral or written report, personal observation, anonymous report, or various other means.
- Title IX coordinator must contact complainant to offer supportive measures and discuss formal complaint process.
- “Supportive Measures.” Measures designed to restore or preserve equal access to the school’s educational program. The school must consider the complainant’s wishes in determining what supportive measures to provide. Supportive measures may not unreasonably burden the other party. Ultimately within the school’s discretion based on the facts and circumstances of the situation. Examples: modifications of work or class schedules, mutual restrictions on contact between the parties, leaves of absence, increased security and monitoring, and other similar measures.
- School need not accept a formal complaint from a complainant not currently enrolled and “not attempting to participate.” CAUTION! Is the alleged respondent harassing other students? Independent requirement for Title IX coordinator to file formal complaint?