

Chapter 391-55 WAC
IMPASSE RESOLUTION CASE RULES

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-55-002 Sequence and numbering of rules—Special provisions. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.56.065 [41.58.065], 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 12-05-066, § 391-55-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 10-20-172, § 391-55-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-002, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-002, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-002, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-033 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-033, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.

391-55-071 Special provision—State patrol personnel. [Statutory Authority: RCW 41.58.050, 41.56.090. WSR 08-11-125, § 391-55-071, filed 5/21/08, effective 6/21/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-071, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-071, filed 5/31/88.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-0715 Special provision—Public employees. [Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-0715, filed 10/6/10, effective 11/6/10.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-072 Special provision—Educational employees. [Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-072, filed 10/6/10, effective 11/6/10.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Au-

thority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-110 Dispute resolution panel—Membership. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 10-20-172, § 391-55-110, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-110, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-110, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-110, filed 9/30/80, effective 11/1/80.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-120 Dispute resolution panel—Referral and selection procedures. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-120, filed 7/1/99, effective 8/1/99.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-130 Disclosure. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-130, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-130, filed 9/30/80, effective 11/1/80.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-150 Vacancies. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-150, filed 9/30/80, effective 11/1/80.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-201 Special provision—Certification of issues—Public employees. [Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-201, filed 10/6/10, effective 11/6/10.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-202 Special provision—Certification of issues—Educational employees. [Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-202, filed 10/6/10, effective 11/6/10.] Repealed by WSR 22-23-101, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

391-55-260 Uniformed personnel—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-260, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-360 Educational employees—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-360, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-400 State patrol personnel—Fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-400, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-400, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-410 State patrol personnel—Selection of fact finder. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-410, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-410, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-415 State patrol personnel—Conduct of fact finding proceedings. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-415, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-415, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-420 State patrol personnel—Submission of proposals for fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-420, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-420, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-425 State patrol personnel—Fact finding hearing. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-425, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-425, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-430 State patrol personnel—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-430, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050,

- 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-430, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-435 State patrol personnel—Fact finding in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-435, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-435, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-440 State patrol personnel—Closing of fact finding hearings. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-440, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-440, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-445 State patrol personnel—Findings of fact and recommendations. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-445, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-445, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-450 State patrol personnel—Responsibility of parties after fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-450, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-450, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-455 State patrol personnel—Expenses of fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-455, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-455, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-455, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-500 Marine employees—Interest arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-500, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-505 Marine employees—Referral for mediation. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-505, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
- 391-55-510 Marine employees—Intervention and consolidation of proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-510, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-515 Marine employees—Conduct of interest arbitration proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-515, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-520 Marine employees—Submission of issues for arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-520, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-525 Marine employees—Hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-525, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-530 Marine employees—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-530, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-535 Marine employees—Arbitration in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-535, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-540 Marine employees—Closing of hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-540, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-545 Marine employees—Interest arbitration award. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-545,

filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-55-560 Marine employees—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-560, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Reviser's note: Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-001, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

WAC 391-55-010 Impasses in contract negotiations—Request for contract mediation—Filing and service. A request for contract mediation may be filed through the agency's online e-filing system, by email, or in writing to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not filed jointly, the party filing the request shall serve a copy on the other party to the dispute, as required by WAC 391-08-120 (3) and (4). The party or parties requesting contract mediation shall provide the following to the agency:

(1) The name, email address, mailing address, and telephone number of the employer and of the employer's representative.

(2) The name, email address, mailing address, and telephone number of the employee organization and of the employee organization's representative.

(3) The parties' contractual relationship, indicating that:

(a) The parties have never had a contract; or

(b) The parties have had a contract, and a copy of the current or most recent collective bargaining agreement is attached.

(4) A general description of the employee job classification(s) in the bargaining unit.

(5) The number of employees in the bargaining unit.

(6) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting, and whether both parties concur in the request for mediation.

(7) Identification of the issues in dispute.

(8) The name(s), signature(s), and title(s), if any, of the person(s) filing the request as well as the date(s) of the signature(s).

(9) Any other information requested in the contract mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-010, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. WSR 99-14-060, § 391-55-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 34.05.413 and 41.56.100. WSR 96-07-105, § 391-55-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

WAC 391-55-020 Grievance mediation—Request for grievance mediation—Filing and service. A request for appointment of a grievance mediator may be filed through the agency's online e-filing system, by email, or in writing to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not filed jointly, the party filing the request shall serve a copy on the other party to the collective bargaining agreement under which the dispute arises, as required by WAC 391-08-120 (3) and (4). The party or parties requesting grievance mediation shall provide the following to the agency:

(1) Information identifying the parties to the dispute, including:

(a) The name, email address, mailing address, and telephone number of the employer and of the employer's representative;

(b) The name, email address, mailing address, and telephone number of the employee organization and of the employee organization's representative;

(c) A copy of the current or most recent applicable collective bargaining agreement;

(d) A general description of the employee job classification(s) in the bargaining unit.

(2) Identification of the grievance to be resolved in grievance mediation.

(3) The name(s), signature(s), and title(s), if any, of the person(s) filing the request as well as the date(s) of the signature(s).

(4) Any other information requested in the grievance mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-020, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-020, filed 7/1/99, effective 8/1/99.]

WAC 391-55-030 Assignment of mediator. (1) Upon submission of a request under WAC 391-55-010 or 391-55-020, a member of the agency staff will be assigned as mediator at the discretion of the executive

director. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request will be considered in making the assignment.

(2) For negotiations involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), if an agreement has not been reached by June 1st of the year in which negotiations occurred, a mediator will be preassigned. The parties are encouraged to meet with the mediator as soon as practicable. For bargaining units eligible for interest arbitration under RCW 47.64.300, the parties may still mutually agree to waive mediation under RCW 47.64.230.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-030, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-55-030, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-030, filed 9/30/80, effective 11/1/80.]

WAC 391-55-032 Special provision—Educational employees. Upon submission of a unilateral request for mediation, the executive director shall consider the position of the other party and evaluate whether the parties have exchanged and considered one another's proposals and whether the intervention of the agency will have a beneficial impact on the negotiating process. Before making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority conferred on the agency by RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-032, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-032, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

WAC 391-55-050 Submission of written proposals. Parties requesting the agency's mediation services are encouraged to submit to the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute as well as any written material supporting the identified proposals.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-050, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, §

391-55-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-050, filed 9/30/80, effective 11/1/80.]

WAC 391-55-070 Function of mediator. The mediator may meet with the parties or their representatives, or both, either jointly or separately, and may take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-070, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090. WSR 08-04-059, § 391-55-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

WAC 391-55-090 Confidential nature of mediation. Mediation meetings are not open to the public. Confidential information acquired by a mediator must not be disclosed to others outside of the mediation process for any purpose, and a mediator may not give testimony about the mediation in any legal or administrative proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-090, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 5.60.072. WSR 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

WAC 391-55-200 Interest arbitration—Certification of issues.

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030 (14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that further efforts will not result in an agreement, the following procedure will be implemented:

(a) The mediator shall notify the parties of the mediator's intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and the other party a written list (including article and section references to the parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (4)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration must be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward a recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-200, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.56.090, 41.58.050, 41.58.065, 47.64.300, and 74.39A.270. WSR 12-05-066, § 391-55-200, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. WSR 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. WSR 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. WSR 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. WSR 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators. For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496 and within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of the arbitration panel and shall notify the opposite party and the executive director of the name, email address, mailing address, and tel-

ephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later-appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators is deemed waived if neither party has notified the executive director of its appointee within 14 days following the issuance of a certification of issues for interest arbitration, and the parties' representatives shall then select the neutral chairperson.

(2) A party that has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

(3) By mutual agreement, the parties may waive the provisions in this rule and the appointment of partisan arbitrators.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-205, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-205, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-205, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

WAC 391-55-210 Interest arbitration—Selection of neutral chairperson.

(1) For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496, if the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the agency. Upon the submission of a request, the executive director shall appoint a neutral chairperson from the agency staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall request a panel of at least five arbitrators specifying that the request is for interest arbitration proceedings under the applicable statute. Referrals and selection from the public employment relations commission's dispute resolution panel must be made as provided in WAC 391-75-020. Referrals and selection from other panels must be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within 28 days after certification of issues under WAC 391-55-200, the parties are deemed to have waived the procedures in subsections (1) through (3) of this section. The agency shall issue a list of dispute resolution panel members and the neutral chairperson must be selected as provided in WAC 391-75-020 unless the parties notify the executive director that by mutual agreement they have determined an alternative process for selecting a neutral chairperson.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-210, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-210, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-210, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

WAC 391-55-211 Special provision—Interest arbitration—Selection of neutral chairperson for state.

(1) Preceding the commencement of negotiations for bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), but no later than February 1st of each even-numbered year, the parties shall utilize the following procedure to select a neutral chairperson unless an alternative process is specified by law or has been mutually agreed upon by the parties:

(a) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve and shall notify the executive director of the identity of the chairperson.

(b) If the parties agree to have the agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the agency. Upon the submission of a request, the executive director shall appoint a neutral chairperson from the agency staff.

(c) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall request a panel of at least five arbitrators specifying that the request is for interest arbitration proceedings under the applicable statute. Referrals and selection from the public employment relations commission's dispute resolution panel must be made as provided in WAC 391-75-020. Referrals and selection from other panels must be made under the rules of the agency supplying

the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(d) If the parties have not notified the executive director of their selection of a neutral chairperson within 28 days after February 1st of each even-numbered year, or requested an extension of time to complete the selection process, the parties are deemed to have waived the procedures in (a) through (c) of this subsection. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson must be selected as provided in WAC 391-75-020.

(2) Once a neutral chairperson is selected, the parties shall work with the neutral chairperson to select a mutually agreeable hearing date(s) and location. This information must be transmitted to the executive director within 30 days of it being finalized.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-211, filed 11/16/22, effective 1/1/23.]

WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections. Proceedings must be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, is deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-215, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-215, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration. At least 14 days before the date of the hearing, or no later than the next business day after the issuance of the certification if the date between certification and hearing is less than 14 days, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties are not entitled to submit issues that were not among the issues certified under WAC 391-55-200.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-220, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and

47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing. (1) The neutral chairperson may, upon the chairperson's own motion or upon request of a party, convene a prehearing conference.

(a) The purpose of a prehearing conference is to consider any one or more of the following:

(i) Simplification of issues;

(ii) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents, which will avoid unnecessary proof;

(iii) Limitations on the number and consolidation of the examination of witnesses;

(iv) Procedural matters;

(v) Distribution of written testimony and exhibits to the parties prior to the hearing; and

(vi) Any other matters that may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or other electronic means at a time and location specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference and the agreements made by the parties concerning all of the matters considered. If no objection is filed within 10 days after the date that the order is issued, the order controls the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and provide reasonable notice to the parties. For good cause shown, the neutral chairperson may adjourn the hearing upon the request of a party or upon the chairperson's own initiative. The parties may waive oral hearing by written agreement.

(a) A recording of the hearing must be taken and is the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties must have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party does not preclude another member of the same organization or firm from presenting the case at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-225, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-225, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

WAC 391-55-230 Interest arbitration—Order of proceedings and evidence. The order of presentation at the hearing must be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson is the judge of the relevancy of the evidence. All evidence must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit must be submitted to the neutral chairperson and copies must be provided to the partisan arbitrators and to the other parties. The exhibits must be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that the chairperson may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-230, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

WAC 391-55-235 Interest arbitration—Arbitration in the absence of a party. The neutral chairperson may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute may not be made solely on the default of a party, and the neutral chairperson may require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-235, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-235, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

WAC 391-55-240 Interest arbitration—Closing of arbitration hearings. The neutral chairperson will declare the hearing closed after the parties have completed presenting any testimony or exhibits and submission of briefs or closing arguments within the time limits as mutually agreed upon.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-240, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-240, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

WAC 391-55-245 Interest arbitration—Award. The rulings and determination of the neutral chairperson are controlling and do not require concurrence but may be accompanied by any concurring or dissenting opinions of the partisan arbitrators. The rulings and determinations are not subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-245, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-245, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

WAC 391-55-255 Interest arbitration—Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member, if any. The expenses of witnesses must be paid by the party producing them. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording or transcription of the proceedings, must be shared equally between the parties. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of a recording of the proceedings but not a transcription or the services of a court reporter, must be paid by the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-255, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-255, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings. (1) The execu-

tive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations or mediation or both. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed nonmandatory subject of bargaining, the objecting party must file a complaint charging unfair labor practices under chapter 391-45 WAC before the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the collective bargaining obligations imposed by RCW 41.56.030(4) must file a complaint charging unfair labor practices under chapter 391-45 WAC before the conclusion of the interest arbitration proceedings.

(c) If a cause of action statement is issued under WAC 391-45-110 for a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint must be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section must be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that any suspended issue was unlawfully advanced or affected by unlawful conduct, the issue(s) must be stricken from the certification issued under WAC 391-55-200, and the party advancing the proposal is only permitted to advance modified proposals that are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that any suspended issue was lawfully advanced, the suspension under this section must be terminated and the issue(s) must be remanded to the interest arbitration panel for ruling on the merits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-265, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

WAC 391-55-300 Fact-finding. If a dispute has not been settled after bilateral negotiations and mediation, fact-finding may be initiated. A party may request the appointment of a fact finder by giving written notice to the agency, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW who have made a request for the appointment of a fact finder, a period of 10 days of mediation must have elapsed. The parties may, by agreement made at any time before the appointment of a fact finder, extend the period for mediation or authorize the mediator to determine when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding must be initiated if resolution is not reached through mediation by 100 days beyond the expiration date of a contract previously negotiated under that chapter or 100 days from the initiation of mediation if no such contract exists.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-300, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-300, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

WAC 391-55-302 Special provision—Educational employees. WAC 391-55-310 through 391-55-355 are not applicable to negotiations between educational employees and employers conducted under RCW 28A.657.050.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-302, filed 10/6/10, effective 11/6/10.]

WAC 391-55-310 Selection of fact finder. (1) Upon the submission of a timely request for fact-finding, the parties shall meet within seven days to attempt to select a fact finder.

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder within seven days, they shall immediately notify the executive director.

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder must be a member of the agency staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the agency.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the agency staff or a member of the agency's dispute resolution panel.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-310, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections. Proceedings must be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party that proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and that fails to state its objection in writing is deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-315, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-315, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

WAC 391-55-320 Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties are not entitled to submit issues that were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-320, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-320, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

WAC 391-55-321 Fact-finding prehearing conference. The fact finder may, upon the fact finder's own motion or upon request of a party, convene a prehearing conference.

(1) The purpose of a prehearing conference is to consider any one or more of the following:

- (a) Simplification of issues;
- (b) Identification of evidence or supporting documentation that either one party or both may be required to bring to the hearing;
- (c) Limitations on the number and consolidation of the examination of witnesses;
- (d) Procedural matters; and
- (e) Any other matters that may aid in the disposition or settlement of the case.

(2) Prehearing conferences may be held by telephone conference call or other electronic means at a time and location specified by the fact finder.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-321, filed 11/16/22, effective 1/1/23.]

WAC 391-55-325 Fact-finding hearing. The fact finder shall establish a date, time, and place for a hearing. The fact-finding hearing is open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon the fact finder's own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-325, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-325, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

WAC 391-55-330 Order of proceedings and evidence. The order of presentation at the fact-finding hearing must be as agreed by the parties or as determined by the fact finder. The fact finder is the judge of the relevancy of the evidence. All evidence must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit must be submitted to the fact finder and copies must be provided to the other parties. The exhibits must be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-330, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-330, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

WAC 391-55-335 Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party that, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations may not be made solely on the default of a party, and the fact finder may require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-335, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-335, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

WAC 391-55-340 Closing of fact-finding hearings. The fact finder will declare the hearing closed after the parties have completed presenting any testimony or exhibits and submission of briefs or closing arguments within the time limits as mutually agreed upon.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-340, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-340, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

WAC 391-55-345 Findings of fact and recommendations. Within 30 days after appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder are not subject to appeal to the commission. Fact finders may rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties and may not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-345, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-345, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

WAC 391-55-350 Responsibility of parties after fact-finding. The parties are entitled to consider the fact finder's recommendations privately before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings of fact and recommendations have been issued, the parties

shall notify the agency and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within 10 days after the findings of fact and recommendations have been issued, the parties shall notify the agency and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-350, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-350, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

WAC 391-55-355 Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses must be paid by the party producing them. The fees and expenses of a fact finder must be paid as follows:

(1) A fact finder appointed by the agency from the agency staff under WAC 391-55-310 (2)(a) must be paid by the agency.

(2) A fact finder selected from the dispute resolution panel or some other source must be paid by the parties, in equal shares.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-355, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-355, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

WAC 391-55-365 Advisory opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e., mandatory or nonmandatory subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

(1) During the course of negotiations or mediation, upon receipt of any proposal that one party believes may constitute a nonmandatory

subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal submitted is nonmandatory.

(2) A cooling-off period must be invoked during which both parties must discuss the alleged nonmandatory proposal(s) in at least one subsequent bargaining or mediation session.

(3) If, after the cooling-off period, the offering party does not withdraw or modify the proposal(s) to eliminate any nonmandatory elements, either party may request an advisory opinion from the executive director. The request must be filed with the agency and served on all parties as required by WAC 391-08-120.

(4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

(a) A copy of the proposal(s) alleged to be nonmandatory;

(b) A certification from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling-off period was invoked;

(c) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(d) A copy of any legal material supporting the alleged nonmandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response, which may include only the following documentation and written materials:

(a) A response from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

(b) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(c) A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) of this section, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director determines it appropriate to issue an advisory opinion, it must be issued within 30 days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, the executive director shall notify the parties in writing.

(7) An advisory opinion is not a final agency decision and is not subject to appeal under WAC 391-45-350. Advisory opinions are not binding upon the agency and do not constitute evidence of an unfair labor practice in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-365, filed 11/16/22, effective 1/1/23.]