

**WSR 15-09-007**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)  
 [Filed April 2, 2015, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-19-028.

Title of Rule and Other Identifying Information: Revisions to chapter 388-61A WAC, Shelters for victims of domestic violence.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on May 26, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 27, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., May 26, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 12, 2015, phone (360) 664-6092 or TTY (360) 664-6178, e-mail [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services (DSHS), children's administration (CA), division of external affairs and operations management is proposing to amend the sections of chapter 388-61A WAC that address the training requirements for advocates and advocate supervisors.

Reasons Supporting Proposal: This proposal will add training requirements for advocate supervisors and to change (reduce) the number of annual continuing education training hours for advocates.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Hannibal, 4045 Delridge Way S.W., Room 300, Seattle, WA 98106, (206) 923-4910.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that they do not impose more than minor costs on affected small businesses or small nonprofit organizations.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Susan Hannibal, DSHS/CA, 4045 Delridge Way S.W., Room 300, Seattle, WA 98106, phone (206) 923-4910, fax (206) 923-5497.

March 30, 2015  
 Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-10-028, filed 4/24/13, effective 5/25/13)

**WAC 388-61A-0220 What definitions apply to this chapter?**

"**Advocacy**" means that the client is involved with an advocate in individual or group sessions with a primary focus of safety planning, empowerment, and education of the client through reinforcement of the client's autonomy and self-determination. Advocacy also means speaking and acting for change or justice with, or on behalf of, another person or cause. Advocacy is survivor-centered and uses nonvictim blaming methods that include:

- Identifying barriers to, and strategies to enhance, safety, including safety planning.
- Clarifying and increasing awareness of the power and control associated with domestic violence and the options one may have to obtain resources while staying safe.
- Supporting independent decision-making based on the unique needs and circumstances of each individual.

"**Advocate**" means a trained staff person who works in a domestic violence agency and provides advocacy to clients.

"**Child care**" means the temporary care of a client's child or children by staff of the domestic violence agency at the agency's location or another location where the client is receiving confidential or individual services from the domestic violence agency or is participating in activities sponsored by the domestic violence agency, other than employment, and so long as the client remains on the premises.

"**Children/youth activities**" means activities other than children/youth advocacy, such as recreational and educational activities.

"**Children/youth advocacy**" means an age-appropriate intervention service that strives to assist children/youth to express feelings about their exposure to domestic violence. It is an educational, rather than a therapeutic intervention, and is focused on providing education about domestic violence, safety planning, and developing or enhancing problem-solving skills. Advocacy can be provided on an individual basis and in group settings.

"**Client**" means a victim of domestic violence who is accessing services at a domestic violence agency. Client can also be referred to as a survivor, service recipient, or resident.

"**Cohabitant**" means a person who is or was married, in a state registered domestic partnership, or cohabiting with another person in an intimate or dating relationship at the present time or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, were/are in a domestic partnership with each other, or have lived together at any time, must be treated as a cohabitant. Any person who is or was in a dating relationship with another person at the present or at some time in the past, regardless of whether they lived together at any time, must be treated as a cohabitant.

"**Community education**" refers to information that is provided in community settings about domestic violence and services related to victims of domestic violence. Community education activities include: Training, presentations, outreach to specific communities or geographic areas, community events, and media events.

**"Confidential communication"** means all information, oral, written or nonverbal, that is transmitted between a victim of domestic violence and an employee or supervised volunteer of a domestic violence agency in the course of their relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person.

**"Confidential information"** includes, but is not limited to, any information, advice, notes, reports, statistical data, memoranda, working papers, records or the like, made or given during the relationship between a victim of domestic violence and a domestic violence agency, however maintained. Confidential information includes the name, address, telephone number, social security number, date of birth, nine-digit postal (ZIP) code, physical appearance of, case file or history of, and other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence agency.

**"Crisis hotline or helpline"** means a designated telephone line of the domestic violence agency that operates twenty-four hours a day, three hundred sixty-five days a year. A hotline/helpline provides crisis intervention, safety planning, information, and referral services.

**"Crisis intervention"** means services provided to an individual in crisis to stabilize an individual's emotions, clarify issues, and provide support and assistance to help explore options for resolution of the individual's immediate crisis and needs.

**"Department"** means the department of social and health services (DSHS).

**"Domestic violence"** is a pattern of assaultive and coercive behaviors that an adult or adolescent uses to maintain power and control over their intimate partner. Abusive tactics may include, but are not limited to the following: Physical abuse, sexual abuse, intimidating tactics, physical and/or psychological isolation of the victim, repeated attacks against the victim's competence, alternating use of indulgences, control of family funds and resources, stalking, and the use of children and systems to control the victim. The abuser's use of physical force against persons or property or the use of conduct that establishes credible threat of physical harm (i.e. terrorizing tactics) combined with other controlling tactics are key elements of domestic violence. The effect of the overall pattern of assaultive and coercive behavior is to increase the abuser's power and control in the relationship. It includes, but is not limited to, the categorization of offenses defined in RCW 10.99.020(3) when committed by one cohabitant against another.

**"Domestic violence agency"** means an agency that provides shelter and advocacy for domestic violence clients in a safe and supportive environment.

**"Intimate partner violence"** focuses on the most common form of domestic violence, which is between adult or adolescent intimate partners or cohabitants, rather than on violence between nonintimate adult or adolescent household members.

**"Job-shadowing"** means a work experience where an individual observes and learns about a job, activity, or activities by walking through the work day as a shadow to a skilled and competent employee. The experience must be planned

for and structured with the goal of observing behavior and situations, engaging in interactive questions and answers, and experiencing the link between learning and practice. Job-shadowing can be anywhere from a few hours, to a day, to a week or more, depending on the job or activity to be experienced.

**"Legal advocacy"** means personal support and assistance with victims of domestic violence to ensure their interests are represented and their rights upheld within the civil and criminal justice systems, including administrative hearings. It includes educating and assisting victims in navigating the justice systems; assisting victims in evaluating advantages and disadvantages of participating in the legal processes; facilitating victims' access and participation in the legal systems; and promoting victims' choices and rights to individuals within the legal systems.

**"Live training"** means events that are held at a specific time and not prerecorded, where participants have the opportunity to ask questions and hear the questions of others in real-time. Examples of live training include events that are in-person, teleconferences, interactive webinars and web casts.

**"Lodging unit"** means one or more rooms used for a victim of domestic violence including rooms used for sleeping or sitting.

**"Marginalized populations"** includes, but is not limited to, populations that have been historically underserved and oppressed in society because of ethnicity, race, culture or language diversity, age, sexual orientation, or disability.

**"Personally identifying information"** includes, but is not limited to, first and last name, home or other physical address, telephone number, Social Security number, date of birth, nine-digit postal (ZIP) code, physical appearance of, case file or history of, and other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence agency, or such other information which, taken individually or together with other identifying information, could identify a particular individual.

**"Program"** means the DSHS domestic violence program.

**"Resident"** means a client of the domestic violence agency who is residing in a shelter as defined in this chapter.

**"Safe home"** means a shelter that has two or fewer lodging units and has a written working agreement with a domestic violence agency.

**"Safety plan"** is a process of thinking through with the victim how to increase safety for both the victim of domestic violence and any dependent children of the victim. Safety planning addresses both immediate and long term risks, barriers, or concerns regarding the victim and any dependent children. It is based on knowledge about the specific pattern of the domestic violence perpetrator's tactics and the protective factors of the victim and any dependent children. Safety planning can be done formally, informally, in writing or orally, or in any other conversational process between the victim and advocate.

**"Secretary"** means the DSHS secretary or the secretary's designee.

"Self-study" is a form of study in which one is, to a large extent, responsible for one's own instruction. Examples of self-study include reading articles, books, academic journals, training materials, engaging in on-line learning opportunities, and prerecorded webinars. Self-study content must be current or have historical relevance to the domestic violence advocacy field.

**"Shelter"** means a safe home or shelter home that provides temporary refuge and food and clothing offered on a twenty-four hour, seven-day-per-week basis to victims of domestic violence and their dependent children. Domestic violence agencies may use hotels and motels for victims who need safe shelter, but the domestic violence agency must also have a shelter home and/or safe home(s) that meet the requirements of this chapter.

**"Shelter home"** means a shelter that has three or more lodging units and is either a component of, or has a written working agreement with, a domestic violence agency.

**"Staff"** means persons who are paid or who volunteer to provide services to clients and are a part of a domestic violence agency.

**"Support group"** means interactive group sessions of two or more victims of domestic violence that is facilitated by trained staff on a regular basis. Participants share experiences, offer mutual support, and receive information and education around a specific topic of common interest. Support groups validate the experiences of victims, explore options, build on strengths, and respect participants' rights to make their own decisions. A shelter or house meeting where, for example, chores are discussed, and there is no advocacy provided, is not a support group.

**"Victim"** means a cohabitant who has been subjected to domestic violence.

**"We, us and our"** refers to the department of social and health services and its employees.

**"You, I and your"** refers to the domestic violence agency.

AMENDATORY SECTION (Amending WSR 10-22-040, filed 10/27/10, effective 11/27/10)

**WAC 388-61A-0350 What type of training is required for staff of the domestic violence agency?** Initial and continuing education training of domestic violence agency staff is critically important. In addition, quality supervision is an integral component for the provision of excellent advocacy and in supporting staff. Advocates and advocate supervisors must be able to demonstrate an understanding of the nature and scope of domestic violence as defined by this chapter, as well as the historical and societal attitudes in which domestic violence is rooted. Training must be current and relevant to the provision of empowerment-based advocacy. Domestic violence agencies should also strive to ensure that staff incorporate training on services to marginalized populations as part of each advocate's annual continuing education hours. In furtherance of these goals, domestic violence agency staff must meet the following minimum training requirements.

**Initial training (~~for staff providing supportive services and staff supervisors~~)**

(1) Staff providing supportive services and supervisors of staff shall obtain a minimum of twenty hours of initial basic training that covers the following topics and skills:

(a) Theory and implementation of empowerment-based advocacy.

(b) The history of the domestic violence movement.

(c) Active listening skills.

(d) Legal, medical, social service and systems advocacy.

(e) Anti-oppression and cultural competency theory and practice.

(f) Confidentiality and ethics.

~~((f))~~ (g) Safety planning skills and barriers to safety.

~~((g))~~ (h) Planning, clarifying issues and options, and crisis intervention.

~~((h))~~ (i) Providing services and advocacy to individuals from marginalized populations.

~~((i))~~ (j) Policies and procedures of the domestic violence agency.

(2) Initial training shall be completed prior to providing supportive services to clients and/or their dependent children.

(3) The recommended format for initial trainings is live and in-person group sessions. Structured job-shadowing and self-study may be included as part of the overall initial training. All domestic violence agency in-house training must be based on a training plan that covers one or more of the required initial training topics.

**Continuing education and supervisor training (~~for staff providing supportive services and staff supervisors~~)**

~~((2))~~ (4) Based on their date of hire with the domestic violence agency, staff providing supportive services and staff supervisors must obtain an annual minimum of ~~((thirty))~~ twenty hours of continuing education training beginning in their second year with the domestic violence agency, and in every year thereafter. ~~((Continuing education training must include:~~

(a) A minimum of fifteen hours of training on advocacy that is directly related to serving victims of domestic violence and their children.

~~(b) A minimum of five hours of training on providing services and advocacy to individuals from marginalized populations.~~

~~(3) Not more than ten hours of the thirty hours of continuing education training can be obtained from video, audio, or similar self study methods.)~~

(5) A minimum of ten hours must be live training on topics specifically focused on serving victims of domestic violence and their children.

(6) The remaining ten hours of training may be satisfied through self-study on topics specifically focused on serving victims of domestic violence and their children.

(7) Within six months of being hired as an advocate supervisor and for each year thereafter, the supervisor must obtain a minimum of five hours of training on supervision. Supervision training can be counted toward the twenty hours of annual continuing education training hours required by this chapter. Examples of supervision training topics include leadership skills, job coaching and staff evaluation, personnel management, effective communication and managing con-

flict, multicultural supervision, and how to foster professional development of, and self-care with, advocates. While live, in-person training is the preferred method for supervisory training, all methods of live and self-study training are acceptable.

**Training for staff not providing supportive services**

~~((4))~~ (8) Domestic violence agency staff who do not provide supportive services to clients or their dependent children are not required to obtain initial and continuing education training as described in this section. Examples of staff that are included in this category are shelter housekeeping staff, individuals providing child care assistance as defined in this chapter, and bookkeeping and accounting staff. It is recommended, however, that staff who may come into contact with clients of the domestic violence agency and their dependent children, but who do not provide supportive services, receive training on the following:

- (a) Confidentiality.
- (b) Relevant policies and procedures of the domestic violence agency.
- (c) Mandated reporting of child abuse/neglect as required by chapter 26.44 RCW, Abuse of children.

AMENDATORY SECTION (Amending WSR 10-22-040, filed 10/27/10, effective 11/27/10)

**WAC 388-61A-0360 How should training be documented?** Initial, ~~((and))~~ continuing education, and supervisor training ((received by staff and supervisors of staff providing supportive services must be recorded in a training log. At a minimum the log must include:

- ~~(1) Date(s) of training.~~
- ~~(2) Title or subject matter of the training.~~
- ~~(3) Individual or organization that provided the training.~~
- ~~(4) Number of training hours received.~~
- ~~(5) Training method (e.g. in-person, video, audio, self-study, or other method).~~
- ~~(6) For continuing education training, whether the training was on advocacy or serving individuals from marginalized populations))~~ must be documented as required by DSHS.

**WSR 15-09-009**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed April 3, 2015, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-066.

Title of Rule and Other Identifying Information: WAC 260-70-630 Thresholds.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on June 12, 2015, at 9:30 a.m.

Date of Intended Adoption: June 12, 2015.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [doug.moore@whrc.state.wa.us](mailto:doug.moore@whrc.state.wa.us), fax (360) 459-6461, by June 9, 2015.

Assistance for Persons with Disabilities: Contact Patty Sorby by June 9, 2015, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends the threshold for the substance xylazine.

Reasons Supporting Proposal: The original threshold for xylazine was not based on current, published research and does not allow for reasonable administration.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

April 3, 2015  
Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 14-13-074, filed 6/13/14, effective 7/14/14)

**WAC 260-70-630 Threshold levels.** (1) Permitted medications.

(a) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in urine:

Acepromazine - 25 ng/ml  
Albuterol - 1 ng/ml  
Bupivacaine - 5 ng/ml  
Detomidine - 1 ng/ml  
Mepivacaine - 10 ng/ml  
Omeprazole - 1 ng/ml  
Promazine - 25 ng/ml  
Pyrilamine - 25 ng/ml

(b) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in serum or plasma:

Betamethasone - 10 pg/ml  
Butorphanol - 2 ng/ml  
Clenbuterol - 25 pg/ml  
Dantrolene - 100 pg/ml  
Dexamethasone - 1 ng/ml  
Diclofenac - 5 ng/ml  
DMSO - 10 mc/ml  
Firocoxib - 40 ng/ml  
Glycopyrrrolate - 3 pg/ml  
Isoflupredone - 100 pg/ml  
Lidocaine - 20 pg/ml  
Methocarbamol - 1 ng/ml  
Methylprednisolone - 1.3 ng/ml  
Prednisolone - 1 ng/ml

\*Procaine penicillin - 25 ng/ml  
 Triamcinolone - 100 pg/ml  
 Xylazine - ((0.04)) 0.2 ng/ml

- \* Administration of procaine penicillin to those horses entered must be reported to the commission and may require surveillance up to six hours prior to post time.

(c) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Arsenic - 0.3 mc/ml urine  
 Caffeine - 100 ng/ml serum or plasma  
 Benzoyllecgonine - 50 ng/ml urine  
 Estradiol - 0.045 mc/ml free + conjugated (5 $\alpha$ -oestrane-3 $\beta$ ,17 $\alpha$ -diol), in male horses, other than geldings  
 Hydrocortisone - 1 mc/ml urine  
 Methoxytyramine - 4 mc/ml, free + conjugated urine  
 Morphine Glucuronides - 50 ng/ml urine  
 Salicylate salicylic acid - 750 mc/ml serum or plasma  
 Theobromine - 2 mc/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Boldenone (Equipoise) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5 $\alpha$ -oestrane-3 $\beta$ ,17 $\alpha$ -diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

Title of Rule and Other Identifying Information: Highline College student conduct code.

Hearing Location(s): Highline College, 2400 South 240th Street, Building 2, Room 101, Des Moines, WA 98198, on May 26, 2015, at 1:00 p.m.

Date of Intended Adoption: June 11, 2015.

Submit Written Comments to: Toni Castro, Vice-President for Student Services, Highline College, P.O. Box 98000, Mailstop 6-11, Des Moines, WA 98198, e-mail tcastro@highline.edu, fax (206) 592-3710, by June 1, 2015.

Assistance for Persons with Disabilities: Contact Dena Dillon by May 20, 2015, TTY (206) 870-4853 or (206) 592-3077.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Highline College is repealing the student conduct code and discipline procedures that are currently codified under chapter 132I-120 WAC, Student rights and responsibilities, and adopting a new student conduct code and discipline procedures that will be codified in chapter 132I-125 WAC, Student conduct code.

Reasons Supporting Proposal: The new student conduct code and discipline procedures will, among other things, meet requirements imposed by Title IX of the Civil Rights Act of 1964 and the Campus Sexual Violence Elimination Act (SaVE), and Washington's law against discrimination. The proposed changes will also add new provisions to the student conduct code that are currently not adequately addressed in the current code. These new provisions include prohibitions against cyber-bullying and the use of marijuana on campus, and restrictions on the use of electronic cigarettes. Changes to the discipline procedures will streamline discipline proceedings and provide victims of sexual assault additional procedural protections and guarantees.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of federal law, 79 F.R. 35417.

Name of Proponent: Highline College, Community College District IX, governmental.

Name of Agency Personnel Responsible for Drafting: Dena Dillon, Executive Assistant for Student Services, Highline College, Building 6, Room 218, (206) 592-3077; Implementation and Enforcement: Toni Castro, Vice-President for Student Services, Highline College, Building 6, Room 218, (206) 592-3351.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business impact statement is not required, since these rules will have no impact on businesses in an industry. See RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. These proposed rules are not subject to the cost-benefit analysis requirement in RCW 34.05.328(5).

April 6, 2015

Toni Castro

Vice-President for  
Student Services

**WSR 15-09-013**  
**PROPOSED RULES**  
**HIGHLINE COLLEGE**

[Filed April 6, 2015, 7:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-041.

**Chapter 132I-125 WAC**  
**STUDENT CONDUCT CODE**

NEW SECTION

**WAC 132I-125-010 Statement of jurisdiction.** The student conduct code applies to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the date of admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off-campus.

NEW SECTION

**WAC 132I-125-020 General policies.** (1) Highline College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for the laws by cooperating in their enforcement.

(2) Highline College cannot and will not establish regulations which would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions conducive to the effective performance of the function of the college, to protect students from unfair imposition of penalties and to assure due process. Highline College is granted the right by law to adopt rules deemed necessary to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take action that is in the best interest of the college and that is commensurate with the constitutional rights of the individual.

(5) Highline College reserves the right to impose the provisions of this chapter and provide further sanctions before or after law enforcement agencies, courts or other agencies have imposed penalties or otherwise disposed of a case. College proceedings are not subject to challenge on the ground that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The associated students of Highline College have the right to participate in the formulation and review of all poli-

cies pertaining to student rights and responsibilities and its enforcement as described in the student code of conduct.

(7) Rules of conduct and procedures of enforcement shall be made available to all students via the internet.

NEW SECTION

**WAC 132I-125-030 Authority and responsibility for discipline.** (1) The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action.

(2) Administration of the disciplinary procedures is the responsibility of the vice-president for student services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

(a) The administrator or delegate in charge of any college office, department or facility is responsible for student conduct that takes place in that area, but outside a classroom setting. The administrator or delegate may remove a student from the area within their control if they reasonably believe that the student conduct substantially and materially disrupts college operations and such removal is necessary to protect the learning environment and/or to ensure the safety and well-being of members of the college community and/or to protect property or facilities belonging to the college or members of the college community. Staff directing the removal of a student must report the student's conduct to their administrator in charge at the earliest opportunity. The administrator in charge must report the incident in writing to the student conduct officer at the earliest opportunity.

(b) The instructor or advisor is responsible for student conduct in the classroom or at any college-related activity or event. The instructor or advisor is authorized to remove the student from a single class or college-sponsored event in which the student's conduct materially and substantially disrupts the educational environment. When such behavior results in removal, the instructor or advisor must report the student's conduct in writing to the student conduct officer at the earliest opportunity.

(c) In all cases involving disruption, the student conduct officer or designee will proceed with the investigation and/or disciplinary proceedings at the earliest opportunity consistent with the procedural requirements established in this chapter.

NEW SECTION

**WAC 132I-125-050 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment and other property owned, used or controlled by the college.

(3) "Conduct review officer" is the vice-president for student services or designee who is responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct

review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or from a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action are reviewed through brief adjudicative proceedings, unless the case is referred to the committee by the student conduct officer or the conduct review officer.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by e-mail and either intercampus mail or first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(7) "Respondent" is the student against whom disciplinary action is initiated.

(8) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(9) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been admitted for admission are considered "students."

(10) "Student conduct officer" is a college administrator designated by the vice-president for student services to be responsible for implementing and enforcing the student conduct code. The vice-president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "The president" is the president of the college. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

## NEW SECTION

**WAC 132I-125-100 Prohibited student conduct.** The college may impose sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit any act(s) of misconduct which include, but are not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, fabrication, collusion or academic misconduct.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Collusion includes assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or to increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct includes intentionally violating college policies, such as altering grades, misrepresenting one's identity, failing to report known incidents of academic dishonesty or participating in obtaining or distributing any part of a test or any information about a test.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault, intimidation, harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, posting or sending threatening messages, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's electronic identity, nonconsensual recording of sexual activity and nonconsensual distribution of a recording of sexual activity.

(6) Property violation. Damage to, or theft or misuse of real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when used for self-defense.

(9) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or

amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession, delivery, sale or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) Lewd conduct. Conduct which is lewd or obscene.

(12) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, intellectual or physical disability; use of a service animal; gender including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation and sexual violence.

(a) Sexual harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual inter-

course, nonconsensual sexual contact, domestic violence, dating violence and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(vii) A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(viii) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status;

or any other legally protected classification. See "sexual misconduct," subsection (13) of this section for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(15) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display or print an obscene or abusive message, text or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) Safety violations. Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) Violation of other laws or policies. Violation of any federal, state or local law, rule or regulation or other college rules or policies, including college traffic and parking rules.

(20) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

**WAC 132I-125-125 Disciplinary sanctions and terms and conditions.** (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) Not in good standing. A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) No contact order. An order directing a student to have no contact with a specified student, college employee, a member of the college community or a particular college facility.

NEW SECTION**WAC 132I-125-200 Initiation of disciplinary action.**

(1) All disciplinary action will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice-president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s) and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten business days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the sanctions imposed (if any) and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose disciplinary sanction(s) outlined in this chapter.

(c) Impose disciplinary terms and conditions alone or in conjunction with a disciplinary sanction including, but not limited to, disciplinary terms and conditions identified in WAC 132I-125-125(2).

(d) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention

of the chair of the student conduct committee, with a copy served on the respondent.

#### NEW SECTION

##### **WAC 132I-125-220 Appeal from disciplinary action.**

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has the right to a prompt, fair and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer or the conduct review officer.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any disciplinary conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and exonerations are final actions and are not subject to appeal.

#### NEW SECTION

**WAC 132I-125-230 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

##### **WAC 132I-125-240 Brief adjudicative proceedings—Review of an initial decision.**

(1) An initial decision is subject to review by the vice-president for student services or designee, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The vice-president for student services or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the vice-president for student services or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the vice-president for student services or designee does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the vice-president for student services or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132I-125-260 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the faculty senate;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review

officer) appointed by the vice-president for student services at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132I-125-270 Appeals to the student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent.

If doing so, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and if they do so, whether the committee chair may provide copies of

these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132I-125-280 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

**WAC 132I-125-290 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions and/or a proposed decision for its consideration.

(2) Within twenty-one days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the vice-president for student services.

NEW SECTION

**WAC 132I-125-300 Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final.

(4) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

**WAC 132I-125-350 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure is pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall

include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

#### **DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT**

##### NEW SECTION

**WAC 132I-125-400 Supplemental sexual misconduct procedures.** (1) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(2) Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132I-125-010 through 132I-125-300. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

##### NEW SECTION

**WAC 132I-125-410 Supplemental definitions.** The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 132I-125-100(13).

##### NEW SECTION

**WAC 132I-125-420 Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX coordinator or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the findings of the investigation shall be reported to the student conduct officer within sixty days.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college com-

munity or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

##### NEW SECTION

**WAC 132I-125-430 Supplemental appeal rights.** (1) The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132I-125-420(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) Disciplinary warning;
- (c) Written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132I-120-010 Purpose.
- WAC 132I-120-020 General policies.
- WAC 132I-120-030 Definitions.
- WAC 132I-120-100 College community expectations.
- WAC 132I-120-101 Student code of conduct.
- WAC 132I-120-102 Academic honesty.

- WAC 132I-120-105 Student rights.
- WAC 132I-120-315 Right of assembly.
- WAC 132I-120-330 Rights of ownership of works.
- WAC 132I-120-340 Right to be interviewed.
- WAC 132I-120-350 Student nonacademic complaints against college employees.
- WAC 132I-120-400 Authority and responsibility for discipline.
- WAC 132I-120-410 Definition of disciplinary action.
- WAC 132I-120-415 Authority to request identification.
- WAC 132I-120-421 Initial disciplinary proceedings.
- WAC 132I-120-424 Purpose of summary suspension.
- WAC 132I-120-426 Summary suspension proceedings.
- WAC 132I-120-427 Procedures of summary suspension hearing.
- WAC 132I-120-428 Posthearing decision by the chief student affairs officer.
- WAC 132I-120-429 Notice of suspension.
- WAC 132I-120-431 Suspension for failure to appear.
- WAC 132I-120-432 Appeals from summary suspension hearing.
- WAC 132I-120-435 Discipline committee.
- WAC 132I-120-441 Appeals of disciplinary action.
- WAC 132I-120-442 Hearing procedures before the discipline committee.
- WAC 132I-120-443 Evidence admissible in hearings.
- WAC 132I-120-444 Decision by the discipline committee.
- WAC 132I-120-450 Final appeal.
- WAC 132I-120-500 Review of rules.
- WAC 132I-120-510 Membership of review committee.
- WAC 132I-120-520 Function of the review committee.
- WAC 132I-120-530 Jurisdiction.

#### **WSR 15-09-024**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed April 7, 2015, 12:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-093.

Title of Rule and Other Identifying Information: Changes to specific sections within chapter 388-845 WAC, DDD home and community based services waivers.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public

parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>, on June 9, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 10, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., June 9, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 26, 2015, TTY (360) 664-6178 or (360) 664-6094 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2014 operating supplemental budget directed the developmental disabilities administration (DDA) to move the state funded individual and family services (IFS) program into a 1915(C) Home and Community Based Services (HCBS) Waiver. The requirement is to mirror the current IFS program as much as possible in the new HCBS waiver.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: SSB 6387 of the 63rd legislature, 2014 regular session.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [DSHS], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bob Beckman, DDA, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3445.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do no [not] impact small businesses or nonprofits. They only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii) and relate only to client medical or financial eligibility.

April 7, 2015  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-10 issue of the Register.

**WSR 15-09-038**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed April 9, 2015, 3:40 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-08-400 How much can a health care provider charge for searching and duplicating health care records, pursuant to RCW 70.02.010(37).

Hearing Location(s): Department of Health, 111 Israel Road, Town Center 2, Room 158, Tumwater, WA 98501, on May 29, 2015, at 9:00.

Date of Intended Adoption: June 5, 2015.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by May 29, 2015.

Assistance for Persons with Disabilities: Contact Sherry Thomas by May 22, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to adjust the maximum fees health care providers are allowed to charge for searching and duplicating health care records. The adjustment is legislatively required to occur every two years, and must be based on the change in the consumer price index (CPI) for the Seattle-Tacoma area.

**CPI - All Urban Consumers**  
**Original Data Value**

**Series Id:** CUURA423SA0

**Not Seasonally Adjusted**

**Area:** Seattle-Tacoma-Bremerton, Washington

**Item:** All items

**Base Period:** 1982-84=100

**Years:** 2012 to 2014

Year	Dec
2012	237.993
2013	241.055
2014	245.050

**CPI - All Urban Consumers**  
**12-Month Percent Change**

**Series Id:** CUURA423SA0

**Not Seasonally Adjusted**

**Area:** Seattle-Tacoma-Bremerton, Washington

**Item:** All items

**Base Period:** 1982-84=100

**Years:** 2012 to 2014

Year	Dec	Annual
2012	1.4	2.5
2013	1.3	1.2
2014	1.7	1.8

Reasons Supporting Proposal: The proposed rule sets reasonable fees that providers are allowed to charge for cost recovery for searching and duplicating health care records. The CPI for the Seattle-Tacoma area changed from 237.993 in 2012 to 245.050 in 2014, which is a 3.0 percent increase.

Statutory Authority for Adoption: RCW 70.02.010(37) and 43.70.040.

Statute Being Implemented: RCW 70.02.010(37).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 34.05.310 (4)(f), a small business economic impact statement is not required for a proposed rule that sets or adjusts fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 9, 2015

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 13-14-092, filed 7/1/13, effective 8/1/13)

**WAC 246-08-400 How much can a health care provider charge for searching and duplicating health care records?** RCW 70.02.010(~~((45))~~) (~~37~~) allows health care providers to charge fees for searching and duplicating health care records. The fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than one dollar and (~~((nine))~~) twelve cents per page for the first thirty pages;

(b) No more than (~~((eighty-two))~~) eighty-four cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a (~~((twenty-four))~~) twenty-five dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) This section is effective July 1, (~~((2013))~~) 2015, through June 30, (~~((2015))~~) 2017.

(4) HIPAA covered entities shall refer to HIPAA regulation 45 C.F.R. 164.524 (c)(4).

#### WSR 15-09-040

#### PROPOSED RULES

#### CASCADIA COLLEGE

[Filed April 9, 2015, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [14-22-001 on] October 23, 2014.

Title of Rule and Other Identifying Information: Student conduct code, chapter 132Z-115 WAC (new sections and

repealed sections); and brief adjudicative proceedings, WAC 132Z-108-050 (amendments).

Hearing Location(s): Cascadia College, 18345 Campus Way N.E., CC1-250, Bothell, WA 98011, on June 2, 2015, at 3:30 p.m.

Date of Intended Adoption: June 17, 2015.

Submit Written Comments to: Dede Gonzales, 18345 Campus Way N.E., Bothell, WA 98011, e-mail dgonzales@cascadia.edu, fax (425) 352-8313, by June 2, 2015.

Assistance for Persons with Disabilities: Contact Gordon Dutrisac by May 22, 2015, (425) 352-8288 or e-mail gdutrisac@cascadia.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to update, clarify, and streamline student conduct code standards and procedures, as well as to incorporate federal requirements relating to sexual harassment and sexual misconduct, including the Violence Against Women Act, Clery Act amendments, and Title IX/OCR guidance letters.

Statutory Authority for Adoption: RCW 28B.50.140 and chapter 34.05 RCW.

Rule is necessary because of federal law, 20 U.S.C. § 1681(a); 20 U.S.C. § 1092(f); Pub. L. No. 113-4, § 304 (2013).

Name of Proponent: Cascadia College, public and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Erin Blakeney, CC1-130, (425) 352-8534; and Enforcement: Gordon Dutrisac, CC1-130, (425) 352-8288.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules impose no costs or regulatory burdens on small businesses as defined under RCW 19.85.040. The proposed rules are also exempt under RCW 19.85.025(3) and 34.05.310 (4)(g)(i).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not "significant legislative rules" as defined under RCW 34.05.328(5).

April 9, 2015

Dede Gonzales  
Executive Assistant  
to the President  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-14-098, filed 7/2/96, effective 8/2/96)

**WAC 132Z-108-050 Brief adjudicative (~~((proceedures))~~) proceedings.** ((This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are adopted by reference. Brief adjudicative proceedings shall be used in all matters related to:

~~(1) Residency determinations;~~

~~(2) Challenges to contents of education records;~~

~~(3) Student conduct proceedings;~~

~~(4) Parking violations;~~

~~(5) Outstanding debts owed by students or employees;~~

~~(6) Loss of eligibility for participation in college sponsored events.))~~ (1) The college will conduct brief adjudicative

proceedings in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted.

(2) Except as otherwise provided by rule or as determined in a particular case by the college president (or designee), brief adjudicative proceedings shall be used to hear appeals of administrative actions relating to the following matters:

(a) Parking and traffic citations:

(b) Outstanding student debts or employee overpayments:

(c) Student residency determinations:

(d) Library fines:

(e) Challenges to contents of student education records:

(f) Loss of student eligibility for participation in college athletics:

(g) Student disciplinary action as defined under the student conduct code, except for a decision referring the matter to the student conduct committee, a decision imposing a sanction of conduct suspension in excess of ten instructional days, or a decision imposing a sanction of conduct expulsion:

(h) Administrative decisions regarding mandatory tuition and/or fee waivers; or

(i) Administrative decisions denying admission or enrollment pursuant to RCW 28B.50.090(3).

(3) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt and fair resolution of the matter.

(4) The administrative record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. Such records shall be maintained as the official record of the proceedings.

### Chapter 132Z-115 WAC

#### ~~((CODE OF))~~ STUDENT CONDUCT ~~((AND DISCIPLINARY PROCEDURES))~~ CODE

#### NEW SECTION

**WAC 132Z-115-006 Authority—Jurisdiction.** (1) This student conduct code is adopted by the governing board of Cascadia College as authorized under RCW 28B.50.140. Authority is hereby delegated to the college president and administrative officers to administer and enforce the provisions of this code.

(2) The student conduct code shall apply to student conduct that occurs on college premises and to conduct that occurs at or in connection with college sponsored events, programs, or activities. This code may also apply to other student conduct occurring off campus or in noncollege electronic environments when the college deems such conduct to threaten safety or security or otherwise adversely impact the college community. Students shall be responsible for their conduct from the time of acceptance for admission or registration through the actual awarding of a degree or other certificate of completion. The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate. Student orga-

nizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.

(3) The college shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.

(4) Nothing in this student code shall be construed as authorizing the college to prohibit or to discipline speech or other conduct that is protected by law or constitutional right.

#### NEW SECTION

**WAC 132Z-115-015 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) **College premises.** "College premises" shall include all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, web sites, and other property owned, used, or controlled by the college.

(2) **Complainant.** A "complainant" for purposes of this student code means any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint.

(3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(4) **Conduct review officer.** The "conduct review officer" is the college official designated by the college to hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct committee.

(5) **Day.** The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means any day within an academic term that the college is open for business, excluding weekends and holidays.

(6) **Disciplinary action.** The term "disciplinary action" means the decision of the designated college official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension.

(7) **Filing and service.**

(a) **Filing.** The term "filing" means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand-delivering it or by mailing it to the college official (or the official's assistant) at the official's office address. Filing is complete upon actual receipt during office hours at the office of the designated official.

(b) **Service.** The term "service" means the delivery to a party of any document that is required to be served under this code. A document is served by hand-delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand-delivered or actually deposited in the mail.

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

(8) **Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(9) **Preponderance of evidence.** The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(10) **Respondent.** A "respondent" is a student against whom disciplinary action is initiated.

(11) **Service.** See "Filing and service."

(12) **Student.** The term "student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

(13) **Vice-president.** The term "vice-president" means the chief student affairs officer of the college and includes any acting or interim vice-president and any other college official designated by the president to perform the functions and duties of the vice-president under this student code.

#### NEW SECTION

##### **WAC 132Z-115-025 Prohibited student conduct.**

Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" includes cheating, plagiarism, and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an academic assignment.

(2) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** An "alcohol violation" includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** A "marijuana violation" includes using, possessing, delivering, selling, or being under the influence

of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on college premises or in connection with college activities.

(c) **Drug.** A "drug violation" includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A "tobacco violation" means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.

(3) **College policy violations.** The term "policy violation" means the violation of any applicable law or college policy governing the conduct of students as members of the college community, including college policies governing nondiscrimination, alcohol and drugs, computer use, copyright, and parking and traffic.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Ethics violations.** An "ethics violation" includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.

(6) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(8) **Harassment.** The term "harassment" means unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such

person's protected status and that is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "sexual misconduct" for the definition of "sexual harassment."

(9) **Hazing.** "Hazing" includes any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes or is likely to cause the destruction or removal of public or private property or that causes or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person.

(10) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(11) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(12) **Retaliation.** The term "retaliation" means harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(13) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, and sexual coercion. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.

(15) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, e-mail account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(16) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

#### NEW SECTION

**WAC 132Z-115-035 Disciplinary sanctions.** The college may impose any of the following disciplinary sanctions for violations of this student code. Violations must be proved by a preponderance of the evidence.

(1) **Conduct reprimand.** A "conduct reprimand" is a written notice formally censuring a student for a student code violation and providing notice that a repeated violation will subject the student to more severe disciplinary action.

(2) **Conduct probation.**

(a) The term "conduct probation" means a specified period of time during which a student's continued enrollment will be conditioned on the student's compliance with specified requirements or restrictions. The probation may be for a limited term or may extend for the duration of the student's attendance at the college, depending on the nature and seriousness of the code violation(s).

(b) Conditions placed on a student's continued enrollment may include, without limitation, any one or more of the following requirements or restrictions:

(i) Compliance with applicable standards of conduct under the student code and college policies;

(ii) Restitution, defined as payment of compensation for damage or loss caused to the college or any person as a result of the student's misconduct, or the assessment of such fines as may be authorized under specific college policies for violations of those policies;

(iii) Restrictions on the student's contact with specified individuals or groups, which may include an order that the student refrain from having any communication with the specified persons;

(iv) Restrictions on the student's access to specified college premises and/or limitations on the student's participation in college activities;

(v) A requirement that the student receive education or participate in training relating to the student's misconduct, which may include other educational sanctions assigned for the purpose of facilitating student development and learning as deemed appropriate to the offense;

(vi) A requirement that the student be professionally evaluated by a qualified health care provider who is approved by the college and who is authorized by the student to discuss the evaluation with designated college officials, together with a requirement that the student comply with treatment recommendations relating to the student's ability to maintain appropriate standards of conduct.

(c) A student's failure to comply with the conditions of the conduct probation may result in further disciplinary action including, but not limited to, disciplinary suspension or permanent dismissal.

(3) **Conduct suspension.** A "conduct suspension" means a temporary dismissal from the college and the suspension of student status for a specified period of time with no refund of tuition or fees. Reenrollment following a disciplinary suspension may be conditioned on any of the requirements or restrictions that may apply to a conduct probation.

(4) **Conduct dismissal.** The term "conduct dismissal" means permanent expulsion from the college with no refund of tuition or fees and may include an order trespassing the student from college premises. A sanction of conduct dismissal shall be recorded on the student's academic transcript.

(5) **Other sanctions.** The following additional sanctions for student code violations may be imposed as required or permitted by law or college policy.

(a) **Athletics eligibility.** A student athlete found in violation of WAC 132Z-115-025 (2)(c), relating to drug violations, shall be ineligible to participate in college athletics pursuant to RCW 69.41.340.

(b) **Parental notification.** The college reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

#### NEW SECTION

##### **WAC 132Z-115-043 Disciplinary action—Initiation.**

(1) The student conduct officer will initiate disciplinary action by serving the student respondent with written notice

of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violation(s).

(2) At the disciplinary meeting, the student conduct officer will review the allegations with the respondent and will afford the respondent an opportunity to respond. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

(3) In a proceeding involving allegations of sexual misconduct, the student conduct officer prior to taking disciplinary action will afford the complainant an opportunity to discuss the results of any investigation and the possible sanctions and/or conditions that could be imposed for the complainant's protection if the sexual misconduct allegations are found to be substantiated.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) The conduct officer may dismiss the proceeding upon finding the allegations to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review, except as provided in proceedings involving allegations of sexual misconduct.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 132Z-115-035. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) The conduct officer may refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served on the respondent (and any complainant in a proceeding involving allegations of sexual misconduct). The decision to refer shall not be subject to appeal or further review.

(5) Within ten days of the initial disciplinary meeting, the conduct officer will serve the respondent (and any complainant in a proceeding involving sexual misconduct allegations) with a written decision either dismissing or referring the matter or imposing disciplinary sanctions. If sanctions are imposed, the decision will specify the conduct code provision(s) found to have been violated, will describe the facts and conclusions supporting the sanction(s), and will provide notice of any appeal rights.

(6) In a proceeding involving sexual misconduct allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct allegations.

#### NEW SECTION

**WAC 132Z-115-045 Appeal and review procedures—General.** The following general rules apply to appeals or requests for further administrative review of disciplinary action at any stage of a student disciplinary proceeding.

(1) **Parties.** The parties to an appeal or review proceeding shall be the respondent, any complainant in a proceeding involving sexual misconduct allegations, and the student conduct officer.

(2) **Filing of appeals.**

(a) **Appeal periods.** An appeal or request for review of disciplinary action must be filed with the designated college official within the applicable time period as further specified in these rules.

(b) **Contents of appeal.** A party's written notice of appeal or request for review must explain why the party disagrees with the disciplinary decision and what relief or remedy the party is requesting.

(c) **Failure to appeal.** The failure of a party to file a timely appeal or request for review at any stage of the proceeding waives that party's right to appeal. However, in a proceeding involving sexual misconduct allegations, if any party appeals, the college official receiving the appeal or request for review will notify the other parties and will afford each party the opportunity to participate in the appeal or review proceeding.

(3) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a conduct suspension of any length or imposing a conduct expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(4) **Reviewing authority.**

(a) Appeals of disciplinary action taken by the student conduct officer will be heard by the conduct review officer or student conduct committee as further provided in these rules.

(b) Appeals of disciplinary action taken by the conduct review officer in a brief adjudicative proceeding will be heard by the vice-president (or designee) as further provided in these rules.

(c) Disciplinary action recommended by the student conduct committee will be heard by the conduct review officer as further provided in these rules.

(5) **Ex parte communications.** Reviewing authorities (the conduct review officer, student conduct committee members, and vice-president) may not communicate with any of the parties regarding an appeal without providing notice and an opportunity for all parties to participate.

(6) **Disqualification.** Reviewing authorities may not participate in a proceeding in which they:

- (a) Are a complainant or witness;
- (b) Have a direct or personal interest, prejudice, or bias;

or

- (c) Have acted previously in another capacity.

NEW SECTION

**WAC 132Z-115-053 Disciplinary action—Appeals.**

(1) **Respondent.** The student respondent may appeal the disciplinary action of the student conduct officer in accordance with the following rules:

(a) The respondent may appeal disciplinary action imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of ten days by filing a written notice of appeal with the conduct review officer within ten days of service of the disciplinary decision.

(b) The respondent may appeal disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within twenty days of service of the disciplinary decision.

(2) **Complainant.** The complainant in a proceeding involving sexual misconduct allegations may appeal the disciplinary action of the student conduct officer with respect to such allegations in accordance with the following rules:

(a) The complainant may appeal disciplinary action dismissing the proceeding or imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of ten days by filing a written notice of appeal with the conduct review officer within ten days of service of the disciplinary decision.

(b) The complainant may appeal disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within twenty days of service of the disciplinary decision.

(3) If no appeal is filed within the applicable time period, the disciplinary action of the student conduct officer shall be final.

NEW SECTION

**WAC 132Z-115-055 Conduct review hearings—Initial decision. (1) Conduct review officer - Authority.**

(a) The conduct review officer will hear a respondent's appeal of disciplinary action imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of ten days.

(b) In a proceeding involving sexual misconduct allegations, the conduct review officer will hear a complainant's appeal of disciplinary action dismissing the sexual misconduct allegations or imposing, with respect to such allegations, a conduct reprimand, conduct probation, or conduct suspension not in excess of ten days.

(c) The conduct review officer shall have the same authority as the student conduct officer to dismiss a proceeding, to impose a disciplinary sanction of conduct reprimand, conduct probation, or conduct suspension not in excess of ten days, or to refer the matter for disciplinary action by the student conduct committee.

(2) **Appeal hearing.** Appeals heard by the conduct review officer will be conducted as informal administrative hearings consistent with the rules for "brief adjudicative proceedings" under RCW 34.05.482 and WAC 132Z-108-050. The review officer shall provide each party an opportunity to explain the party's view of the matter.

(3) **Initial decision - Service.**

(a) Within ten days of consideration of the appeal, the conduct review officer will serve an initial decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct allegations. The initial decision will explain the reasons for the decision and will provide notice of any right to request further administrative review.

(b) In a proceeding involving sexual misconduct allegations, the initial decision will explain the reasons for modify-

ing any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct allegations.

(c) A decision by the conduct review officer to refer the appeal to the student conduct committee is not subject to further administrative review.

(4) **Initial decision - Request for review.** The respondent (or any complainant) may request administrative review of the initial decision by filing a written request for review with the vice-president within twenty-one days of service of the initial decision. If no request for review is filed, the initial decision of the conduct review officer shall be final.

#### NEW SECTION

**WAC 132Z-115-065 Conduct review hearings—Review of initial decision.** (1) Requests for review of the initial decision of the conduct review officer will be heard by the vice-president (or designee). The vice-president shall have the same authority on review as the conduct review officer to take disciplinary action.

(2) The vice-president will review the hearing record and will afford the parties the opportunity to file written statements explaining their views of the matter. The vice-president may make any inquiries necessary to ascertain whether the proceeding should be referred to the student conduct committee for a formal hearing.

(3) Within twenty days of the date for the parties to submit written statements, the vice-president will serve a written review decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct allegations. The review decision will explain the reasons for the decision and will provide a notice that judicial review may be available.

(4) In a proceeding involving sexual misconduct allegations, the review decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct allegations.

(5) The review decision of the vice-president (or designee) shall be final.

#### NEW SECTION

**WAC 132Z-115-073 Student conduct committee.** (1) The student conduct committee shall consist of three members appointed by the president in consultation with student and faculty leadership:

- (a) A full-time student;
- (b) A full-time faculty member; and
- (c) A full-time exempt administrative staff member who shall serve as chair of the committee.

(2) The student conduct committee will hear appeals of disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal. The committee will hear such other matters as may be referred to the committee by the student conduct officer, conduct review officer, or vice-pres-

ident. The committee shall have the authority to recommend dismissing a proceeding or to recommend imposing any of the disciplinary sanctions under WAC 132Z-115-035.

(3) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

#### NEW SECTION

**WAC 132Z-115-075 Student conduct committee—Prehearing procedure.** (1) The student conduct committee chair shall cause all parties to be served written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

(2) The committee chair is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The committee chair may direct the parties prior to the hearing to exchange lists of witnesses and copies of exhibits that the parties reasonably expect to present to the committee. Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The committee chair in advance of the hearing may provide committee members with copies of (a) any notice of disciplinary action (or referral to the committee) and (b) any notice of appeal filed by the respondent (or any complainant). However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Any party may be accompanied at the hearing by a nonattorney advisor of the party's choice. A respondent (or any complainant) may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four instructional days before the hearing, the attorney files and serves a notice of appearance. If the respondent (or complainant) is represented by an attorney, the student conduct officer may be represented by the college's assistant attorney general.

(6) The student conduct committee may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

#### NEW SECTION

**WAC 132Z-115-083 Student conduct committee—Hearing procedure.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing; or
- (b) Serve an order of default in accordance with RCW 34.05.440.

(2) Committee hearings shall be closed to the public, unless all parties (including any complainant) agree on the record that all or parts of the proceeding may be open. The

committee chair shall determine any extent to which the hearing will be open. The chair may exclude from the hearing any person who disrupts the proceeding.

(3) The committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects. Other recording shall be permitted in accordance with WAC 10-08-190. The chair shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The committee chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.

(5) The student conduct officer (or assistant attorney general) shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) The respondent and a complainant in any proceeding involving sexual misconduct allegations shall not directly question or cross-examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on behalf of the parties.

#### NEW SECTION

**WAC 132Z-115-085 Student conduct committee—Recommended decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form the committee wishes to receive them. The committee may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the receipt of closing arguments, the student conduct committee shall issue a recommended decision in accordance with RCW 34.05.461 and WAC 10-08-210. The recommended decision shall contain findings on all material issues of fact, conclusions concerning which, if any, provisions of the student conduct code were found to be violated, and any recommended sanction(s). Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee chair shall cause the recommended decision to be served on the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct allegations. In a proceeding involving sexual misconduct allegations, the decision will state whether the sexual misconduct allegations were substantiated and will describe any sanctions or conditions recommended for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to the sexual misconduct allegations.

(4) The committee chair shall promptly transmit the committee's recommended decision and the record of the pro-

ceedings for review by the conduct review officer who shall enter a final decision.

#### NEW SECTION

**WAC 132Z-115-095 Student conduct committee—Review of recommended decision.** (1) The recommended decision of the student conduct committee will be reviewed by the conduct review officer. The conduct review officer shall have the same authority on review as the student conduct officer to take disciplinary action.

(2) The review by the conduct review officer will be limited to the hearing record made before the student conduct committee. The conduct review officer will afford all parties the opportunity to file written statements explaining why they agree or disagree with the committee's recommended decision. The conduct review officer may notify the parties that the review will be limited to reviewing the specific issues raised by the parties.

(3) The conduct review officer will serve a written decision upon all parties (including the complainant in any proceeding involving sexual misconduct allegations) within twenty days of the date for the parties to submit written statements. The decision will adopt or modify the conduct committee's recommended decision and will provide a notice that reconsideration and/or judicial review may be available.

(4) In a proceeding involving sexual misconduct allegations, the review decision will explain the reasons for modifying any recommended disciplinary action with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct allegations.

(5) The decision of the conduct review officer shall be final.

#### NEW SECTION

**WAC 132Z-115-105 Summary suspension.** (1) A summary suspension is the temporary exclusion of a student from all or specified portions of college premises, programs, or activities pending an investigation and/or disciplinary proceeding relating to alleged student code violations.

(2) The vice-president (or designee) may summarily suspend a student when the vice-president has cause to believe that the student:

- (a) Has violated any provision of the student code; and
- (b) Presents an immediate danger to the safety or security of the campus community and/or poses an ongoing threat of serious disruption or interference with college operations.

(3) Notice of a summary suspension, if given orally, must be followed by service of a written notice within two instructional days of the oral notice. The written notice shall include:

- (a) The duration and scope of the suspension, including any conditions under which the student may access college premises or contact members of the campus community;
- (b) The reasons for the suspension, including reference to the student code provisions allegedly violated, together with notice of any resulting or pending disciplinary action; and

(c) Notice of a summary suspension hearing to be held within three instructional days before a reviewing officer not otherwise involved in disciplinary proceedings relating to the student.

(4) The reviewing officer will conduct the summary suspension hearing as an emergency proceeding under RCW 34.05.479. The issue before the reviewing officer shall be whether probable cause exists to continue the summary suspension. The student shall be afforded an opportunity at the hearing to explain why the suspension should not be continued or why the suspension should be less restrictive in scope. If the student fails to appear or to participate in the hearing, the reviewing officer may order that the suspension continue pending the conclusion of disciplinary proceedings.

(5) The reviewing officer, within two instructional days of the hearing, shall issue a written decision either terminating the summary suspension or explaining the immediate danger and policy reasons justifying the continuation and/or modification of the summary suspension. The reviewing officer will provide a copy of the decision to all persons who may be bound or protected by it.

(6) The student may request review of the reviewing officer's decision before the student conduct committee. Such review will be scheduled promptly and shall be consolidated with any pending disciplinary proceeding arising from the same conduct.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132Z-115-005 Student code of conduct.
- WAC 132Z-115-010 Purpose of the disciplinary system.
- WAC 132Z-115-020 Jurisdiction and authority for student discipline.
- WAC 132Z-115-030 Student participation.
- WAC 132Z-115-040 Demand for identification.
- WAC 132Z-115-050 Free movement on campus.
- WAC 132Z-115-060 Standards of classroom behavior.
- WAC 132Z-115-070 Violations of law and college regulations.
- WAC 132Z-115-080 Definitions.
- WAC 132Z-115-090 Code of conduct.
- WAC 132Z-115-100 Civil disturbances.
- WAC 132Z-115-110 Disciplinary terms.
- WAC 132Z-115-120 Procedures for resolving disciplinary violations.
- WAC 132Z-115-130 Summary suspension.
- WAC 132Z-115-140 Cascadia conflict resolution council.
- WAC 132Z-115-150 Conflict resolution council procedural guidelines.
- WAC 132Z-115-160 Loss of eligibility in college activities.
- WAC 132Z-115-170 Student groups and organizations.

- WAC 132Z-115-180 Appeals.
- WAC 132Z-115-190 Transcript notations.
- WAC 132Z-115-200 Refunds and access.
- WAC 132Z-115-210 Readmission after suspension or expulsion.
- WAC 132Z-115-220 Reestablishment of academic standing.
- WAC 132Z-115-230 Reporting, recording and maintaining records.
- WAC 132Z-115-240 Hazing.

#### **WSR 15-09-056**

#### **PROPOSED RULES**

#### **DEPARTMENT OF CORRECTIONS**

[Filed April 13, 2015, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-063.

Title of Rule and Other Identifying Information: Amendments to chapter 137-25 WAC, Serious infractions and chapter 137-28 WAC, Prisons—Discipline.

Hearing Location(s): Edna Lucille Goodrich (ELG) Building, 7345 Linderson Way S.W., Room 1034, Tumwater, WA 98501, on May 26, 2015, at 1:30 p.m.

Date of Intended Adoption: May 27, 2015.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by May 18, 2015.

Assistance for Persons with Disabilities: Contact John Nispel by May 18, 2015, (360) 725-8365.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise and reorganize ensuring the WACs are consistent with state law and are applied equally in prison and work release facilities. Language and content changed throughout for consistency, clarification, and alignment with policy, practice, procedure and technology. Serious infraction categories expanded to include Category D violations. Adjustments to WAC violations include:

- (New) 882 (electronic/wireless communication devices or related equipment).
- (New) 893 (damaging, altering, or destroying any item that results in the concealment of contraband).
- (New) 896 (harassing, using abusive language, or engaging in other offensive behavior).
- (New) 899 (failing to obtain prior written authorization prior to civil action against victim(s)).
- Removal of 712 (attempted suicide) and 713 (self-mutilation).

Reasons Supporting Proposal: References to the department of corrections (DOC) policy should be accurate.

Statutory Authority for Adoption: RCW 72.01.090, 72.65.100.

Statute Being Implemented: RCW 72.09.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting: Autumn Witten, Headquarters, (360) 725-8831; Implementation and Enforcement: Michele Walker, Headquarters, (360) 725-8732.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. No financial impact.

April 13, 2015  
Bernard Warner  
Secretary

### Chapter 137-25 WAC

#### SERIOUS (~~INFRACTIONS~~) VIOLATIONS—TOTAL AND PARTIAL CONFINEMENT FACILITIES

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

**WAC 137-25-010 Application of chapter.** The definitions and serious (~~infractions~~) violations described herein apply to offenders committed to both (~~full~~) total and partial confinement facilities.

AMENDATORY SECTION (Amending WSR 13-18-002, filed 8/21/13, effective 9/21/13)

**WAC 137-25-020 Definitions.** (~~(\*)~~) For the purposes of this chapter, the following (~~words~~) terms have the following meanings:

~~(Abusive sexual contact—An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:~~

~~• Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.~~

~~Adult correctional institution and institution—A facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.)~~ (1) Aggravated assault - An assault resulting in a documented physical injury (~~and~~) requiring (~~medical care (see definition of medical care):~~) treatment in a medical facility/treatment center by medical staff including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered treatment.

(2) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

~~((Attempted suicide—An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.~~

~~Attempt))~~ (3) Attempting - Putting forth an effort to commit any (~~infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault~~) violation.

(4) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

~~((Cell tag—If contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.~~

~~Conspiracy—An agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.~~

~~Deputy secretary—The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.~~

~~Discovery—When a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.~~

~~Earned time—Means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.~~

~~Earned release time—Means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.~~

~~Good conduct time credits—That portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.~~

~~Hearing officer—Staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.~~

~~Infraction—Commission of, attempt to commit, or conspiracy with another to commit any violation of rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.~~

~~Infraction review officer—Staff member(s) designated by the superintendent to review a serious infraction.~~

~~Lesser included offense—Any infraction that must necessarily have been committed in order to commit another infraction.~~

~~Medical care—Any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.~~

~~Mental health professional—An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training~~

aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

~~Mitigating factors — Factors to be considered by the infraacting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.~~

~~Possession — Established when)) (5) Conspiring - Entering into an agreement with another person(s) to commit a violation.~~

~~(6) Facility - A correctional facility as defined in RCW 72.09.015.~~

~~(7) Infraction - A term designating the procedures and documents related to offender misconduct and the facility disciplinary process.~~

~~(8) Offender - An inmate as defined in RCW 72.09.015.~~

~~(9) Possessing - When an item(s) is found on ((a person)) an offender or in an ((area which is under the control of the individual(s)-charged)) offender's assigned area of responsibility.~~

~~(Promptly — To act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.~~

~~Secretary — The secretary of the Washington state department of corrections, or the secretary's designee.~~

~~Sexual harassment — Any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.~~

~~Sexual assault — An incident in which the act occurs against the will of the victim (without his/her consent and/or he/she is unable to consent or refuse) as the result of the threat of the force or force used to obtain compliance. A sexual assault includes one or more of the following behaviors:~~

~~• Contact between the penis and the vagina or the penis and the anus involving penetration. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit;~~

~~• Contact between the mouth and the penis, vagina and/or anus;~~

~~• Penetration of the anal or genital opening of another person by hand, finger or other object.~~

~~Sexually explicit — Materials consist of any item displaying, portraying, depicting, or describing:~~

~~(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);~~

~~(b) A sex act(s) which)) (10) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration((-)); genital or anal contact/penetration with an inanimate object((-); masturbation((-); sadistic/masochistic abuse((-);~~

~~bondage((-); bestiality((-); and/or bodily excretory behavior which appears to be sexual in nature((-;~~

~~(e) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or~~

~~(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.~~

~~Staff member — For purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.~~

~~Superintendent — Superintendent of an adult correctional institution or the superintendent's designee.~~

~~Working days — Monday through Friday, excluding weekends and holidays)).~~

~~(11) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without his/her consent or when he/she is unable to consent or refuse:~~

~~(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.~~

~~(b) Contact between the mouth and the penis, vagina, or anus.~~

~~(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.~~

~~(12) Sexual contact against a staff member - Contact against a staff member without his/her consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.~~

~~(13) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.~~

~~(14) Staff member - A department of corrections employee, contract staff, or volunteer.~~

~~(15) Violation - The act of failing to comply with a rule enumerated in this chapter.~~

## NEW SECTION

**WAC 137-25-025 Adoption or revision of serious violations.** (1) The secretary may adopt and/or revise serious violations.

(2) Before adopting or revising a serious violation, the secretary shall, when applicable, follow the rule-making procedures of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

AMENDATORY SECTION (Amending WSR 14-12-095, filed 6/4/14, effective 7/1/14)

**WAC 137-25-030 Serious ~~((infractions))~~ violations.**

(1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another offender;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

**Category A**

501 - Committing homicide((-))
502 - <del>Committing aggravated assault ((on))</del> <u>against another offender((-))</u>
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules((-))
511 - <del>Committing aggravated assault ((on))</del> <u>against a visitor or community member((-))</u>
521 - Taking or holding any person hostage((-))
550 - <del>((Escape-))</del> <u>Escaping</u>
601 - <del>((Possession, manufacture, or introduction of))</del> <u>Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component((s of an explosive device or ammunition-)) thereof</u>
602 - <del>((Possession, manufacture, or introduction of))</del> <u>Possessing, manufacturing, or introducing any ((gun-)) fire-arm, weapon, sharpened instrument, knife, or poison, or any component thereof((-))</u>
603 - <del>((Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug,))</del> <u>Introducing or transferring any unauthorized drug((, mind altering substance,)) or drug paraphernalia((-))</u>
604 - <del>((Aggravated assault on))</del> <u>Committing aggravated assault against a staff member((-))</u>
611 - <del>((Sexual assault on))</del> <u>Committing sexual assault against a staff member((-))</u>
<del>((612 - Attempted sexual assault of staff.</del>
<del>613 - Abusive sexual contact with staff.</del>
<del>635 - Sexual assault on another offender.</del>
<del>636 - Attempted sexual assault of another offender.</del>
<del>637 - Abusive sexual contact with another offender.</del>
<del>650 - Rioting.</del>
<del>651 - Inciting others to riot.</del>
<del>882 - Possession or unauthorized use of a cell phone.)</del>
<u>613 - Committing an act of sexual contact against a staff member</u>

<u>635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)</u>
<u>637 - Committing sexual abuse against another offender, as defined in department policy</u>
<u>650 - Rioting, as defined in RCW 9.94.010</u>
<u>651 - Inciting others to riot, as defined in RCW 9.94.010</u>
<u>830 - Escaping from work/training release with voluntary return within 24 hours</u>
<u>831 - While in work/training release, failing to return from an authorized sign out</u>
<u>882 - While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization</u>

**Category B - Level 1**

504 - Engaging in <del>((sexual acts))</del> <u>a sex act with ((others)) another person(s) within the facility ((with the exception of)) that is not otherwise included in these rules, except in an approved ((conjugal visits-)) extended family visit</u>
553 - Setting a fire((-))
560 - <del>((Unauthorized possession of))</del> <u>Possessing items or materials likely to be used in an escape ((attempt-)) without authorization</u>
633 - <del>((Assault on))</del> <u>Assaulting another offender((-))</u>
704 - <del>((Assault on))</del> <u>Assaulting a staff member((-))</u>
711 - <del>((Assault on))</del> <u>Assaulting a visitor or community member((-))</u>
744 - Making a bomb threat((-))
884 - Urinating, defecating, or placing feces or urine((-)) in any location other than a toilet or authorized receptacle((-))
886 - <del>((Adulteration of))</del> <u>Adulterating any food or drink((s-))</u>
892 - Giving, selling, or trading any prescribed medication <del>((with another offender-)),</del> <u>or possessing another offender's prescribed medication</u>

**Category B - Level 2**

505 - Fighting with <del>((any person-))</del> <u>another offender</u>
556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member((-))
607 - Refusing to submit to a urinalysis and/or <del>((failure))</del> <u>failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member ((within the allotted time frame-))</u>
608 - Refusing or failing to submit to a <del>((breathalyzer))</del> <u>breath alcohol test</u> or other standard sobriety test when ordered to do so by a staff member((-))

609 - Refusing or failing to submit to testing required by policy, statute, or court order, <del>((such as DNA blood tests))</del> <u>not otherwise included in these rules</u> , when ordered to do so by a staff member((-))
652 - Engaging in or inciting a group demonstration((-))
655 - Making <del>((intoxicants, alcohol, controlled substances, narcotics, or possession of))</del> <u>any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making ((intoxicants, alcohol, controlled substances, or narcotics.)) any drug, alcohol, or intoxicating substance</u>
682 - Engaging in or inciting an organized work stoppage((-))
707 - <del>((Possession, introduction, or transfer of any alcoholic or intoxicating beverage or substance.))</del> <u>Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules</u>
716 - <del>((Unauthorized use of))</del> <u>Using an over the counter medication without authorization or ((failure)) failing to take prescribed medication as required when administered under supervision((-))</u>
736 - <del>((Possession, manufacture or introduction of unauthorized keys.))</del> <u>Possessing, manufacturing, or introducing an unauthorized key or electronic security access device</u>
750 - <u>Committing indecent exposure((-))</u>
752 - <u>Possessing, or receiving a positive test for use of, an unauthorized drug((s)), alcohol, or ((other intoxicants.)) intoxicating substance</u>
<del>((830 - Any escape from work release with voluntary return within 24 hours.))</del> <u>778 - Providing a urine specimen that has been diluted, substituted, or altered in any way</u>

### Category B - Level 3

503 - <del>((Extortion, blackmail.))</del> <u>Extorting or blackmailing, or demanding or receiving ((money or)) anything of value in return for protection against others((-)) or under threat of informing((-))</u>
506 - Threatening another with bodily harm or with any offense against <del>((another person, property, or family.))</del> <u>any person or property</u>
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area((-))
525 - Violating conditions of a furlough((-))
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in <del>((DOC policy on Response to and Investigation of Sexual Misconduct.))</del> <u>department policy</u>
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties((-))

600 - Tampering with, damaging, blocking, or interfering with any locking, <u>monitoring</u> , or security device((-))
605 - Impersonating any staff member, <del>((contracted staff member, volunteer.))</del> other offender((s)), or visitor((-))
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction((-))
654 - Counterfeiting <del>((, forgery, altering, falsification, or unauthorized reproduction of))</del> <u>or forging, or altering, falsifying, or reproducing any document, article of identification, money, or security((-)) or other official paper((-) without authorization</u>
660 - <del>((Unauthorized possession of))</del> <u>Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more((-))</u>
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization((-))
738 - <del>((Possession of))</del> <u>Possessing clothing or assigned equipment of a staff member((-))</u>
739 - <del>((Possession of personal))</del> <u>Possessing, transferring, or soliciting any person's identification information ((about currently employed)), including current staff((-, contractors, or volunteers.)) members or their immediate family members, when not voluntarily given ((to the offender by the individual involved; including, but not limited to:)). Identification information includes Social Security numbers, ((unpublished)) home addresses ((or)), telephone numbers, driver's license numbers, medical, personnel, financial, or real estate ((records)) information, bank or credit card numbers, or other like information not authorized by the ((court or the)) superintendent((-))</u>
745 - Refusing a transfer to another <del>((institution.))</del> <u>facility</u>
746 - Engaging in or inciting an organized hunger strike((-))
762 - Failing to complete((-)) or administrative termination from((-)) a DOSA substance abuse treatment program. Note: <i>This ((infraction)) violation must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC((-))</i>
777 - Causing injury to another person by resisting orders, <del>((resisting))</del> assisted movement, or physical efforts to restrain((-))
813 - <del>((Unauthorized/unaccounted time))</del> <u>Being in the community without authorization, or being in an unauthorized location in the community((-))</u>
814 - While in work/ <u>training</u> release, <del>((violation of))</del> <u>violating an imposed special condition((-))</u>
<del>((831 - While in work release, failure to return from an authorized sign out.</del>

<del>879 - Operating a motor vehicle without permission or in an unauthorized manner or location.</del>
<del>889 - Unauthorized use of facility phones/related equipment or use of computer to conduct unauthorized or illegal business(-))</del>
<u>879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location</u>
<u>889 - Using facility phones, information technology resources/systems, or related equipment without authorization</u>

**Category C - Level 1**

508 - <u>Spitting or throwing objects, materials, or substances((- or spitting))</u> in the direction of another person(s)(-:
<del>517 - Committing any act that would constitute a misdemeanor and that is not otherwise included in these rules.</del>
<del>555 - Theft of property or possession of stolen property.))</del>
557 - Refusing to participate in an available <u>work, training, education ((or work program))</u> , or other mandatory programming assignment((-:))
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices((-:))
610 - <del>((Unauthorized possession of prescribed medication greater than a single or daily dose.))</del> <u>While in prison, receiving or possessing prescribed medication without authorization</u>
620 - <del>((Receipt or possession of))</del> <u>Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail((-:))</u>
659 - <u>Committing sexual harassment((-:)) against another offender, as defined in department policy</u>
661 - <u>Committing sexual harassment against a staff member, visitor, or community member</u>
663 - Using physical force, intimidation, or coercion against any person((-:))
702 - <del>((Possession, manufacture or introduction of))</del> <u>Possessing, manufacturing, or introducing an unauthorized tool((-:))</u>
708 - Organizing or participating in <u>an unauthorized group activity or meeting((-:</u>
<del>714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.))</del>
717 - Causing a threat of injury to another person by resisting orders, <del>((resisting))</del> <u>assisted movement, or physical efforts to restrain((-:))</u>

720 - Flooding a cell or other area of the <del>((institution/facility.))</del> <u>facility</u>
724 - Refusing a cell or housing assignment((-:))
734 - Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group((-:))
810 - <del>((Failure))</del> <u>Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a ((job)) work, training, education, or other programming assignment</u> for negative or substandard performance((-:))
893 - <u>Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband</u>
896 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information
899 - <u>Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed</u>

**Category C - Level 2**

552 - Causing an innocent person to be penalized or proceeded against by providing false information((-:))
554 - Damaging, altering, or destroying <del>((state property or))</del> any <del>((other))</del> item <u>that is not the offender's personal property</u> , the value of which is ten dollars or more <del>((and that is not the personal property of the offender.</del>
<del>559 - Gambling; possession of gambling paraphernalia.</del>
<del>656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.</del>
<del>706 - Giving false information when proposing a release plan.))</del>
710 - <del>((Being tattooed while incarcerated))</del> <u>Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scarring another, or possessing tattoo/piercing/scarring paraphernalia((-:))</u>
718 - <del>((Use of))</del> <u>Using the mail ((or)), telephone, or electronic communications in violation of any law, court order, or ((local, state, or federal law.)) previous written warning, direction, and/or documented disciplinary action</u>
<del>((725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.))</del>

726 - Telephoning (( <del>or</del> )), sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian((-
727 - Telephoning or sending written communications to any person contrary to previous written warnings or direction and/or documented disciplinary action.
728 - Possession of any sexually explicit material(s), as defined by department policy and/or WAC 137-25-020.
740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
742 - A pattern of creating a false emergency by feigning illness.
778 - Providing a urine specimen that has been diluted, substituted or altered in any way.))

**Category C - Level 3**

((551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.))
606 - ((Possession, introduction, or transfer of)) <u>Introducing or transferring</u> any tobacco, tobacco products, matches, or tobacco paraphernalia((-))
657 - Being found guilty of four or more general (( <del>infractions</del> )) <u>violations</u> arising out of separate incidents within a 90-day period((-))
658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any (( <del>general or serious infraction</del> )) <u>violation</u>
((662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.
741 - Theft of food the value of which is more than five dollars.
755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more.
811 - Entering into an unauthorized contract.))
812 - ((Failure)) <u>Failing</u> to report/turn in all earnings ((income.
861 - Performing or taking part in an unauthorized marriage.
890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury.))

**Category D**

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules
551 - Providing false information to the hearing officer or in a disciplinary appeal

555 - Stealing property, possessing stolen property, or possessing another offender's property
559 - Gambling or possessing gambling paraphernalia
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service
662 - Soliciting goods or services for which the provider would expect payment, when the offender knows or should know that he/she lacks sufficient funds to cover the cost
706 - Giving false information when proposing a release plan
714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more
725 - Telephoning or sending written or electronic communication to any offender in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee
728 - Possessing any sexually explicit material(s), as defined in WAC 137-48-020
740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense
741 - Stealing food, the value of which is five dollars or more
742 - Establishing a pattern of creating false emergencies by feigning illness or injury
755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more
811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

((1) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-25-030 should be charged, the infraacting officer shall consider mitigating factors as defined in WAC 137-25-020.

(2) Attempts to commit infraction #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-25-020 which includes "attempts.") (2) If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

## Chapter 137-28 WAC

DISCIPLINE—PRISONS(~~(—DISCIPLINE)~~)

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-140 Purpose.** The rules in this chapter provide a standardized system to determine whether misconduct by an ~~((inmate of an adult correctional institution))~~ offender has occurred, and to provide a system that clearly links an offender's behavior and participation in available work, training, education ((and work programs)), or other programming as determined through classification with the receipt or denial of earned ~~((early))~~ release time and other privileges as outlined in department policy.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

AMENDATORY SECTION (Amending WSR 13-18-002, filed 8/21/13, effective 9/21/13)

**WAC 137-28-160 Definitions.** ~~((\*))~~ For the purposes of this chapter, the following ~~((words))~~ terms have the following meanings:

~~((Abusive sexual contact—An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:~~

~~• Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.~~

~~Adult correctional institution and institution—A facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.~~

~~Aggravated assault—An assault resulting in physical injury and requiring medical care (see definition of medical care).~~

~~Assault—A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.~~

~~Attempted suicide—An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.~~

~~Attempt—Putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.~~

~~Bodily harm—Physical pain or injury, illness, or impairment of physical condition.~~

~~Cell tag—If contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation~~

~~shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.~~

~~Conspiracy—An agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.~~

~~Deputy secretary—The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.~~

~~Discovery—When a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.~~

~~Earned time—Means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.~~

~~Earned release time—Means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.~~

~~Good conduct time credits—That portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.~~

~~Hearing officer—Staff member(s) designated by the superintendent to conduct disciplinary hearings.~~

~~Infraction—Commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.~~

~~Infraction review officer—Staff member(s) designated by the superintendent to review a serious infraction.~~

~~Lesser included offense—Any infraction that must necessarily have been committed in order to commit another infraction.~~

~~Medical care—Any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.~~

~~Mental health professional—An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.~~

~~Mitigating factors—Factors to be considered by the infraction officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually moti-~~

vated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

**Possession**—Established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

**Promptly**—To act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

**Secretary**—The secretary of the Washington state department of corrections, or the secretary's designee.

**Sexual harassment**—Any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

**Sexually explicit**—Materials consist of any item displaying, portraying, depicting, or describing:

(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);

(b) A sex act(s) which includes, but is not limited to, genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration, genital or anal contact/penetration with an inanimate object, masturbation, sadistic/masochistic abuse, bondage, bestiality, and/or bodily excretory behavior which appears to be sexual in nature;

(c) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or

(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.

**Staff member**—For purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

**Superintendent**—Superintendent of an adult correctional institution or the superintendent's designee.

**Working days**—Monday through Friday, excluding weekends and holidays.)) (1) Attempting - Putting forth an effort to commit any violation.

(2) Business days - Monday through Friday, excluding holidays and days the facility is experiencing altered/modified operational status.

(3) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(4) Facility - A correctional facility as defined in RCW 72.09.015.

(5) Hearing officer - A trained staff member designated by the superintendent to conduct disciplinary hearings processes, as well as review appeals of general violations.

(6) Infraction - A term designating the procedures and documents related to offender misconduct and the facility disciplinary process.

(7) Infraction review officer - A trained staff member who assesses and evaluates the accuracy of the infraction packet, to include verification of the incident, appropriateness of the violation(s) charged, thoroughness of the information, and verification that supporting documents are included and that all evidence is collected and handled correctly (when applicable) before submittal to the hearing office.

(8) Lesser included offense - A less serious violation than the one charged, but one which the offender necessarily committed in carrying out the charged violation.

(9) Offender - An inmate as defined in RCW 72.09.015.

(10) Possessing - When an item(s) is found on an offender or in an offender's assigned area of responsibility.

(11) Promptly - To act as soon as reasonably possible, consistent with facility goals of safety, security, and rehabilitation.

(12) Staff member - A department of corrections employee, contract staff, or volunteer.

(13) Violation - The act of failing to comply with a rule enumerated in this chapter or chapter 137-25 WAC.

**AMENDATORY SECTION** (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-170 Supplementary rules.** (1) The superintendent may promulgate local supplementary rules, policies, and procedures, including the creation of new sanctions.

(2) All new or supplemental sanctions shall be approved in writing by the ((deputy)) assistant secretary before being put into effect.

**AMENDATORY SECTION** (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

**WAC 137-28-180 Notification.** (1) All ((inmates of an adult correctional institution)) offenders confined in a facility shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;

(b) Acts prohibited in the ((institution)) facility; and

(c) Disciplinary action that may be taken in the event of misconduct.

(2) All ((inmates)) offenders shall have access to a copy of the local disciplinary policies of the ((institution)) facility to which they are assigned.

(3) ((Inmates)) Offenders unable to read or understand English shall be provided access to a written or ((tape)) recorded translation of these rules in their accustomed language.

(4) ((Inmates)) Offenders should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) ((Under normal circumstances, announcements of these changes should be posted at designated places for at least thirty days prior to their effective date or sent to the affected inmates.

(b)) Complete and up-to-date copies of these rules and all ((local)) facility disciplinary policies shall be available for offender access at each ((institution for inmate examination.

(c) Inmates shall be)) facility.

(b) Offenders are responsible ((to take steps necessary to inform)) for informing themselves of changes ((and posted updates.

(5) All infraction(s) should be heard at the facility where the infraction(s) occurred. If it is necessary to transfer an inmate to another facility prior to resolution of unheard

infractions, his/her infraction(s) will be forwarded to the new facility for hearing) to the rules and policies.

AMENDATORY SECTION (Amending WSR 98-04-086, filed 2/4/98, effective 3/7/98)

**WAC 137-28-190 ((Reporting)) Referral to law enforcement ((authorities)).** (1) The superintendent ((shall)) should report any felony under state or federal law committed in a facility to law enforcement ((authorities.

(2) ~~When~~ Any time an offender ((knowingly)) commits ((an additional)) a serious ((infraction)) violation after losing all potential earned ((early)) release time credits, the superintendent ((will)) should report ((that)) the offender to local law enforcement ((authorities)) for possible felony prosecution under RCW 9.94.070.

((3)) ~~If a violation has been reported to law enforcement authorities, inmates who have been charged with an infraction shall not be questioned about the incident outside of a formal disciplinary hearing or an administrative segregation hearing until after it has been determined that no prosecution will occur or until a finding of guilty is made.~~

~~(4) No provisions of these rules shall prevent the administrative segregation of any inmate.~~ (2) The superintendent may report any misdemeanor under state or federal law committed in a facility to law enforcement.

(3) Nothing in this section shall prevent an offender's assignment to administrative segregation.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

**WAC 137-28-200 Out-of-state ((inmates)) offenders.** (1) ((Inmates)) Offenders committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to ((the prison to which they have been transferred)) that prison. That prison may, in its discretion, use any presumptive sanction guidelines currently in ((current)) effect in Washington state ((institutions)) facilities.

(2) ((Inmates)) Offenders committed ((from other jurisdictions)) to the ((control of the Washington)) department of corrections from other states shall be ((subjected)) subject to the disciplinary rules and procedures ((applicable to the)) currently in effect in the Washington state facility to which they are assigned. ((In addition:

(a) A summary of)

(3) Each state shall forward all serious infraction reports ((including sanctions, shall be forwarded)) and appeals to the originating ((jurisdiction.

(b) ~~Loss of good time shall be handled in accordance with this policy. A copy of all infraction reports resulting in loss of good time shall be forwarded)~~ state within seven days of the final action, and may include a recommendation that the offender return to the originating ((jurisdiction by the institution record office with a request for approval. The loss of good time shall be considered pending until confirmed or modified by the originating jurisdiction)) state.

AMENDATORY SECTION (Amending WSR 06-24-087, filed 12/4/06, effective 1/4/07)

**WAC 137-28-210 Hearing officers.** (1) Each hearing shall be conducted by a hearing officer((~~ts~~) within the rank/classification of lieutenant or above, or corrections specialist,) designated by the superintendent.

(2) ((The hearing officer(s) will receive training in the disciplinary process and in the identification of inmates who may be impaired in their ability to understand the hearing process and participate in their own defense.

(3)) ~~Hearing officers may not ((function in that capacity))~~ preside over a hearing when they are related to the offender, witness, victim, or infracting officer, or have direct personal involvement in the infraction under consideration. ((Such officers must disqualify themselves by giving notice to the superintendent, who will select a replacement.

(4) ~~Direct~~ For purposes of this section, direct personal involvement ((as that phrase is used in this section shall)) means knowledge or interest acquired through witnessing, investigating, or directly participating in the incident under consideration. This rule shall not preclude hearing officer participation where the hearing officer has acquired knowledge ((or interest indirectly or through review)) of the incident ((conducted)) as part of regular ((institutional)) facility responsibilities.

((5)) (3) Hearing officers may disqualify themselves or may be disqualified by the superintendent if ((actually)) biased for or against any ((inmate)) offender so that they cannot render a fair ((judgment)) and impartial decision in the hearing.

((6)) ~~Hearing officers must notify an infraacted inmate if they are related to the infracting officer or the victim. The inmate may request another hearing officer or continue with the same hearing officer.)~~

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

**WAC 137-28-220 General ((infractions)) violations.** (1) Any of the following types of behavior may constitute a general ((infraction)) violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

#### **Unauthorized possession/theft**

- 051 - ((Unauthorized possession of)) Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is less than five dollars((-))
- 053 - ((Possession of)) Possessing anything not authorized for retention or receipt by an ((inmate)) offender and/or not issued to an ((inmate by regular institutional)) offender through approved channels(-))

- 255 - ~~((Misuse or waste of))~~ Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is less than ten dollars(-)
- 310 - Pretending or failing to take prescribed medication ~~((that the inmate has accepted))~~ by concealing or retaining ~~((a single or daily dose.))~~ the medication
- 354 - ~~((Theft of))~~ Stealing food, the value of which is ~~((five dollars or))~~ less(-) than five dollars
- 356 - ~~((Possession of))~~ Possessing an unauthorized amount of ~~((otherwise authorized))~~ clothing, bedding, or issued supplies(-)

**((Lending)) Lending/trading**

- ~~((052~~ - Lending of property for profit.))
- 351 - Giving, selling, purchasing, borrowing, lending, ~~((or))~~ trading, or accepting money or anything of value ~~((to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family))~~ except through approved channels, the value of which is less than ten dollars(-)

**Altering/destroying property**

- 055 - ~~((Mutilating))~~ Damaging, altering, ~~((defacing))~~ or destroying any item ~~((valued at less than ten dollars and))~~ that is not the offender's personal property, the value of ~~((the inmate.))~~ which is less than ten dollars

**Disruptive behavior/lying**

- 202 - ~~((Abusive))~~ Harassing, using abusive language, ~~((harassment))~~ or engaging in other offensive behavior directed to or in the presence of ~~((staff, visitors, inmates.))~~ another person(s) or ~~((other persons or groups.))~~ group(s)
- 203 - Lying to a staff member(-)
- 244 - Unauthorized displays of sexual affection ~~with another inmate.))~~
- 353 - ~~((Disruptive))~~ Engaging in disruptive behavior(-)
- 355 - ~~((Horseplay.))~~ Roughhousing, or engaging in horseplay or any other unauthorized physical contact ~~((between inmates.))~~ with another offender(s)
- 357 - ~~((Unauthorized demonstration, practice))~~ Demonstrating, practicing, or ~~((use of))~~ using martial arts(-) or other self-defense tactics

**Failure to follow rules and orders**

- ~~((102))~~ - ~~((Failure))~~ Failing to follow any oral/written orders, rules, or policies ~~((adopted by the institution and not specified within this chapter or in local disciplinary rules.))~~ not otherwise included in these rules
- ~~((103~~ - Refusing or failing to obey an order, oral or ~~written, of any staff member.))~~
- ~~105~~ - Failing to perform a work, training, education, or other programming assignment as directed
- 210 - Out of bounds(;-): Being in an area where the presence of the ~~((inmate))~~ offender is unauthorized(-)
- 214 - Interfering or failing to comply with court procedures(-)
- 251 - Smoking ~~((and possession of))~~ or possessing tobacco or related products/paraphernalia where prohibited(-)
- 301 - ~~((Failure to keep your person))~~ Failing to maintain one's clothing, personal hygiene, or ~~((your))~~ quarters in accordance with ~~((institution))~~ facility rules or policies(-)

**Unauthorized communication/visitor contact**

- 303 - ~~((Unauthorized use of))~~ Using the mail ~~((or))~~, telephone(-), or electronic communications without authorization
- 304 - ~~((Unwanted))~~ Conducting/participating in unwanted written ~~((and telephonic))~~, telephone, or electronic communications ~~((to))~~ with any person(-)
- 305 - ~~((Correspondence or))~~ Corresponding with or engaging in conduct with a visitor in violation of published or posted rules ~~((and))~~ or policies(-)
- ~~((309~~ - Unauthorized display of affection with a visitor.))

**Inappropriate use of equipment**

- 212 - Using any equipment or machinery when not specifically authorized or contrary to instructions or safety standards(-)

**Unexcused absence/feigning illness**

- 104 - ~~((Unexcused absence))~~ Being absent from work or any assignment, scheduled meeting, appointment, or call out(-) without authorization
- 352 - Pretending to be ill or injured contrary to medical/mental health screening results(-)

**Inappropriate sexual behavior**

- 244        : Displaying sexual affection with another offender
- ~~((328~~     - ~~Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.))~~
- 309        : Engaging in an unauthorized display of affection with a visitor

~~((In determining whether a #328 infraction or a #728 infraction pursuant to WAC 137-25-030 should be charged, the infraacting officer shall consider mitigating factors as defined in WAC 137-28-160.))~~ If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

**WAC 137-28-230 General infraction procedure.**

~~((Infraction report.))~~ (1) In the event of a general ~~((infraction))~~ violation, a staff member may make an on-site adjustment. An on-site adjustment may consist of ~~((counseling))~~ counseling, warning, or reprimanding the ~~((inmate))~~ offender and/or ~~((causing))~~ directing the ~~((inmate))~~ offender to remove ~~((him))~~ himself/herself from the situation immediately. An action addressed through an on-site adjustment ~~((under this rule))~~ cannot be considered a general ~~((infraction))~~ violation for the purposes of determining whether a #657 serious ~~((infraction))~~ violation has occurred.

(2) In the event of a general ~~((infraction))~~ violation where a staff member does not make an on-site adjustment, the staff member ~~((may))~~ will prepare and submit an infraction report per department policy. The ~~((infraction report shall include:~~

- ~~((a))~~ Name, number and housing location of the offender;
- ~~((b))~~ A description of the incident;
- ~~((c))~~ The time and place of the incident;
- ~~((d))~~ The names of witnesses, victims, and other persons involved;
- ~~((e))~~ The specific rule(s) alleged to have been violated;
- ~~((f))~~ A description of any action taken and) staff member will attach copies of any ~~((relevant documentation or supplemental reports;~~
- ~~((g))~~ Name and signature of reporting staff) supporting documents.

(3) The general infraction report shall be promptly submitted ~~((promptly))~~ for review to the supervisor ~~((or unit team))~~ designated by the superintendent ~~((to receive such reports. The))~~. Upon review, if the supervisor ~~((or unit team may))~~ determines the action meets the criteria of a serious violation, he/she may return the report to the reporting staff member to upgrade the general ~~((infraction))~~ violation to a serious ~~((infraction))~~ violation. If the ~~((infraction))~~ violation is upgraded, the ~~((supervisor or unit team shall))~~ reporting staff member will forward the serious infraction report to the

~~((hearing clerk for preparation for a hearing on the serious))~~ infraction review officer.

(4) ~~((The supervisor or unit team receiving))~~ If the action was appropriately charged as a general ~~((infraction report shall))~~ violation, the supervisor will decide whether the ~~((inmate))~~ offender is guilty or not guilty within five ~~((work-ing))~~ business days of ~~((receipt of))~~ receiving the report ~~((-))~~, unless an extension ~~((to the five days may be granted))~~ is approved in writing by the ~~((disciplinary))~~ hearing officer. ~~((This decision of))~~ The supervisor ~~((or unit team can be reached by scheduling))~~ will conduct an informal hearing ~~((with the inmate present))~~ at which ~~((the supervising employee or unit team))~~ he/she may allow witnesses and documentary evidence ~~((- Upon finding that an inmate is guilty, the supervising employee or unit team may impose any appropriate sanction))~~ with the offender present.

AMENDATORY SECTION (Amending WSR 02-12-023, filed 5/28/02, effective 6/28/02)

**WAC 137-28-240 General ~~((infractions))~~ violations —Sanctions.** ~~((For being found guilty of any general infraction, one or more of the following sanctions may be imposed:))~~ (1) If the supervisor finds the offender not guilty of a general violation, disciplinary sanctions shall not be imposed on the offender for that violation. Records pertaining to the violation shall not be placed in the offender's file but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the supervisor finds the offender guilty of any general violation, the supervisor may impose one or more of the following sanctions:

(a) Reprimand or warning;

~~((2))~~ (b) Issuance of a written order to cease ~~((a))~~ the problematic behavior. The order will include a warning that if the identified behavior is repeated within a specified period (not to exceed one hundred eighty days), the ~~((inmate))~~ offender will be charged with ~~((violation of))~~ a serious violation ~~((WAC 137-28-260))~~ #658.

~~((3))~~ #658 under WAC 137-25-030;

(c) Loss of a privilege or privileges as specified by the supervisor ~~((or unit team))~~ for a period not ~~((more than))~~ to exceed ten consecutive days on ~~((a))~~ the first offense, twenty consecutive days on ~~((a))~~ the second offense, and thirty consecutive days on ~~((a))~~ the third offense within a six-month period;

~~((4))~~ Confinement to) (d) Evening cell/room ~~((or cell))~~ confinement, except for attendance at work or school assignments, religious services, or meals, or law library if ~~((a documented court deadline has been imposed))~~ approved for emergency/priority access per department policy, not to exceed ten consecutive evenings;

(e) Weekend and/or holiday cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period of one or more weekends, not to exceed four consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the offender's programming or work day

Friday and terminate at the beginning of the offender's programming or work day Monday.

~~(f) Confinement to cell/room except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period not to exceed ten consecutive days;~~

~~((5)) (g) Up to one hundred twenty hours of extra work duty.~~

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

**WAC 137-28-250 General infraction appeals.** (1) ~~(The sanctions for a finding of)~~ If the supervisor finds the offender guilty of a general (infraction) violation, only the offender may (be appealed by) appeal the (inmate) decision and/or sanction(s) to ((the major) a hearing officer ((of the institution)).

(a) The appeal must be in writing and must include the reason(s) why the (inmate) offender believes the action taken was incorrect and specify the desired relief.

(b) The appeal must be delivered to the hearing officer within ~~((twenty-four hours after the inmate receives))~~ two business days of receiving the notice ((of the action taken)).

(c) Failure to follow appeal procedures ~~((with))~~ shall be deemed a waiver of the appeal, however the hearing officer may consider appeals filed beyond the two business day period.

(2) ~~((Within))~~ The hearing officer will review and act on the appeal request within ten ((working)) business days ((after) of receipt ((of the appeal,)) unless ((the time)) an extension is ((extended)) approved in writing by the superintendent(,). The hearing officer ((will decide either to:

~~(a) Schedule a hearing on))~~ may affirm the decision and sanction(s), affirm the ((appeal,)) decision and reduce the sanction(s), or ((b) Affirm,)) dismiss/modify downward((, or reverse the finding of guilty without a hearing)) the decision and sanction(s).

(3) Once a decision ~~((of the hearing officer))~~ is made(,)) on the ((inmate) appeal, the offender shall be notified in writing within ((seventy-two hours)) three business days, unless ((the time period)) an extension is ((extended)) approved in writing by the superintendent.

(4) Sanctions ~~((are))~~ will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

**WAC 137-28-260 Serious ((infractions)) violations.** See WAC 137-25-030 for the list of serious ((infractions)) violations.

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

**WAC 137-28-270 Serious infraction procedure.** ~~((Infraction report-~~

~~(1) In the event of a))~~ (1) When a staff member witnesses a serious violation or determines that a serious violation has occurred, he/she shall prepare and submit an infraction report

per department policy. The staff member will attach to the report copies of any supporting documents, including a summary of any confidential information, which shall not identify the confidential source(s).

(2) ~~The infraction review officer will review the serious infraction((, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:~~

~~(a) Name, number and housing assignment of offender;~~

~~(b) A description of the incident;~~

~~(c) The time and place of the incident;~~

~~(d) The names of witnesses, victims, and other persons involved;~~

~~(e) The specific rule alleged to have been violated;~~

~~(f) A description of any action taken;~~

~~(g) A summary of any confidential information;~~

~~(h) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;~~

~~(i) Name and signature of reporting staff.~~

~~(2) The infraacting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.~~

~~(3) Serious infraction reports may be reviewed by))~~ report and any supporting documents and/or evidence. If the report is incomplete or the charge(s) is inappropriate, the infraction review officer ((who may:

~~(a) Approve))~~ will return the report ((and forward it)) to the ((hearing clerk;

~~(b) Require the report))~~ reporting staff member to be revised, rewritten, or reinvestigated ((by the reporting staff member to ensure that the alleged facts support the charges;

~~(c) Add, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;~~

~~(d) Recommend)).~~ Otherwise, the infraction review officer will forward the report to the hearing clerk or designee to schedule a hearing.

The infraction review officer may recommend referral to a mental health professional as defined in department policy for consultation if there is a question whether:

~~((i))~~ (a) Mental illness contributed to the behavior that led to the ((infraction) violation; or

~~((ii))~~ (b) The ((inmate's)) offender's mental health status may need to be monitored.

~~((4) If))~~ (3) A negotiated hearing process ((is in place in the facility, the report may)) will be used for any violation specifically identified in department policy. The serious infraction report will be forwarded to the designated hearing((s)) officer per department policy.

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

**WAC 137-28-280 Temporary prehearing ((confinement)) placement.** (1) ~~((Before a hearing, an inmate))~~ An

offender may be temporarily confined to his/her cell or ~~((demoted to a higher custody level or housing assignment))~~ placed in more restrictive housing, such as segregation, when it is reasonably believed that the ~~((inmate))~~ offender presents a ~~((risk to the))~~ security ~~((of the institution))~~ risk, a risk of escape, or a danger to ~~((themselves))~~ himself/herself or to others, or is in danger from others.

(2) ~~((Confinement decisions under this rule shall be made by the shift commander in writing. All))~~ Segregation placement decisions must be approved by the superintendent within ~~((one working day))~~ three business days of the confinement.

~~((3) Confinement imposed under this section))~~ (a) Placement may not be for more than three ~~((working))~~ business days, unless either the ~~((inmate))~~ offender or the ~~((institution, for good cause,))~~ facility requires additional time to prepare for the disciplinary hearing, or there is an administrative segregation hearing.

~~((4))~~ (b) If found guilty of the infraction and sanctioned to segregation, the offender shall receive credit against the sanction for time already served in segregation for that violation.

(3) An ~~((inmate))~~ offender confined ~~((under this section shall be subject to the same rules and restrictions as other inmates in the unit or status.~~

~~((5) An inmate confined under this rule))~~ to his/her cell or placed in more restrictive housing shall be afforded reasonable opportunities to prepare a defense to the charges against him/her.

~~((6) An inmate confined on prehearing confinement or restricted under this rule by administrative segregation placement shall receive credit against the sanction for time served if found guilty of the infraction.~~

(7) If an inmate is on prehearing confinement and a sanction of further segregation or isolation is given and the inmate indicates he/she wishes to appeal, the inmate may remain on prehearing confinement status pending disposition of the appeal, unless released by the superintendent.)

## NEW SECTION

**WAC 137-28-285 Offender rights.** (1) An offender charged with a violation(s) has the right to:

- (a) A fair and impartial hearing;
- (b) Written notice of the alleged violation(s) and a summary of the supporting evidence at least twenty-four hours before the hearing;
  - (i) The notice shall include a statement of the rights listed in this section.
  - (ii) The offender may waive the twenty-four hour notice.
- (c) Be present at the hearing or waive presence at the hearing;
- (d) Request a department advisor and/or an interpreter to assist the offender in preparing for and participating in the hearing;
- (e) Testify or remain silent;
- (f) Call witnesses and present documentary evidence, though the hearing officer may exclude witnesses/evidence deemed irrelevant, duplicative, or unnecessary;

(g) Propose questions for the hearing officer to ask witnesses, although the hearing officer may exclude questions deemed irrelevant, duplicative, or unnecessary;

(h) Appeal the hearing officer's finding(s) and/or sanction(s) imposed to the superintendent within fifteen business days of the hearing officer's decision.

- (2) Offenders do not have the right to:
  - (a) Cross-examine witnesses;
  - (b) Have the reporting staff member present at the hearing;
  - (c) Receive a polygraph or other supplemental tests;
  - (d) Examine physical evidence;
  - (e) Receive confidential information.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-290 Preparations for hearing.** (1) When possible, hearings will be held in the facility where the violation(s) occurred. If the offender is transferred to another facility before a hearing is conducted, the sending facility will provide the infraction report, along with any supporting documents, to the receiving facility.

(2) In preparation for the hearing, the hearing clerk or designee shall, at least twenty-four hours ~~((in advance of))~~ before the hearing:

~~((1))~~ (a) Provide copies of the infraction report ~~((to the inmate))~~ and nonconfidential supporting documents to the offender;

- ~~((2))~~ (b) Advise the ~~((inmate))~~ offender in writing~~((:~~
  - (a) Of his/her right to have a hearing;
  - (b) That if he/she chooses not to testify at or attend the hearing, his/her silence may be used against him/her;
  - (c) To present written statements from other inmates, staff, or other persons only if those statements would be relevant to the infraction and have a tendency to demonstrate his/her innocence;

~~((d) To request that staff members, other inmates, and other persons be present as witnesses in his/her defense for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to institutional safety or correctional goals. Limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the inmate's case;~~

~~((e) To have a staff advisor assist in preparation of the inmate's case when it is determined by appropriate staff that the inmate is unable to adequately represent him/herself on the basis of literacy, competence, or other disability;~~

~~((f) To have access to nonconfidential reports and records used by the hearing officer during the fact-finding stage. However, where reports and records contain information that might reasonably compromise the security or safety of the institution or its inmates, these reports and records shall be identified as confidential and withheld. A summary of the confidential information shall be provided to the inmate. This summary may be included in the infraction report.~~

~~((g) The inmate must establish that any requested witness has relevant and exculpatory evidence to present at the hearing. The inmate must list all intended witnesses on the notice~~

of hearing. The hearing officer may, in his/her discretion, allow additional witnesses for good cause shown;

(3) Advise the inmate that he/she does not have a right:

(a) To cross-examine witnesses;

(b) To have the infraacting staff member present at the hearing;

(c) To a polygraph or other supplemental tests;

(4) of the rights, restrictions, and responsibilities listed in this section;

(c) Obtain written ((acknowledgement)) acknowledgment of the ((inmate's)) offender's receipt of the ((information));

(5)) infraction report and any supporting documents;

(d) Determine ((from the inmate)) whether the ((inmate)) offender wishes to contest the allegation;

((6) Schedule the hearing within seven working days after discovery of the incident. If an inmate)) (e) Determine whether the offender needs a department advisor and/or an interpreter. If assigned, the department advisor and/or interpreter will remain in place throughout the hearing process, unless the offender declines assistance.

(3) If an offender is placed in prehearing confinement((, a)) in segregation, the hearing ((shall)) will be held within three ((working days after the day of placement)) business days of service of the infraction report and any supporting documents, unless the ((time is extended by the superintendent. If)) offender has waived twenty-four hour notice for the hearing or the hearing is continued in writing by the hearing officer. A staff member may be assigned to assist in obtaining witness statements.

If a hearing is continued, a determination shall be made in writing whether the ((inmate)) offender should remain ((on prehearing confinement and the reasons for that confinement)) in segregation.

(4) For offenders not placed in segregation, the hearing will be held within five business days of service of the infraction report and any supporting documents.

## NEW SECTION

**WAC 137-28-295 Department advisors.** (1) A department advisor may be appointed per department policy to help the offender prepare for and participate in the hearing. Before a department advisor is assigned, the following factors will be considered:

(a) The offender's literacy;

(b) The complexity of the issue(s);

(c) The offender's overall ability to speak for himself/herself and adequately present his/her case;

(d) The offender's ability to communicate in English;

(e) Any disability that might impair the offender's ability to adequately defend himself/herself.

(2) The department advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(3) The department advisor shall attend the hearing, in whole or in part, based on the offender's needs. He/she may attend in person or by telephone. He/she shall not present the offender's case, question witnesses, or make any other oral presentation, unless requested by the hearing officer.

(4) When a hearing is continued for the purpose of appointing a department advisor, an advisor shall be appointed immediately.

(5) Conversations between department advisors and offenders are neither confidential nor privileged.

**AMENDATORY SECTION** (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-300 Conduct of hearing.** (1) The hearing officer shall ensure that the ((inmate)) offender's rights are protected throughout the hearing. The hearing officer shall ensure that the offender is capable of understanding the charge against him/her((;)) and the nature of the proceedings, and is able to adequately ((take part)) participate in the hearing. If there is reason to doubt the ((inmate's)) offender's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information((; refer the inmate to a mental health staff member for assessment, appoint a mental health staff member to represent the inmate at the hearing, or request a staff advisor)).

(2) The ((inmate)) offender shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

((3) The hearing officer may consider relevant evidence presented)) (a) If new evidence/information is introduced outside the hearing ((when not feasible to present that evidence within the hearing. The inmate shall be apprised of the content of that evidence and shall be allowed)), the offender will have an opportunity to rebut ((that)) the evidence/information during the hearing. ((An inmate may waive his/her presence at a hearing. Failure without good cause))

(b) Unless excused, an offender's failure to attend a scheduled hearing ((may be deemed a waiver of personal attendance. An inmate may be removed from his/her disciplinary hearing and the hearing may be continued in the inmate's absence if the inmate's behavior disrupts the disciplinary hearing.

(4) ~~Where institution staff members are witnesses against the inmate, a written statement from the staff member may)) will be considered ((by the)) his/her waiver of the right to be present at the hearing.~~

(3) An audio recording will be made of all hearings. A written record will also be made of all hearings.

(a) The record shall include:

(i) The name and DOC number of the offender;

(ii) The date, location, and time of the hearing;

(iii) The name of the hearing officer;

(iv) The alleged violation(s);

(v) The offender's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the offender and any witnesses, and information from any additional sources, including confidential sources;

(viii) A summary of any new evidence/information introduced outside the hearing;

(ix) A description of any physical evidence;

(x) The reasons for denying any witnesses;

(xi) Any witness statements requested by the offender or hearing officer ((instead of in-person testimony, except where)) that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the offender that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);

(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.

(b) If the offender is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the offender's file.

(4) The hearing officer will ensure physical evidence is handled per department policy.

(5) If an offender's behavior disrupts the hearing, he/she may be removed and the hearing will continue on the record in the offender's absence.

(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person, at the hearing officer's discretion. If the hearing officer determines that ((the staff member's presence is necessary to an adequate understanding of the issues in the case.

(5)) participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.

(7) The hearing officer has the authority to question all witnesses. The ((inmate)) offender may submit proposed questions to be asked of witnesses, but the hearing officer ((has discretion over the)) may exclude questions ((asked-

(6) The inmate shall be allowed to present witnesses in his/her defense and to present documentary evidence in his/her defense when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals. Testimony of witnesses from outside the facility will be submitted in writing.

(a) The hearing officer may deny the admission of evidence or testimony if the hearing officer determines that the testimony or evidence is)) that are irrelevant, ((immaterial, unnecessarily)) duplicative ((of other information before the hearing officer, or otherwise found to be)), or unnecessary to the adequate presentation of the ((inmate's)) offender's case.

((b) The testimony of witnesses that is adverse to the inmate may be given in person, in writing, or by telephone.

(c) The hearing officer shall document on the written record the reasons for denial of in-person testimony that is requested in writing by the inmate.

(7) If the hearing officer determines that a source of information would be subject to risk of harm if his/her identity were disclosed, testimony of the)) (8) Information from a confidential source ((may)) will be introduced by the testimony of ((a)) the staff member. ((The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used)) who received the information.

(a) The hearing officer shall, out of the presence of ((all inmates)) the offender and off the record, ((identify the con-

fidential source, and how the testifying staff member received)) review the confidential information((-

(b) The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall)) and make an independent determination regarding the reliability of the ((confidential)) source, the credibility of the information, and the necessity of not revealing the source ((of the confidential information)). In determining whether the ((confidential)) source is reliable and the ((confidential)) information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

#### NEW SECTION

**WAC 137-28-305 Continuances.** (1) At any time during the disciplinary process, the hearing officer may continue the hearing:

(a) To appoint a department advisor;

(b) To obtain an interpreter;

(c) To obtain a witness(es) or witness statement(s);

(d) To obtain a replacement hearing officer;

(e) If the witness(es) is temporarily unavailable;

(f) If the offender is unavailable (e.g., on escape, court-ordered custody, in transit to a nondepartment facility, etc.);

(g) At the reasonable request of the offender;

(h) If the facility is experiencing altered/modified operational status;

(i) To determine restitution costs.

(2) Continuances shall be for no longer than necessary, and shall not exceed twenty business days, unless approved by the superintendent.

(3) Hearings for offenders on escape status, in court-ordered custody, in transit to a facility in another jurisdiction, or otherwise unavailable may be continued for not more than twenty business days after their return to department custody.

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

**WAC 137-28-310 Decision of hearing officer.** (1) ((A report of the hearing shall be made.

(a) The report shall include:

(i) The charge;

(ii) Names of witnesses;  
 (iii) Inmate plea(s);  
 (iv) Summary of the testimony and cross-examination;  
 (v) A description of the physical evidence used;  
 (vi) Reasons for denying witnesses or the fact that written witness statements were not returned to the hearing officer; and

(vii) The decisions and reasons.

(b) The written report shall be placed in the inmate's institutional file if he/she is found guilty.

(c) All reports and attachments shall be maintained by the clerk as part of the hearing officer's permanent records. A complete taped record of the hearing shall be taken but the tape shall not become a part of the inmate's file, and may be destroyed in accordance with the department's archive retention schedule unless the hearing officer becomes aware that an appeal or court proceeding is pending.

(2)) In reaching a decision ((on the guilt or innocence of the inmate)), the hearing officer ((must rely solely on evidence considered)) will consider only the evidence presented at the hearing((- However, during the dispositional stage of the hearing, other factors, such as the inmate's institutional file, prior conduct, mental status, and overall institution adjustment, may be considered.

(3) The hearing officer may not find an inmate guilty of committing a #328 or #728 infraction if the inmate possesses sexually explicit materials depicting **only** actual penetration and such sexually explicit material was screened and approved by a mail room staff member prior to delivery to the inmate. Nothing herein shall be construed to limit the ability to remove such material from the inmate's possession and eell.

(4) The hearing officer shall consider mitigating factors in determining whether to reduce a #728 serious infraction to a #328 general infraction)).

((5)) (2) The hearing officer is authorized to find an inmate guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.

((6)) (3) Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a separate hearing ((on the new charges and may allow the hearing officer to enter a finding of guilty or not guilty and impose sanctions.

(7) The inmate)) and allow the hearing officer to conduct the hearing on the new charge.

(4) The offender shall be informed of the hearing officer's decision ((of the hearing officer)) in writing within three ((working)) business days of the hearing, unless extended by the superintendent.

((8) The inmate)) (5) The offender shall be informed of his/her right to appeal the hearing officer's decision ((of the hearing officer)) to the superintendent.

**AMENDATORY SECTION** (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

**WAC 137-28-350 Sanctions—Authority to impose.**

(1) If the hearing officer finds the offender not guilty of a vio-

lation, disciplinary sanctions shall not be imposed on the offender for that violation. Records pertaining to the violation shall not be placed in the offender's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the hearing officer ((determines that an inmate is)) finds the offender guilty of a serious ((infraction, he/she)) violation, the hearing officer may impose one or more of the ((following)) sanctions listed in this section.

If the hearing officer determines that more than one violation occurred as a result of the same incident, he/she shall not impose sanctions for the separate violations, but shall consider them together and impose penalties based on the most serious violation in the group.

(3) Allowable sanctions for serious violations are as follows. The hearing officer may consider factors such as prior documented behavior, infraction history, mental status, and overall facility and program adjustment when determining an appropriate sanction(s):

(a) Any of the sanctions available for general ((infractions)) violations;

(b) Any of the sanctions available under ((DOC 320-150)) department policy;

(c) Loss of a privilege or privileges as ((specified by the hearing officer)) outlined in department policy for a period not to exceed: Thirty consecutive days on ((a)) the first offense, ninety consecutive days on ((a)) the second offense, and one hundred eighty consecutive days on ((a)) the third offense(-) within a one-year period;

(d) ((Evening lockup or confinement to quarters for ten days;-

(e) Weekend and/or holiday lockup or confinement to quarters for a period of one or more weekends but not to exceed twelve consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the Friday workday and terminate at the beginning of the Monday workday;

(f)) Confinement to ((quarters)) cell/room except for meals(-) (or with meals in cell((- with or without curtailment of job assignment))), attendance at work or school assignments, or religious services, or law library if approved for emergency/priority access per department policy, for a period not to exceed thirty consecutive days;

((g)) (e) Recommendation to the ((unit team/classification committee/assignment officer for reconsideration)) facility risk management team for review of custody classification ((or program change;

(h) Recommendations to the classification committee/classification officer for transfer to another institution when, as a result of the infraction committed, the inmate is unable to function in the institution of present confinement, or if other disciplinary methods have been attempted and failed));

((h)) (f) Confinement on segregation status for a period not to exceed thirty consecutive days;

((i) Confinement)) (g) With assistant secretary approval, confinement on isolation status for a period not to exceed ten consecutive days((- however, where)), Where a serious ((infraction)) violation occurs during a period of isolation ((imposed under this rule)), additional periods of isolation not to exceed ten consecutive days may be imposed. In situations where an ((inmate)) offender is in isolation for

more than ten consecutive days, the ~~((director's))~~ assistant secretary's prior approval is required unless the ~~((inmate))~~ offender is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;

~~((h))~~ (h) Restitution per WAC 137-28-410;

~~((i))~~ (i) Recommendation to the superintendent that he/she ~~((not certify))~~ deny good conduct time credit ~~((for an inmate subject to the jurisdiction of the indeterminate sentence review board, pursuant to RCW 9.95.070 or that he/she approve the denial of good conduct time credit for those inmates not under the jurisdiction of the board)).~~

~~((j))~~ (j) The recommendation will be consistent with guidelines established by the ~~((secretary of the))~~ department ~~((of corrections)).~~

~~((k))~~ (k) secretary. Any sanctions ~~((for loss of good conduct credits))~~ in excess of the guidelines ~~((established by the secretary of the department of corrections must have final approval by the deputy secretary)).~~

~~((l))~~ (l) For inmates not under the board's jurisdiction, all awards of good conduct time shall be considered tentative and therefore all good conduct time credits earned or to be earned may be addressed under this rule;

~~((m))~~ (m) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with infractions providing for actual time loss of twelve months or more and consistent with guidelines established by the department;

~~((n))~~ (n) Interruption of visitation between the offender and a specified individual(s) for a period of up to one hundred eighty consecutive days when there has been an infraction for visit related behavior or behavior that presents a security or safety threat. In cases of multiple or very serious offenses, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

~~((o))~~ (o) Restrictions, interruption or termination of correspondence, and/or telephone privileges with specified individuals. Sanctions for offense(s) within any one-year period may not exceed: Up to) require assistant secretary approval;

~~((p))~~ (p) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the ((first)) second offense, and one hundred eighty consecutive days for the ((second offense and permanent loss for the)) third offense((- Termination of correspondence and/or telephone privileges may be permanent for the first offense if:

~~((1))~~ (1) The recipient ~~so requests; or))~~ within a one-year period;

~~((2))~~ (2) Restriction, interruption, or termination of correspondence, telephone, and/or electronic communication for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the second offense, and one hundred eighty consecutive days for the third offense in a one-year period. Termination of correspondence, telephone, and/or electronic communication may be permanent:

(i) At the recipient's request:

~~((A))~~ (A) At the request of the parent or guardian of the recipient, if the recipient is a minor or an ((incompetent)) incapacitated person((- so requests; or));

~~((B))~~ (B) If correspondence perpetuates criminal activity; or

~~((C))~~ (C) If the contact violates a court order((;

~~((D))~~ (D) The sanction for infraction #557 and #810 shall be the loss of available earned release credits and other privileges as outlined in department policy. Progressively more severe sanctions will be utilized for subsequent infractions #557 and #810.

~~((E))~~ (E) The sanction for infraction #882 shall include a mandatory loss of telephone privileges, with the exception of legal calls, for sixty consecutive days for the first offense, ninety consecutive days for the second offense and one hundred eighty consecutive days for a third or subsequent offense within any one-year period.

~~((F))~~ (F) If the hearing officer determines that more than one infraction occurred as a result of the same incident, he/she shall not impose consecutive sanctions for the separate infractions but shall consider them together and impose penalties for the group of infractions.

~~((G))~~ (G) The hearing officer may suspend the execution of a disciplinary sanction for a fixed period of time, not to exceed three hundred sixty-five consecutive days, subject to the good behavior of the inmate or to meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer may, at or before the end of the fixed period, cancel the sanction. A suspended sanction may be imposed if the inmate has been found guilty of a general or serious infraction or of violating the conditions attached to the original suspension. A suspended sanction may be imposed by the hearing officer following notice to, and an in-person meeting with, the inmate).

~~((H))~~ (H) Urinalysis or breath alcohol testing for a period not to exceed ninety days for drug or alcohol related violations.

~~((I))~~ (I) The hearing officer may review any decision he/she previously made and may modify downward any sanction previously imposed.

~~((J))~~ (J) In all cases, regardless of whether an appeal is ~~((taken))~~ requested, the superintendent may review and reduce a sanction imposed ~~((and may reduce its severity))~~. Once the superintendent has made a decision on the appeal, no modifications will be made by the hearing officer.

~~((K))~~ (K) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

**WAC 137-28-360 Sanctions and mental status.** In determining an appropriate sanction, the hearing officer should consider the ~~((inmate's))~~ offender's mental health and his/her intellectual, emotional, and maturity levels and what effect a particular sanction might have on the ~~((inmate))~~ offender in light of such factors. The hearing officer may request the assistance of other department staff members, including mental health staff members, in determining appropriate sanctions.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

**WAC 137-28-370 Sanctions—Limitations.** ~~((1) No inmate shall be subject to discipline for violation of inmate conduct rules unless there has been reasonable advance notice to the inmate of the prohibited behavior unless the rule was adopted on an emergency basis.~~

~~(2) Lowering the quantity or nutritional value of food or deprivation of clothing, bedding, bed, or normal hygienic implements shall not be used as disciplinary sanctions.~~

~~(3) Corporal punishment or physical restraint shall not be used as disciplinary sanctions.~~

~~(4) An inmate placed in disciplinary segregation shall be:~~

~~(a) Confined to an environment with healthful temperatures in cells substantially similar to those used for general population;~~

~~(b) Provided reasonable opportunities for personal hygiene;~~

~~(c) Afforded correspondence, reading, and access to the courts in accordance with written policy and procedure;~~

~~(d) Provided daily opportunity for at least one hour of exercise unless staffing, space, institutional security, order and/or safety, or other similar circumstances make this unfeasible, in which cases the inmate shall be allowed as much exercise as is feasible in the judgment of staff. Any limitations of exercise shall be approved in advance by a staff member with the rank of lieutenant or higher; and~~

~~(e) Provided adequate medical treatment.~~

~~(5) An inmate placed in isolation shall be:~~

~~(a) Confined in an environment with healthful temperatures in cells substantially similar to those used for the general population;~~

~~(b) Provided reasonable opportunities for personal hygiene;~~

~~(c) Afforded correspondence, reading, and access to courts in accordance with written policy and procedure. Reading literature may be limited to educational, religious, legal, or program involvement material;~~

~~(d) Provided adequate medical treatment;~~

~~(e) Upon approval by the superintendent, released immediately to an appropriate setting when medical personnel recommend such release on medical or psychological grounds; and~~

~~(f) Have reasonable access to a counselor and religious staff member.)~~ (1) No offender shall be infraacted for violation of offender conduct rules unless he/she has been provided reasonable advance notice of the prohibited behavior, unless the rule was adopted on an emergency basis.

(2) Disciplinary sanctions shall not include:

(a) Lowering the quantity or nutritional value of food;

(b) Corporal punishment or physical restraint;

(c) Confinement to an environment with unhealthful temperatures;

(d) Denial of adequate medical treatment.

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

**WAC 137-28-380 ((Appeal to superintendent)) Serious infraction appeals.** (1) ((An inmate or the inmate's staff

advisor)) If the hearing officer finds the offender guilty of a serious violation, only the offender may appeal the decision ((of the hearing officer)) and/or sanction(s) to the superintendent ((by filing a written)).

(a) An appeal request ((for review with his/her reasons with the clerk)) cannot be filed when the offender has pled guilty to the violation.

(b) The appeal request must be in writing and must include the reason(s) why the offender believes the action taken was incorrect and specify the desired relief.

(c) The appeal request must be filed within fifteen business days((, exclusive of weekends and holidays, after)) of receiving the notice.

(d) Failure to follow appeal procedures shall be deemed a waiver of the ((decision of the hearing officer. The)) appeal, however the superintendent may consider appeals filed beyond the fifteen((-) business day period.

(2) The ((clerk shall promptly transmit the appeal and)) superintendent will review the hearing record ((to the superintendent.

(3) The superintendent shall)) and act on the appeal request within ten ((working)) business days of ((its)) receipt. The superintendent may affirm the decision ((of the hearing officer; reduce the charge to a lesser included offense; reduce a #728 serious infraction to a #328 general infraction based upon mitigating factors; reduce the severity of the sanctions imposed; vacate the judgment of the hearing officer; or)) and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s). The superintendent may also reverse the decision and remand the matter for a new hearing((-Any)), in which case the sanction(s) imposed at the new hearing may not ((result in an increase in the severity of the sanctions)) be more severe than the sanction(s) originally imposed ((unless the inmate is charged with related or additional offenses)).

((4)) (3) The ((inmate)) offender shall be promptly notified ((promptly)) in writing of the superintendent's decision ((of the superintendent)).

((5)) (4) Sanctions ((are)) will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

**WAC 137-28-390 Hearing officer reports to the indeterminate sentence review board.** (1) When the hearing officer determines that an offender subject to the jurisdiction of the indeterminate sentence review board is guilty of a serious violation, the hearing officer may recommend to the superintendent that he/she not certify good conduct time credit for the offender pursuant to RCW 9.95.070.

The hearing officer's recommendation will be consistent with guidelines established by the department secretary. Any sanctions for loss of good conduct credits in excess of the guidelines require assistant secretary approval.

(2) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with violations providing for actual time loss of twelve months or more and consistent with guidelines established by the department secretary.

(3) Whenever the hearing officer finds an ~~(inmate)~~ offender under the jurisdiction of the indeterminate sentence review board guilty of a serious ~~(infraction)~~ violation and recommends either loss of good conduct time credits or an increase in the ~~(inmate's)~~ offender's minimum term, the records office must inform the indeterminate sentence review board of ~~(that)~~ the hearing officer's decision and recommendation within ten days, or ~~(, if an appeal is taken,)~~ within ten days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the offender is within forty-five days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

~~((2)) (4) In all other cases where ~~(a finding of guilty is made for)~~ an offender under the jurisdiction of the indeterminate sentence review board is found guilty of a serious ~~(infraction)~~ violation, the records office must inform the indeterminate sentence review board of ~~(that)~~ the hearing officer's decision within thirty days, or ~~(if an appeal is taken,)~~ within thirty days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer ~~(reporter).~~~~

~~(3) Where an inmate is found guilty of a serious ~~(infraction)~~ violation, if the offender is within forty-five days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.~~

~~((4) This section shall apply only to inmates who are under the jurisdiction of the indeterminate sentence review board.)~~

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

**WAC 137-28-410 Restitution.** (1) If the hearing officer imposes restitution ~~(has been imposed)~~ as a sanction, ~~(a hearing officer shall determine the amount of restitution owed. A determination of)~~ the amount of restitution owed shall be ~~(made)~~ determined at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence regarding restitution. If continued, the ~~(inmate)~~ offender shall be present at the continued/reconvened hearing.

(2) The amount of restitution ~~(normally shall)~~ will be the replacement value of the item, the cost of repair, and/or the cost of any unnecessary expense caused by the ~~(inmate's)~~ offender's misconduct.

(3) ~~The ~~(inmate shall be given an opportunity to)~~ offender may appeal the amount of restitution within the time limits of this ~~(policy)~~ chapter. If under appeal, the amount of the restitution will be held in the ~~(inmate's)~~ offender's account, but funds will not be ~~(withdrawn from the inmate's account)~~ withdrawn/withheld until the superintendent has decided the appeal.~~

(4) Restitution funds may be collected in the following ways:

(a) The funds may be ~~(~~

~~(a))~~ withdrawn from the ~~(inmate's)~~ offender's account to make restitution, provided the ~~(inmate's)~~ offender's

account ~~(shall)~~ is not ~~(be)~~ reduced to less than ten dollars; or

(b) Twenty percent of all funds being placed ~~(into)~~ in the ~~(inmate's)~~ offender's account may be taken until the restitution is paid in full.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 137-28-185	Creation or amendment of serious infractions.
WAC 137-28-330	Finding of not guilty.
WAC 137-28-340	Staff advisors.
WAC 137-28-420	Continuances.
WAC 137-28-430	Evidence.

#### **WSR 15-09-064**

#### **PROPOSED RULES**

#### **CLARK COLLEGE**

[Filed April 14, 2015, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-059.

Title of Rule and Other Identifying Information: Revise WAC 132N-300-001 and 132N-300-010, nondiscrimination and harassment statement of policy and grievance procedure and WAC 132N-125-035 Code of student conduct prohibited student conduct.

Hearing Location(s): Ellis Dunn Community Room, Gaiser Student Center, Clark College, 1933 Ft. Vancouver Way, Vancouver, WA 98663, on May 27, 2015, at 5:00 p.m.

Date of Intended Adoption: June 29, 2015.

Submit Written Comments to: Mr. Bob Williamson, Vice-President of Administrative Services, Clark College, Mailstop BRD 159, 1933 Ft. Vancouver Way, Vancouver, WA 98663, e-mail bwilliamson@clark.edu, fax (360) 992-2884, by May 25, 2015.

Assistance for Persons with Disabilities: Contact Aaron Hodukavich by May 25, 2015, (360) 992-2065 or video phone (360) 991-0910.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new revision is necessary to comply with the latest Title IX, Violence Against Women Act (VAWA), and campus SaVE requirements.

Reasons Supporting Proposal: The proposed new revision is necessary to comply with the latest Title IX, VAWA, and campus SaVE requirements.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, Title IX, VAWA, and campus SaVE.

Name of Proponent: [Clark College], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bob Williamson, Clark College, Mailstop BRD 159, 1933 Ft. Vancouver Way, Vancouver, WA 98663, (360) 992-2289.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required, there will be no impact on small business if the proposed code is adopted.

A cost-benefit analysis is not required under RCW 34.05.328. Costs associated with implementing and enforcing these rules are already accounted for in the college's budget.

April 3, 2015  
Robert D. Williamson  
Vice-President of  
Administrative Services

AMENDATORY SECTION (Amending WSR 14-12-024, filed 5/27/14, effective 7/7/14)

**WAC 132N-125-035 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment.

(c) Self-plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(d) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(e) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(2) **Other dishonesty.** Any other acts of dishonesty, such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college. Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.

(4) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons, which can be used to inflict bodily harm or to damage real or personal property is prohibited on the college campus, at any other facilities leased or operated by the college, or at any activity under the administration or sponsorship of the college. Exceptions to this policy are permitted when the weapon is used in conjunction with an approved college instructional program, is carried by duly constituted law enforcement officer, or is otherwise permitted by law.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public, Clark College maintains a tobacco-free campus. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location is prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, lewd, or indecent.

(12) **Disorderly conduct.** Conduct which disrupts campus operations or the educational environment, is disturbing the peace, or assisting or encouraging another person to disturb the peace.

(13) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. Such finding is considered an aggravating factor in determining a sanction for such conduct.

(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** ~~((The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause:))~~ "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intended to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other

drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(15) **Harassment.** Unwelcome and offensive conduct including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(16) **Retaliation.** Retaliation~~((, intimidation, threats, or coercion against anyone who asserts a right protected by))~~ against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment~~((, or who cooperates in an investigation))~~.

(17) **Theft or misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the student computing resources policy. [http://www.clark.edu/student\\_services/computing\\_resources/policy.php](http://www.clark.edu/student_services/computing_resources/policy.php)

(18) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted

means of access to college property, or unauthorized entry onto or into college property.

(19) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) **Abuse or misuse of any procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding.
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(21) **Motor vehicles.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(23) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 98-19-066, filed 9/18/98, effective 10/19/98)

**WAC 132N-300-001 Statement of policy.** ~~((+))~~ The college affirms a commitment to freedom from discrimination for all members of the college community. The responsibility for, and the protection of, this commitment extends to students, faculty, administration, staff, contractors, and those who develop or participate in college programs. It encompasses every aspect of employment and every student and community activity. The college expressly prohibits discrimination ~~((against any person))~~ on the basis of race, ~~((sex, creed, religion,))~~ color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, ((the presence of any physical, sensory or mental disability

ity, or status as a disabled or Vietnam-era veteran)) creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal. Harassment is a form of discrimination.

~~((2) Definitions.~~

~~(a) Sexual harassment is a form of sex discrimination which involves the inappropriate introduction into the work or learning situation of sexual activities or comments that demean or otherwise diminish one's self worth on the basis of gender. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment under any of the following conditions:~~

~~(i) When submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing.~~

~~(ii) When submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual.~~

~~(iii) When such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, offensive working or educational environment.~~

~~Sexual harassment often involves relationships of unequal power and contains elements of coercion—as when compliance with requests for sexual favors becomes a criterion for granting work, study, or grading benefits. However, sexual harassment may also involve relationships among equals, e.g., student to student, as when repeated sexual advances or demeaning verbal behavior have a harmful effect on a person's ability to study or work.~~

~~Gender discrimination is the process of making a distinction in favor of, or against, a person or persons on the basis of sex rather than on individual merit. If gender is taken into account when making a decision regarding an employee, except when it is a *bona fide* occupational qualification or is otherwise authorized by law, or if an employee is sexually harassed, that person has been subjected to gender discrimination.~~

~~(b) Racial harassment is defined as physical or verbal conduct that is maliciously intended to harass, intimidate, or humiliate a person or persons on account of race, color, or national origin and that causes severe emotional distress, physical injury or damage or destruction to the property of another, or threatens and places a specific person or group of persons in reasonable fear of harm.~~

~~(c) Disabilities. People with disabilities are persons with a physical, mental, or sensory impairment which substantially limits one or more major life activities. An individual is disabled if he or she meets at least any one of the following tests:~~

~~(i) He or she is substantially impaired with respect to a major life activity; or~~

~~(ii) He or she has a record of such an impairment; or~~

~~(iii) He or she is regarded as having such an impairment.~~

~~(d) Disabled veteran. A person entitled to disability compensation under laws administered by the U.S. Department of Veterans Affairs, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.~~

~~(e) Vietnam-era veteran. A person who served on active duty for a period of more than one hundred eighty days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released from duty with other than a dishonorable discharge.)~~

AMENDATORY SECTION (Amending WSR 98-19-066, filed 9/18/98, effective 10/19/98)

~~**WAC 132N-300-010 Grievance procedure.** ~~((1) Any person who believes she or he has been discriminated against or harassed by Clark College or its employee(s) or agent(s) on the basis of race, sex, creed, religion, color, national origin, age, sexual orientation, marital status, the presence of any physical, sensory or mental disability, or status as a disabled or Vietnam-era veteran, may lodge a formal grievance. The college president delegates investigation of grievances on the basis of disability or disabled or Vietnam-era veteran status to the ADA Compliance Officer (ADACO). The college president delegates investigation of all other discrimination/harassment grievances to the college's affirmative action officer (AAO).~~~~

~~(a) Complaints should be filed within one hundred eighty days from the most recent incident. Where extraordinary circumstances are shown, the one hundred eighty-day limit may be waived by the ADACO or AAO.~~

~~(b) If the individualized education program (IEP) of a student provides for enrollment at Clark College or contracted special education or related services to be provided by the college, the school district which developed the IEP shall remain responsible for insuring that the requirements of chapter 392-172 WAC and the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 *et seq.*, including review and revisions to the IEP, are met.~~

~~(2)(a) Step 1: **Informal meeting.** In an attempt to informally resolve the concern, the complainant may request a meeting with the individual believed to have committed the discriminatory act (the respondent) or with the appropriate supervisor or president's designee. The time period in which attempts to informally resolve the concern are made shall not exceed thirty working days from the time the complaint is lodged.~~

~~(b) Step 2: **Formal grievance procedure.** The complainant may initiate a formal grievance.~~

~~(i) A formal grievance must be filed in writing and must set forth the specific grievance(s) raised by the complainant, including the dates, times, places, and circumstances surrounding his or her complaint. A form for this purpose is available from the ADACO or AAO; however, any written document is acceptable. Formal complaints may not be filed by e-mail.~~

~~(ii) Upon receipt of the grievance, the ADACO or AAO will conduct an investigation which includes, but is not limited to, interview(s) with the complainant, the respondent, and any additional persons necessary to determine the merit(s) of the complaint. The investigation should be completed within thirty working days.~~

~~(iii) Upon completion of the investigation, the ADACO or AAO will present a written report, including findings and conclusions to the complainant and the respondent. The~~

report may include a recommendation by the ADACO or AAO for appropriate disciplinary or corrective action, or the report may be sent to the designated dean or administrator to determine appropriate disciplinary or corrective action.

(iv) If the complaint is found to be false and malicious, the ADACO or AAO will notify the designated dean or administrator for possible disciplinary action against the complainant.

(e) Step 3: **Presidential appeal.** If the complaint is not resolved at Step 2 the complainant may appeal to the college president.

(i) The appeal must be made in writing within twenty-one days after the report is issued.

(ii) Within twenty days after receiving the appeal, the college president or the president's designee will conduct the presidential review and report the results in writing to both the complainant and the respondent. The college president may affirm or modify the report, remand the case for further investigation, or dismiss the appeal.

(iii) The written results of the presidential review will be considered final. No further intra-institutional appeal exists.

(3) If desired, inquiries or appeals beyond the institutional level may be directed to:

(a) Equal employment opportunity commission.

(b) Washington state human rights commission.

(c) Regional director, office of civil rights, department of education:)) (1) **Introduction.**

Clark College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendments Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Clark College has enacted policies prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of these policies will be subject to disciplinary action up to and including dismissal from the college or from employment.

The responsibility for, and the protection of this commitment, extends to students, faculty, administration, staff, contractors, and those who develop or participate in college programs. It encompasses every aspect of employment and every student and community activity.

Any person who believes she or he has been discriminated against or harassed by Clark College or its employee(s) or agent(s) on the basis of any status listed in subsection (1) of this section, may request informal assistance and/or lodge a formal grievance. If the complaint is against that designee, the complainant should report the matter to the president's office for referral to an alternate designee.

The college president designates investigation of grievances on the basis of race, creed, religion, color, national origin, age, political affiliation, and/or marital status to: Associate vice-president of human resources and Title IX coordinator, human resources, Baird administration building (BRD) 133, 360-992-2619. The college president designates investigation of grievances on the basis of sex, sexual orientation, gender identity, or gender expression to: Special advisor for diversity and equity and Title IX deputy coordinator, office of diversity and equity, Gaiser hall (GHL) 214, 360-992-2355, and dean of student success and retention and Title IX deputy coordinator, student affairs office, Gaiser hall (GHL) 204, 360-992-2900. The college president designates investigation of grievances on the basis of any physical, sensory or mental disability, or status as a disabled, or honorably discharged veteran or military status to: ADA compliance coordinator, disability support services, Penguin Union building (PUB) 013, 360-992-2065.

The presidential designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors.

- Will make determinations regarding how to handle requests by complainants for confidentiality.

- Will keep accurate records of all complaints and referrals for the required time period.

- May conduct investigations or delegate and oversee investigations conducted by a designee.

- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.

- Will issue written findings and recommendations upon completion of an investigation.

- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available online at [http://www.clark.edu/clark-and-community/about/policies-procedures/grievance\\_procedure.php](http://www.clark.edu/clark-and-community/about/policies-procedures/grievance_procedure.php). Hardcopies of the complaint form are available at the following locations on campus: Office of diversity and equity, Gaiser hall (GHL) 214; student affairs office, Gaiser hall (GHL) 204; or human resources office, Baird administration building (BRD) 133.

## (2) Definitions.

(a) Complainant: Employee(s), applicant(s), student(s), or visitor(s) of Clark College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(b) Complaint: A description of facts that allege violation of the college's policy against discrimination or harassment.

(c) Consent: Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct

indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(d) Discrimination: Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(e) Harassment: A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(i) Epithets, jokes, ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(ii) Verbal or physical threats of violence or physical contact directed toward an individual based upon their membership in a protected class.

(iii) Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(f) Protected class: Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(g) Resolution: The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.

(h) Respondent: Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(i) Sexual harassment: A form of discrimination consisting of unwelcome, gender-based verbal, written electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the

terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(ii) Quid pro quo sexual harassment occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.

- An instructor who promises a student a better grade in exchange for sexual favors.

- Sexually explicit statements, questions, jokes, or anecdotes.

- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.

- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.

- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.

- Direct or indirect propositions for sexual activity.

- Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(j) Sexual violence: Is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

**(3) Who may file a complaint.**

Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at [http://www.clark.edu/clark-and-community/about/policies-procedures/grievance\\_procedure.php](http://www.clark.edu/clark-and-community/about/policies-procedures/grievance_procedure.php). Hardcopies of the complaint form are available at the following locations on campus: Diversity center - GH1 214, vice-president of student affairs office - GH1 204, human resources office - BRD 133. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

**(4) Confidentiality and right to privacy.**

Clark College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Clark College policies and procedures. Although Clark College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the presidential designee.

Confidentiality requests and sexual violence complaints. The presidential designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the presidential designee will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the presidential designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the presidential designee will notify the complainant of the decision and ensure that complainant's

identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the presidential designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

**(5) Investigation procedure.**

Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The presidential designee shall be responsible for overseeing all investigations. Investigations may be conducted by the presidential designee or his or her designee. If the investigation is assigned to someone other than the presidential designee, the presidential designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(a) Interim measures. The presidential designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(b) Investigation. Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the presidential designee. The presidential designee shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred and, if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(c) Written notice of decision. The presidential designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations:

(i) The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not mer-

itorious or a recommendation that the accused not contact the complainant.

(ii) The complainant may be notified generally that the matter has been referred for disciplinary action.

(iii) The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action.

Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) Informal dispute resolution. Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the presidential designee. Requests for reconsideration shall be submitted in writing to the presidential designee within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the presidential designee shall respond within seven days. The presidential designee shall either deny the request or, if the presidential designee determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

**(6) Publication of antidiscrimination policies and procedures.**

The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

**(7) Limits to authority.**

Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Clark College policies and procedures, and federal, state, and municipal rules and regulations.

**(8) Nonretaliation, intimidation, and coercion.**

Retaliation by, for, or against any participant (including complainant, respondent, witness, presidential designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the presidential designee immediately.

**(9) Criminal complaints.**

Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Vancouver Police Department  
605 E. Evergreen Blvd.  
Vancouver, WA 98661  
360-487-7400  
vanpd@cityofvancouver.us

Clark County Sheriff's Office  
707 W. 13th Street  
Vancouver, WA 98660  
Mailing address: P.O. Box 410  
Vancouver, WA 98666  
Main phone: 360-397-2211  
sheriff@clark.wa.gov

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

**(10) Other discrimination complaint options.**

Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission  
<http://www.hum.wa.gov/index.html>

U.S. Department of Education Office for Civil Rights  
<http://www2ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission  
<http://www.eeoc.gov/>

**WSR 15-09-066**

**PROPOSED RULES**

**DEPARTMENT OF TRANSPORTATION**

[Filed April 15, 2015, 7:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-140.

Title of Rule and Other Identifying Information: Commute trip reduction (CTR) program performance goals.

Hearing Location(s): Washington State Department of Transportation (WSDOT), 310 Maple Park Avenue S.E., Olympia, WA 98504-7387, on May 26, 2015, at 2:00 p.m.

Date of Intended Adoption: May 26, 2015.

Submit Written Comments to: A. Alexandra DeMoss, WSDOT, P.O. Box 47387, Olympia, WA 98504-7387, e-mail DeMossA@WSDOT.WA.GOV, by May 24, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The program's current performance goals have been replaced with an improved model for goal and target setting, which will encourage tailoring of goals and targets to be more accurate, timely and potentially effective for both state and community objectives.

The rule making will amend:

WAC 468-63-020, the definitions of "base year value" and "jurisdiction's base year measurement."

WAC 468-63-030, the structure and process for state and local goal and target setting in the program's four-year plan and performance cycle.

WAC 468-63-040, the local goal and target setting to be consistent with the new provisions in WAC 468-63-030.

WAC 468-63-060, the growth and transportation efficiency center goal and target setting to be consistent with the new provisions in WAC 468-63-030.

Reasons Supporting Proposal: In addition to the proposal's advantages, the current rule language for goals covered activities through 2011. The content of the rules governing goals were due for either adjustment or replacement.

Statutory Authority for Adoption: RCW 70.94.537.

Statute Being Implemented: RCW 70.94.521.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: A. Alexandra DeMoss, Olympia, (360) 705-7906; Implementation and Enforcement: Kathy Johnston, Olympia, (360) 705-7925.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This program only regulates large businesses. It does not regulate small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to WSDOT. It is not required to develop a cost-benefit analysis.

April 15, 2015  
Kathryn W. Taylor  
Assistant Secretary

**AMENDATORY SECTION** (Amending WSR 07-05-065, filed 2/20/07, effective 3/23/07)

**WAC 468-63-020 Definitions.** (1) **Definitions.** The definitions in this section apply throughout these rules.

(a) **Statutory definitions.** The terms listed in this subsection are defined in the CTR statutes (RCW 70.94.521 through 70.94.555).

(i) "A major employer" means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(ii) "Major employment installation" means a military base or federal reservation, excluding tribal reservations, at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months during the year.

(iii) "Person hours of delay" means the daily person hours of delay per mile in the peak period of 6:00 a.m. to 9:00 a.m., as calculated using the best available methodology by the department of transportation.

(iv) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(v) "Proportion of single-occupant vehicle commute trips" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees.

(vi) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(vii) "Growth and transportation efficiency center" means a defined, compact, mixed-use urban area that contains jobs or housing and supports multiple modes of transportation. For the purpose of funding, a growth and transportation efficiency center must meet minimum criteria established by the commute trip reduction board under RCW 70.94.537, and must be certified by a regional transportation planning organization as established in RCW 47.80.020.

(viii) "Affected urban growth area" means:

(A) An urban growth area, designated pursuant to RCW 36.70A.110, whose boundaries contain a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, and any contiguous urban growth areas; and

(B) An urban growth area, designated pursuant to RCW 36.70A.110, containing a jurisdiction with a population over seventy thousand that adopted a commute trip reduction ordinance before the year 2000, and any contiguous urban growth areas.

(ix) "Certification" means a determination by a regional transportation planning organization that a locally designated growth and transportation efficiency center program meets the minimum criteria developed in a collaborative regional process and the rules established by the department of transportation.

(b) **Terms defined by rule.** The terms listed in this subsection are defined herein and apply throughout these rules.

(i) "Goal" means a purpose toward which efforts are directed.

(ii) "Target" means a quantifiable or measurable value that is expressed as a desired level of performance, against which actual achievement can be compared in order to assess progress.

(iii) "Drive-alone" means single-occupant vehicle.

(iv) "Single-occupant vehicle" means a motor vehicle, including a motorcycle, occupied by one person for commute purposes. If there are other passengers occupying the motor vehicle, but the ages of these passengers are sixteen or under, the motor vehicle is still considered a "single-occupant vehicle" for measurement purposes.

(v) "Nondrive-alone travel" means travel by a method other than single-occupant vehicle. Travel avoided by telework, alternative work schedules, or condensed work weeks shall also be considered as nondrive-alone travel.

(vi) "Base year value" means the measured values ~~((of the proportion of single-occupant vehicle commute trips and commute trip vehicle miles traveled))~~ per employee at a major employer worksite, on which commute trip reduction targets for the major employer worksite shall be based.

(vii) "Jurisdiction's base year measurement" means the ~~((proportion of single-occupant vehicle commute trips by CTR commuters and commute trip vehicle miles traveled per CTR commuter on which commute trip reduction targets for the local jurisdiction shall be based. The))~~ year of the first measurement. For those jurisdictions which have used the CTR survey, the jurisdiction's base year measurement~~((, for those jurisdictions with an affected urban growth area as of March 1, 2007,))~~ shall be determined based on employee surveys administered in the ~~((2006-2007))~~ 2007-2008 survey cycle. If complete employee survey data from the ~~((2006-2007))~~ 2007-2008 survey cycle is not available, then the base year measurement shall be calculated from the ~~((most recent and))~~ earliest available set of complete employee survey data. For jurisdictions which do not use the CTR survey for measurement, this shall be determined using equivalent 2007-2008 data.

(viii) "Affected employee" means a full-time employee who begins his or her regular workday at a major employer worksite between 6:00 and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months, who is not an independent contractor, and who is scheduled to be employed on a continuous basis for fifty-two weeks for an average of at least thirty-five hours per week.

(ix) "CTR commuter" means a resident or employee in an affected urban growth area who is a participant in the city or county's commute trip reduction program, including any growth and transportation and efficiency center ("GTEC") programs, implemented to meet the city or county's established targets.

(x) "Commute trip vehicle miles traveled per CTR commuter" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of CTR commuters during that period.

(xi) "Major employer worksite" means the physical location occupied by a major employer, as determined by a local jurisdiction.

(xii) "Voluntary employer worksite" means the physical location occupied by an employer who is voluntarily implementing a CTR program.

(2) **Identification of CTR jurisdictions.** This section establishes the process to be used by WSDOT to determine the state's affected urban growth areas and lists the state's affected urban growth areas.

(a) **Process to determine affected urban growth areas.** WSDOT shall use the definition of an affected urban growth area in RCW 70.94.524 to determine the list of affected urban growth areas. WSDOT shall use the most recent set of valid and available data that covers the entire state highway system to calculate the one hundred person hours of delay threshold for state highway segments. WSDOT shall use the most recent geographical information for the state's urban growth areas as provided by the department of community, trade and economic development, or its successor.

(b) **Listing of affected urban growth areas.** The cities and counties within or containing an affected urban growth area, as determined by WSDOT, are:

(i) Clark County and the cities of Camas, Vancouver, and Washougal;

(ii) King County and the cities of Algona, Auburn, Beaux Arts, Bellevue, Black Diamond, Bothell, Burien, Clyde Hill, Covington, Des Moines, Federal Way, Hunts Point, Issaquah, Kenmore, Kent, Kirkland, Lake Forest Park, Maple Valley, Medina, Mercer Island, Newcastle, Normandy Park, Pacific, Redmond, Renton, Sammamish, SeaTac, Seattle, Shoreline, Tukwila, Woodinville, and Yarrow Point;

(iii) Kitsap County and the cities of Bainbridge Island, Bremerton, and Port Orchard;

(iv) Pierce County and the cities of Bonney Lake, DuPont, Edgewood, Fife, Fircrest, Gig Harbor, Lakewood, Milton, Orting, Puyallup, Ruston, Steilacoom, Sumner, Tacoma, and University Place;

(v) Snohomish County and the cities of Arlington, Bothell, Brier, Edmonds, Everett, Lake Stevens, Lynnwood, Marysville, Mill Creek, Monroe, Mountlake Terrace, Mukilteo, Snohomish, and Woodway;

(vi) Spokane County and the cities of Airway Heights, Liberty Lake, Millwood, Spokane, and Spokane Valley;

(vii) Thurston County and the cities of Lacey, Olympia, and Tumwater;

(viii) Whatcom County and the cities of Bellingham and Ferndale; and

(ix) Yakima County and the cities of Selah, Union Gap, and Yakima.

(c) **Listing of affected urban growth areas exempted from CTR requirements for a period not exceeding two years from March 1, 2007.** The cities or counties within an affected urban growth area, as determined by WSDOT, but which the legislature in RCW 70.94.527(12) has exempted from CTR requirements for a period not exceeding two years from March 1, 2007, are:

(i) Benton County and the cities of Kennewick, Richland, and West Richland; and

(ii) Franklin County and the city of Pasco.

(d) **Notification of cities, counties, and regional transportation planning organizations (RTPOs) required to adopt CTR plans.** WSDOT shall notify the cities, counties, and RTPOs that are determined to be in the affected urban growth areas. Cities and counties in the affected urban growth areas shall identify the major employers, if any, within their boundaries. Only those cities and counties containing a major employer in the affected urban growth area within the boundaries of their official jurisdiction shall be required to adopt a local CTR plan. Only those regional transportation planning organizations whose planning territory encompasses a city or county required to adopt a local CTR plan shall be required to adopt a regional CTR plan.

AMENDATORY SECTION (Amending WSR 07-05-065, filed 2/20/07, effective 3/23/07)

**WAC 468-63-030 Program goals and measurement.**  
(1) **Program ~~((goals))~~ purpose and process.** ~~((This section establishes the goals and targets for the CTR program that every city and county shall seek to achieve at a minimum for the affected urban growth area within the boundaries of its official jurisdiction. Every two years, the state shall measure the progress of each jurisdiction and region toward their established targets for reducing drive-alone commute trips~~

and commute trip vehicle miles traveled per CTR commuter. Local and regional goals and measurement methodologies shall be consistent with the measurement guidelines established by WSDOT and posted on the agency's web site.) The purposes of the CTR program, as defined in RCW 70.94.521, are to decrease automobile-related air pollution, consumption of gasoline, and traffic congestion.

**(2) Statewide ((minimum)) program performance goals and targets.** ((The goals and targets of local jurisdictions for their urban growth areas shall meet or exceed the minimum targets established in this section:

(a) ~~The first state goal is to reduce drive-alone travel by CTR commuters in each affected urban growth area. This will help urban areas to add employment and population without adding drive-alone commute traffic. The first state target based on this goal is a ten percent reduction from the jurisdiction's base year measurement in the proportion of single-occupant vehicle commute trips (also known as drive-alone commute trips) by CTR commuters by 2011.~~

(b) ~~The second state goal is to reduce emissions of greenhouse gases and other air pollutants by CTR commuters. The second state target based on this goal is a thirteen percent reduction from the jurisdiction's base year measurement in commute trip vehicle miles traveled (VMT) per CTR commuter by 2011.)~~ The CTR board shall establish the performance goals and targets of the statewide program every four years in its state CTR plan, per RCW 70.94.537(3).

**(3) Local program performance goals and targets.** Local jurisdictions shall establish goals and targets ~~((that meet or exceed the minimum program targets))~~ for their CTR plan that contribute to goals established ((by) in the state plan and the purposes of the CTR program. The goals and targets shall be set for the affected urban growth area in the city or county's official jurisdiction, and shall be targets for the four-year ((2014)) period under the state CTR plan based on the base year measurement for the urban growth area.

(a) ~~((Each local jurisdiction shall implement a plan designed to meet the urban growth area targets.))~~ Local and regional goals and measurement methodologies shall be consistent with the measurement policies established by WSDOT and posted on the agency's web site. Progress will be determined every two years based on the jurisdiction's performance in meeting its established ~~((drive-alone commute trips and VMT))~~ goals and targets. Local jurisdictions shall establish base year values and targets for each major employer worksite (including major employment installations) in the jurisdiction. However, the targets may vary from major employer worksite to major employer worksite, based on the goals and measurement system implemented by the jurisdiction. Variability may be based on the following considerations:

(i) Previous engagement in trip reduction programs by the employer;

(ii) Current conditions, policies and services ~~((designed to reduce drive-alone travel))~~ in the vicinity of the major employer worksite;

(iii) Planned investments, services, policy changes and other strategies ~~((designed to reduce drive-alone travel))~~ in the vicinity of the major employer worksite;

(iv) Transit access to the employer worksite and frequency of transit service during peak periods in the vicinity of the major employer worksite;

(v) Potential for ride matching internally and with other employers in the area;

(vi) Bicycle and pedestrian access to the major employer worksite; and

(vii) Ability to implement compressed work week schedules and/or teleworking.

(b) ~~((The base year values for major employer worksites with an existing CTR program as of March 1, 2007, shall be determined based on employee surveys administered in the 2006-2007 survey cycle. If complete employee survey data from the 2006-2007 survey cycle is not available, then the base year values shall be calculated from the most recent and available set of complete CTR employee survey data. The local CTR plan shall use data from the same survey cycle to establish base year values for major employer worksites to ensure consistency.))~~ Jurisdictions will use base year values in determining their base year measurement.

(c) In their local CTR plans, local jurisdictions shall communicate what local, regional and state benefits would be gained if the established targets were achieved. Benefits may include but are not limited to projected changes in transportation system performance, projected reductions in emissions of pollutants, projected reductions in energy consumption, and projected benefits for economic development. Regional transportation planning organizations (RTPOs) and WSDOT shall provide applicable data, if available, to assist this analysis.

**(4) Goals for employers.** Regardless of the variations in major employer worksite targets that a jurisdiction implements, each major employer worksite shall be accountable for attaining the targets established by the jurisdiction. However, if major employer worksites are meeting the state requirements and giving a good faith effort as defined in RCW 70.94.531, local jurisdictions may not penalize the major employer for not meeting established targets.

**(5) Voluntary employer worksites.** In the local CTR plan, local jurisdictions shall indicate whether voluntary employer worksites that agree to measure will be counted in the calculation of the jurisdiction's progress toward its established targets. Regardless of whether the local jurisdiction chooses to count voluntary employer worksite measurements toward the area goal, jurisdictions shall continue to track results for those employer worksites that agree to measure.

**(6) Other local strategies for achieving the goals.** Jurisdictions may choose to institute trip reduction strategies for residents and employees in the urban growth area who are not affected by the local CTR ordinance. The progress of these efforts may be used in the jurisdiction's calculation of its progress toward its established urban growth area targets, if it is measured in a manner that is consistent with the measurement guidelines established by WSDOT and posted on the agency's web site.

**(7) Regional goal-setting.** The RTPO in its regional CTR plan shall establish regional CTR program goals and targets. The regional program goals and targets shall be developed ~~((based on a compilation of the))~~ with consider-

ation and inclusion of the contribution of local jurisdiction goals and targets in the region.

~~(8) ((Conditional review of targets. WSDOT shall evaluate the minimum state goal and target standard at least once every four years to determine whether, based on the current and planned level of support by transit agencies, local jurisdictions, and other service providers, the targets are attainable in each jurisdiction. As part of its evaluation, WSDOT shall determine the circumstances that have affected the ability of jurisdictions to meet the targets, including whether or not sufficient services and support for trip reduction have been provided.~~

~~(9))~~ Local jurisdictions shall not be penalized for not meeting their established four-year targets if they are implementing a plan that meets state requirements and if WSDOT determines that there are circumstances beyond the jurisdiction's control that prevented attainment of the targets.

AMENDATORY SECTION (Amending WSR 07-05-065, filed 2/20/07, effective 3/23/07)

**WAC 468-63-040 Local commute trip reduction plan. (1) Purpose and process.**

(a) **Purpose of local CTR plan.** The state's intent in requiring local CTR plans is to ensure that CTR program goals and targets help jurisdictions achieve their broader transportation and land use goals, and that the jurisdiction in turn develops services, regulations, policies and programs that support the trip reduction investments of major employers. This can be achieved by integrating the local CTR plan and program with other transportation and land use plans and programs, and collaborating with local service providers, interest groups, and others to develop effective trip reduction strategies. Nothing in these rules is intended to change the requirements for local comprehensive plans developed under the Growth Management Act. The state intends for the CTR planning process to provide a new perspective on the local comprehensive plan; while a jurisdiction may choose to update or amend its comprehensive plan based on the outcome of the CTR planning process, nothing in these rules requires it.

(b) **Plan development process.** RCW 70.94.527(4) requires local CTR plans to be developed in consultation with local transit agencies, the applicable RTPO, major employers, and other interested parties.

(i) Consultation. The local jurisdiction shall invite, as appropriate, representatives of major employers, local transit agencies, the applicable RTPO, business associations and economic development organizations, nonprofit transportation and land use advocacy organizations, pedestrian and bicycle advocacy organizations, public health agencies, tribal governments, and residents, employees and businesses that will be affected by the CTR plan to participate in the development of the local CTR plan. The state intends for the invited partners to work collaboratively with the local jurisdiction by providing data and plans and discussing opportunities, including new and reprioritized investments and policy changes, to reduce drive-alone commute trips in the jurisdiction and increase transportation access to affected major employer worksites.

(ii) State role. WSDOT shall provide information to support local CTR plan development. This information shall include employer and jurisdiction base year values, calculated from CTR survey data, state highway system performance data, and other information as appropriate. WSDOT shall also provide technical assistance to support implementation of the local CTR plan, which may include but is not limited to:

- (A) Printing and processing of state CTR survey forms;
- (B) Creation of survey reports and customized data reports;
- (C) Online survey set-up and assistance;
- (D) Online annual report set-up and assistance; and
- (E) Program reviewer and survey training.

(ii) Regional role. It is critical that the local jurisdiction collaborate with the applicable RTPO in the development of its local CTR plan. By working closely with the RTPO, the local jurisdiction can produce a CTR plan that meets state requirements and is consistent with the regional CTR plan.

(iv) Public outreach. The local jurisdiction shall follow, at a minimum, a comparable process to the local requirements and procedures established for purposes of public outreach for comprehensive plan development, adoption, or amendment, including public notices and public meetings and hearings.

(c) **Consistency and integration with other plans, programs and local requirements.** RCW 70.94.527(5) requires local CTR plans to be consistent with applicable state and regional transportation plans and local comprehensive plans. RCW 70.94.527(5) also requires local CTR plans to be coordinated and consistent with those of adjoining jurisdictions or related regional issues to ensure consistency in the treatment of employers who have worksites in more than one jurisdiction. The local jurisdiction shall review the local comprehensive plan to ensure that it is consistent with the local CTR plan. If the local jurisdiction determines that the local comprehensive plan needs to be updated or amended to be consistent with the local CTR plan, the local jurisdiction shall identify in the local CTR plan what changes may be needed and when the changes will be made. The local jurisdiction shall use the regional CTR planning process as a means to discuss regional issues with adjoining jurisdictions. The local jurisdiction shall follow the administrative guidelines established by WSDOT and posted on the agency's web site to ensure consistency in the treatment of employers who have worksites in multiple jurisdictions.

(d) **Plan review and approval.** RCW 70.94.527(1) requires the local CTR plan to be submitted to the RTPO and be included in the regional CTR plan.

(i) Schedule. In order for a local jurisdiction to receive state CTR program funding in the 2007-2009 biennium, the CTR board must receive the final draft of the local CTR plan by October 1, 2007. For biennia after 2007-2009, the CTR board must receive updated CTR plans by March 31 every two years thereafter if updates to the local CTR plan have been made or if a jurisdiction is adopting a local CTR plan for the first time.

(ii) RTPO review. RCW 70.94.527(5) requires the RTPO to review the local CTR plans. Local jurisdictions shall submit the final draft of their local CTR plans to the

applicable RTPO by the date specified by the RTPO, so that the RTPO may review the plans before submission to the CTR board. The RTPO will review the local CTR plan to determine its consistency with the regional CTR plan and state requirements.

(iii) **Determination of consistency.** RCW 70.94.527(7) requires the RTPO to collaborate with the CTR board to evaluate the consistency of local CTR plans with the regional CTR plan. When the RTPO submits its regional CTR plan to the CTR board, it shall also submit any final drafts of local CTR plans in the region and recommend to the CTR board which local CTR plans are consistent with the regional CTR plan and state requirements.

(iv) **Approval by CTR board.** RCW 70.94.527(7) requires local CTR plans to be approved by the CTR board in order to be eligible for state CTR funding. The CTR board shall review the final drafts of local CTR plans and communicate its findings in writing to the submitting RTPO within one hundred twenty days following receipt of the plans. If the CTR board approves a local CTR plan, the local jurisdiction shall then adopt the local CTR plan by ordinance and begin to implement the plan and any other necessary changes to local ordinances, plans, or programs. If the CTR board rejects a local CTR plan, it shall communicate its reasoning and recommendations for improvement to the submitting RTPO. The RTPO shall then work with the local jurisdiction to improve the local plan. Jurisdictions may submit a revised local CTR plan to the RTPO and CTR board in the schedule jointly established by the RTPO and the CTR board.

(v) **Appeal.** If a local CTR plan is not approved by the CTR board, the local jurisdiction may choose to appeal the decision to the secretary of transportation or his/her designee within sixty days of the board's decision by submitting a written request for appeal to the secretary of transportation or his/her designee. The secretary of transportation or his/her designee shall consider the appeal within sixty days of the jurisdiction's request. If the secretary of transportation or his/her designee grants the appeal, the local CTR plan shall be considered valid by the CTR board and RTPO. If the secretary of transportation or his/her designee denies the appeal, the local jurisdiction is not eligible for state CTR program funding until its revised plan is submitted and approved by the CTR board.

(e) **Plan update cycle.** According to RCW 70.94.527(5), local jurisdictions shall review their local CTR plans annually and revise them as necessary to be consistent with applicable plans developed under RCW 36.70A.070. The local CTR plan shall be updated at least once every four years, in order to establish new four-year targets and program strategies and update other elements as needed.

(2) **Required plan elements.** RCW 70.94.527(4) requires affected local governments to adopt CTR plans consistent with the rules and deadlines established by WSDOT. The state intends for local jurisdictions to use information in existing plans and programs, such as the local comprehensive plan, unified development codes, the transportation improvement program, economic development plans, and others, as much as possible in order to develop the local CTR plan. The local CTR plan is required to meet the requirements specified in these rules, but local jurisdictions may choose to adjust the

scope of their local CTR plans as needed to make them more effective. The local CTR plan shall describe how the CTR program will help achieve the jurisdiction's broader land use and transportation goals.

The local CTR plan shall contain the following elements:

(a) **Description of land use and transportation context.** Jurisdictions shall evaluate the significance of local land use and transportation conditions, characteristics and trends to describe the most critical factors to the success of CTR.

The plan shall highlight the existing and future land use and transportation conditions and characteristics considered most critical by the jurisdiction and evaluate the degree to which existing local services, policies, regulations, and programs, as well as any documented future investments, will complement the trip reduction efforts of CTR employers. Jurisdictions may choose to broaden the scope of their local CTR plan by developing a jurisdiction-wide analysis, rather than focusing only on major employers.

The plan shall evaluate the existing barriers to the success of the CTR program, and identify how the jurisdiction and its partners can overcome these barriers. The state intends for the plan to be a mechanism through which employers can describe what policy changes, services and support they need to make their CTR programs more effective.

The plan shall also discuss cross-boundary issues, such as pass-through commute patterns or larger regional issues, and how these affect the local CTR plan.

(b) **Goals and targets.** The plan shall establish the jurisdiction's CTR goals and targets and show how achievement of these goals and targets will contribute to the jurisdiction's other adopted land use and transportation goals. The plan's goals and targets shall be established ~~((at a level that meets or exceeds the state minimum))~~ consistent with the standard described in WAC 468-63-030, Program goals and measurement. The plan shall describe the base year values and numerical targets for each major employer worksite required to participate in the CTR program.

(c) **Measurement methodology for determining base year values and progress toward meeting goals and targets.** The plan's measurement methodology shall be consistent with the measurement guidelines established by WSDOT and posted on the agency's web site.

(d) **Description of local services and strategies for achieving the goals and targets.** The plan shall describe what local services and strategies will be implemented to achieve the plan's goals and targets, and how these services and strategies will support the CTR programs of major employers. Strategies may include, but are not limited to:

(i) Modifications of local policies and regulations, including the transportation concurrency system, street design standards, parking, and zoning;

(ii) Investments in services and facilities, including transit services, nonmotorized facilities and amenities; and

(iii) Marketing and incentives.

Transit agencies shall work with counties, cities and towns as a part of their six-year transit development plan established in RCW 35.58.2795 to take into account the location of major employer worksites when planning and prioritizing transit service changes or the expansion of public

transportation services, including rideshare services (RCW 70.94.527(5)).

(e) **Description of requirements for major employers.** The plan shall describe the requirements for major employers that will be outlined in the local ordinance. The plan shall also describe the program that the local jurisdiction will offer to its employees and how this contributes to the success of the overall plan. The plan shall also identify the major employer worksites, including affected state agency locations, within the jurisdiction's affected urban growth area and any major employment installations.

(f) **Documentation of consultation.** The plan shall include documentation from the local jurisdiction that verifies consultation with employers, transit agencies and others to develop the plan. If the CTR plan includes new or reprioritized transit service beyond that identified in the six-year transit development plan as a strategy to meet the goals and targets, the plan shall include acknowledgement from the applicable transit agency that it supports the transit element of the plan and has agreed on a plan to fund future service investments. If the plan submittal to the CTR board does not include acknowledgement of support from the applicable transit agency, then the new or reprioritized transit service element of the plan shall not be considered as a valid strategy to meet the plan's goals and targets.

(g) **A sustainable financial plan.** The plan shall describe the funding revenues from public and private sources that are reasonably expected to be available, as well as the expected costs, to implement the plan and achieve its goals and targets. If a jurisdiction identifies program elements that are not necessary to the success of the plan, but would support the plan and are beyond expected resources, the plan shall describe the level of funding that would be needed to implement the program element and how it would contribute to the success of the plan.

(h) **Implementation structure.** The plan shall describe how the various strategies identified in the CTR plan will be implemented, either by the local jurisdiction, its partners, or its contracting partners, and when the elements of the plan are expected to be implemented. If the local jurisdiction decides to update its comprehensive plan to be consistent with the CTR plan, it shall describe which elements need updating and when the update will occur.

(i) **Growth and transportation efficiency centers.** If the jurisdiction has designated a growth and transportation efficiency center, the local jurisdiction shall summarize and incorporate the GTEC program plan into the local CTR plan in the next update of the plan.

AMENDATORY SECTION (Amending WSR 07-05-065, filed 2/20/07, effective 3/23/07)

**WAC 468-63-060 Growth and transportation efficiency centers. (1) Purpose and process.**

(a) **Purpose and objective of the growth and transportation efficiency center (GTEC) program.** The state's goal for the GTEC program is to provide greater access to employment and residential centers while increasing the proportion of people not driving alone during peak periods on the state highway system. Counties, cities and towns may designate

existing or new activity centers as GTECs in order to establish a transportation demand management (TDM) program in the designated area. The purpose of the rules pertaining to GTECs is to provide a consistent framework for local jurisdictions to exercise their authority to implement a GTEC via comprehensive plans, development regulations, and transportation investments that support population growth and economic development, transportation-efficient land uses, and transportation demand management strategies.

The state intends for GTECs to be developed in a collaborative planning process that builds upon the information in local and regional CTR plans as well as other existing plans and programs such as the local comprehensive plan, unified development codes, the transportation improvement program, economic development plans. The state intends for the development of the GTEC program plan to be informed by and coordinated with the development of local and regional CTR plans.

The state intends to focus state program resources provided for GTECs in those urban areas that can provide the greatest current or future benefits for highway system efficiency.

(b) **Jurisdictional coordination.** The state encourages jurisdictions to discuss interjurisdictional issues and evaluate the possibility of creating a cross-boundary GTEC. While these rules refer to the actions of a single city or county in designating a GTEC, nothing in these sections shall prohibit jurisdictions from cooperating to designate GTECs that cross jurisdictional boundaries. Jurisdictions designating a cross-boundary GTEC shall adopt consistent ordinances and enter into a cooperational partnership to implement the GTEC program.

(c) **Consistency for employers.** Major employers that are affected by the base CTR program, when located within a designated GTEC, shall only be required to fulfill one set of requirements, if the GTEC program and base CTR program requirements vary. Jurisdictions that allow major employers to follow the requirements of the GTEC, rather than the base CTR program, shall ensure that major employer worksites are measured in a manner that allows accountability for the worksite and is consistent with the measurement guidelines established by WSDOT and available on the agency's web site.

(d) **Designation and certification.** RCW 70.94.537(2) requires WSDOT to establish methods for RTPOs to evaluate and certify that designated GTECs meet the minimum requirements and are therefore eligible for funding.

(i) Minimum land use and transportation criteria. RCW 70.94.537(2) requires WSDOT to establish guidance criteria for GTECs. Minimum land use and transportation criteria for GTECs shall be developed by the RTPO in collaboration with local jurisdictions, transit agencies, major employers, and other affected parties as part of the regional CTR plan. The regional CTR plan may include a map that depicts which areas of the region meet the criteria.

The state's intent is to constrain funding resources to those areas that have the greatest potential to reduce single-occupant vehicle commute trips on the state highway system in the future. The state will use the RTPO certification of the

GTEC's potential system benefits as part of its funding prioritization process.

(ii) Eligibility and designation process. To be eligible for certification as a designated "growth and transportation efficiency center," the jurisdiction must submit a GTEC certification application to the applicable RTPO that:

(A) Describes how the GTEC meets the minimum land use and transportation criteria established by the RTPO as part of the regional CTR plan;

(B) Includes a copy of the GTEC program plan and the required elements identified in this rule;

(C) Identifies when and how the GTEC program plan will be incorporated into future updates or amendments of the applicable local comprehensive plan; and

(D) Includes letters of support for the GTEC program plan from partners that are expected to contribute resources to the plan or intend to work with the local jurisdiction to develop future strategies and funding resources for the GTEC.

(iii) Schedule. For GTEC programs to be eligible for state CTR program funds, the CTR board must receive GTEC certification reports, or local jurisdiction requests for appeal, for new or updated GTEC programs by October 1, 2007, and by April 1 every two years thereafter.

These rules do not constrain the ability of local jurisdictions to designate a GTEC at any time, or for RTPOs to certify new or updated GTECs at any time.

GTEC program plans may be updated annually to reflect changing conditions and new information. However, substantial changes to the program plan, including reductions in targets, densities, and investments, may be made no more than once every biennium. RTPOs may require local jurisdictions to update GTEC program plans as part of the regional CTR plan update. Substantially modified GTEC program plans shall be resubmitted to the RTPO for recertification.

(iv) Certification. RCW 70.94.528 (1)(b) requires designated GTECs to be certified by the applicable RTPO to be eligible for state funding. The RTPO shall evaluate the jurisdiction's GTEC certification application to determine if the proposed GTEC meets the requirements outlined in this rule. The RTPO shall, in partnership with the local jurisdiction and WSDOT, evaluate how achievement of the GTEC goal would affect the performance of the state highway system and the regional transportation system.

Within sixty days following receipt of the jurisdiction's application, the RTPO shall issue a certification report to the jurisdiction that either certifies or declines to certify the GTEC. The certification report shall state the rationale for the decision and describe in quantitative terms how the GTEC addresses state and regional highway deficiencies, and what benefits for the transportation system the GTEC is projected to provide. The RTPO shall provide a copy of the certification report and the GTEC program plan report to the CTR board.

(v) Appeal. RCW 70.94.528 (1)(b) allows jurisdictions denied certification of a designated GTEC by an RTPO to appeal the decision to the CTR board. If the RTPO declines to certify a GTEC when requested by the local jurisdiction, the local jurisdiction may appeal the decision to the CTR board within sixty days following receipt of the RTPO's cer-

tification report. The CTR board will hear the appeal within sixty days of a jurisdiction request.

If the CTR board concurs with the RTPO decision, the jurisdiction's GTEC will not be eligible for state funding. The local jurisdiction may then choose to implement the GTEC (while ineligible for state funding) or revise its application and request RTPO certification during the next biennial budget cycle. If the CTR board overrules the RTPO and certifies the GTEC, then the jurisdiction's GTEC will be eligible for state funding if it is designated within one hundred twenty days following receipt of the notice of the state GTEC funding allocation.

(vi) Adoption. The jurisdiction shall "designate" the GTEC by adopting the GTEC program plan via official resolution or ordinance within one hundred twenty days following receipt of the notice of the state GTEC funding allocation. If the jurisdiction does not designate the GTEC program plan within this deadline, then it will not be eligible for any state or regional funding intended for GTEC programs for the current biennium.

(vii) Funding. State funding for GTECs shall be allocated by the CTR board, based on the board's funding policy developed pursuant to RCW 70.94.544.

**(2) GTEC program plan.**

(a) **Program development process.** RCW 70.94.528 (1)(a) requires the GTEC program plan to be developed in consultation with local transit agencies, the applicable RTPO, major employers, and other interested parties.

(i) Collaboration. The local jurisdiction shall invite, as appropriate, representatives of major employers, property managers, local transit agencies, the applicable RTPO, business associations and economic development organizations, nonprofit transportation and land use advocacy organizations, pedestrian and bicycle advocacy organizations, public health agencies, tribal governments, and residents, employees and businesses that will be affected by the GTEC to participate in the development of the GTEC program plan. The local jurisdiction and its invitees shall discuss the findings of the gap analysis portion of the plan and collaboratively develop the program's goals, targets, and program strategies.

(ii) Informal review. The local jurisdiction shall give collaborating entities and those entities affected by the GTEC designation an opportunity to review the draft program plan before it is released to the public and submitted for certification to the RTPO.

(iii) Public outreach. The local jurisdiction shall follow, at a minimum, a comparable process to the local requirements and procedures established for purposes of public outreach for comprehensive plan development, adoption, or amendment, including public notices and public meetings and hearings.

(b) **Required elements.** RCW 70.94.528 (1)(c) requires the TDM program elements in the GTEC to be consistent with the rules established by WSDOT.

The state intends for GTECs to be developed in a collaborative planning process that builds upon the information in local and regional CTR plans as well as other existing plans and programs, such as the local comprehensive plan, unified development codes, the transportation improvement program, and economic development plans. The state intends for

the GTEC program plan to be a focused planning element that is coordinated with the local and regional CTR plan.

The GTEC program plan shall describe local conditions and use projections of future growth to define the scope of the problem that the GTEC goals and strategies are designed to address.

The GTEC program plan shall contain the following elements:

(i) Executive summary. The GTEC program plan shall include an executive summary of the jurisdiction's vision for the GTEC, how the GTEC relates to the base CTR program, how the plan's success will affect transportation access to and within the center, and states:

(A) The GTEC program goals and targets;

(B) The GTEC target population;

(C) Proposed program strategies, including policy and service changes needed to execute the plan and proposed land use strategies to support the plan; and

(D) Key funding and service partnerships.

(ii) Background information. The GTEC program plan shall include:

(A) A description of the geographic boundaries of the GTEC;

(B) Documentation that the GTEC is located within the jurisdiction's urban growth area; and

(C) A brief description of the jurisdiction's vision for the GTEC, including information from the local comprehensive plan, other transportation plans and programs, and funded transportation improvements.

(iii) Evaluation of land use and transportation context. Jurisdictions shall evaluate the significance of local conditions, characteristics and trends to determine which factors are most critical to the success of the plan. The RTPO, local transit agencies, state agencies and other appropriate entities shall assist this process by providing data and plans and discussing issues with jurisdictions.

The local jurisdiction shall evaluate existing conditions and characteristics and projected future conditions and characteristics. The jurisdiction may choose to evaluate, but is not limited to, the following issues:

(A) Existing conditions and characteristics. These may include, but are not limited to:

(I) Existing land uses, including the general location and extent of housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses, and population densities and building intensities, with particular attention to mix of land uses and proximity of residential and employment locations.

(II) Existing transportation network, including:

- Major origins and destinations of trips, including traffic impacts of activity to, from and within a GTEC to state-owned transportation facilities, if adequate information is available from WSDOT to support this evaluation;

- Transit service network and level of service including unused capacity and facilities, service deficiencies and needs, if adequate information is available from transit agencies to support this evaluation;

- Available capacity and performance of other HOV systems serving the GTEC, if adequate information is available from transit agencies and WSDOT to support this evaluation;

- Public and private parking capacity, pricing, and development standards (minimums, maximums, and incentives to reduce parking);

- Significance of the use of and deficiencies in the street, sidewalk, and trail/bicycle path network for bicyclists and pedestrians and deficiencies in end of trip facilities (e.g., bike parking, storage and shower/locker facilities) necessary to support bicyclists and pedestrians;

- Estimated commute mode share in the GTEC for transit, rideshare, bike and walk for all employees;

- Number and size of CTR-affected employers and commute mode share by CTR employees; and

- Local and regional transportation demand management strategies available to businesses in the GTEC, including incentives and programs that promote nondrive-alone travel.

(III) Local and regional economic development plans.

(B) Projected future conditions and characteristics. Jurisdictions shall use existing data, plans and programs to describe anticipated changes in the future. Jurisdictions shall use projections of future growth to evaluate how it will affect transportation access and economic development in the GTEC. Factors may include, but are not limited to:

(I) Projected population and employment growth for at least ten and twenty years;

(II) Projected changes in land use types and intensities for at least ten and twenty years;

(III) Forecasts of traffic, delay, mode share, and parking needs for at least ten years to provide information on the location, timing, and capacity needs of future growth, as well as to describe the costs to accommodate growth under the status quo (for example, describing the projected parking costs, delay, and other costs that will be incurred from future growth); and

(IV) Identification of jurisdiction plans, policies and capital programs for the provision of infrastructure, services and amenities to support planned growth and reduce single-occupant-vehicle trips, including additional transit routes, HOV capacity, pricing strategies and nonmotorized facilities and amenities.

(iv) Gap analysis. Using the information gathered in discussion of the existing and projected future conditions and characteristics, the local jurisdiction and its partners shall evaluate the degree to which existing and future services, policies, and programs will be sufficient to maintain or improve transportation access and increase the proportion of non-drive-alone travel as the area grows. This evaluation shall describe the gaps between what services, policies and programs will be available versus what may be needed to address the projected conditions. The jurisdiction's evaluation of its own policies, programs, and regulations shall include, but is not limited to an evaluation of land use and transportation regulations, including parking policies and ordinances, streetscape design standards, development requirements, concurrency policies, level of service standards, assessment of impact fees, and zoning, to determine the extent that they can reduce the need for drive-alone travel and attract and maintain a mix of complementary land uses, particularly uses that generate pedestrian activity and transit ridership.

(v) Description of program goals and measurements. The state's goal for the GTEC program is to provide greater access

to employment and residential centers while increasing the proportion of people not driving alone during peak periods on the state highway system. The GTEC program plan's established goals and targets shall be more aggressive than the minimum goal for the urban growth area established by the jurisdiction, in accordance with RCW 70.94.528(1). The GTEC's established goals and targets shall be designed to maintain or improve transportation access and increase the proportion of nondrive-alone travel as the area grows. The goals and targets shall be designed to support achievement of local and regional goals for transportation and land use.

(A) Goals and targets. Jurisdictions shall have flexibility in establishing GTEC goals and targets, as long as the targets are certified by the RTPO to be more aggressive than the minimum ~~((drive alone and VMT targets for the CTR program))~~ targets for the urban growth area established by the ~~((state))~~ jurisdiction. The RTPO shall certify that the GTEC program targets meet this standard if the GTEC program ~~((target))~~ goal is to reduce, on a relative or absolute basis, more drive-alone trips or more vehicle miles traveled than the minimum base CTR program target in the urban growth area.

The GTEC targets shall be expressed in terms of changes from a base year value.

The RTPO shall determine in the GTEC certification report if the GTEC program target meets the standard defined in RCW 70.94.528(1), and work with WSDOT to evaluate how attainment of the target will affect the performance of the state highway system.

(B) Performance measures. The GTEC program plan shall describe the methodology for measuring the program's performance. The program's performance shall be measured at least once every two years after the base year measurement in order to assess progress toward the established GTEC goals and targets. The program's measurement methodology shall be consistent with the GTEC guidelines established by WSDOT and listed on the agency's web site.

(vi) Description of program strategies. Using the gap analysis evaluation, the local jurisdiction and its partners shall identify what new or revised services, policies and programs may be needed in order to meet the GTEC's established goals and targets.

The local jurisdiction shall consult with appropriate representatives of local transit agencies, the applicable RTPO, business associations and economic development organizations, nonprofit transportation and land use advocacy organizations, public health agencies, and residents, employees and businesses that will be affected by the GTEC so that they may provide their perception of what services, policies and programs are needed to meet the GTEC's established goals and targets. The state's intent is for the discussion to be an open, collaborative process, and for all of the parties to think about how they may be able to improve their own services, policies and programs, or develop stronger partnerships, in order to support the GTEC's established goals and targets.

The GTEC program plan shall identify the target population that will be the focus of the plan, as well as the services, policies and programs that will be needed in order to meet the GTEC's established goals and targets. These may include new services, policies and programs or improvements to existing services, policies and programs. The state recognizes

that program strategies will vary across the state, depending on local conditions, needs, partnerships, and resources.

The GTEC program plan may include but is not limited to the following strategies:

- (A) Improvements to policies and regulations;
- (B) New services and facilities; and
- (C) New marketing and incentive programs.

(vii) Financial plan. The GTEC program plan shall include a sustainable financial plan that demonstrates how the jurisdiction plans to implement the GTEC program to meet its goals and targets. The plan shall describe resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommend any innovating financing techniques consistent with chapter 47.29 RCW, including public/private partnerships, to finance needed facilities, services, and programs. The plan shall specifically describe when and how the expected funding resources will fund the plan's strategies. The plan shall describe how locally derived funding resources will be leveraged as a match to state GTEC program funds allocated through the CTR board according to its funding policy. The plan shall describe the jurisdiction's contingency plan if anticipated funds do not become available to support the plan. Jurisdictions may consider using other state TDM funding resources, including the trip reduction performance program, the vanpool investment program, the rideshare tax credit, and the regional mobility grant program, in funding their GTEC programs.

(viii) Proposed organizational structure for implementing the program. The GTEC program plan shall identify the organization or organizations that are proposed to administer the GTEC program. The plan shall describe the roles of the local jurisdiction's partners by describing who will implement the various strategies identified in the plan and when the elements of the plan are expected to be implemented. If the jurisdiction will update its comprehensive plan to be consistent with the GTEC program plan, it shall describe which elements need updating and when the update will occur.

(ix) Documentation of public outreach. The GTEC program plan shall document the level and frequency of outreach and consultation with local transit agencies, the applicable RTPO, major employers, and other affected parties in the development of the GTEC program plan. The jurisdiction may choose to include letters of support from business associations, developers, employers and others as documentation of consultation. When submitting the plan to the RTPO for certification, the local jurisdiction shall include letters of support from those partners that are expected to contribute resources to the plan or intend to work with the local jurisdiction to develop future strategies and funding resources for the GTEC.

(x) Description of relationship to local CTR plan. Jurisdictions shall describe the relationship of the GTEC program plan to the base CTR program in the local CTR plan. The narrative shall include information about what the GTEC plan adds beyond the requirements and strategies in the base CTR program, and the expected benefits of the GTEC plan for the base CTR program.

**(3) Support for GTECs.**

(a) **Prioritization.** RCW 70.94.528 requires transit agencies, local governments, and RTPOs to identify certified GTECs as priority areas for new service and facility investments in their respective investment plans. Transit agencies, local governments, regional transportation planning organizations, and the state shall identify certified growth and transportation efficiency centers as priority areas for new service and facility investments in future updates of their investment plans, as required by RCW 70.94.528(1). Periodically, the CTR board shall evaluate the degree to which prioritization of GTECs has occurred.

(i) Transit development plan. The local transit agency shall examine and revise funding prioritization policies, recognizing funding constraints and competing priorities, in order to meet the state's intent to prioritize certified GTECs for investments in facilities, services, and amenities in its transit development plan.

(ii) City and county six-year comprehensive transportation programs. The city or county shall examine and revise funding prioritization policies, recognizing funding constraints and competing priorities, in order to meet the state's intent to prioritize certified GTECs for investments in facilities, services, and amenities in its comprehensive transportation program.

(iii) Regional transportation plan. The RTPO shall examine and revise funding prioritization policies, recognizing funding constraints and competing priorities, in order to meet the state's intent to prioritize certified GTECs for investments in facilities, services, and amenities in its regional transportation plan.

(iv) State plans. WSDOT, the department of community, trade, and economic development, the transportation improvement board and the public works trust fund shall examine funding prioritization policies, recognizing funding constraints and competing priorities, in order to meet the state's intent to prioritize certified GTECs for investments in facilities and services as part of state plans and programs.

(b) **Integration.** The GTEC program plan shall be incorporated into other plans and programs, including local comprehensive plans and transportation improvement programs, as they are updated after January 1, 2008.

**WSR 15-09-071**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed April 15, 2015, 12:00 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 14-19-115 and 15-04-041.

Title of Rule and Other Identifying Information: New rule WAC 230-11-999 Pilot project allowing the use of electronic raffle systems to conduct 50/50 raffles.

Hearing Location(s): Red Lion Seattle Airport, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 9 or 10, 2015, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days

before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 9 or 10, 2015.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by July 1, 2015.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2015, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule would authorize a pilot project to test the regulatory and economic impact of charitable/nonprofit licensees using electronic raffle systems to conduct 50/50 raffles. In a 50/50 raffle, fifty percent of the proceeds from ticket sales are awarded to one winner with the remaining fifty percent going to the charitable/nonprofit organization operating the raffle. Description of the electronic raffle system:

- In other states or provinces (Illinois, Colorado, North Dakota, Ohio, and British Columbia), electronic raffle tickets are typically sold at major sporting events by persons staffing kiosks equipped with touch screen devices and other staff moving around the facility with handheld wireless equipment.
- The electronic raffle system is used to print raffle tickets and customer receipts, account for raffle ticket sales, and show progressively increasing prize amounts.
- All other aspects of the raffle, including a manual drawing of winning tickets, must follow existing raffle requirements.
- Electronic raffle systems will be reviewed and approved by commission staff. Any conditions or restrictions for operating the system would be included in a letter to the manufacturer approving its use.

Statutory Authority for Adoption: RCW 9.46.070, 9.46-0277.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensees. Although there is a cost for participation in the pilot program, raffle licensees are not required to use the electronic raffle system.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 15, 2015  
Susan Newer  
Rules Coordinator

NEW SECTION

**WAC 230-11-999 Pilot project allowing the use of electronic raffle systems to conduct 50/50 raffles.** The commission finds it to be in the public's interest to conduct a pilot project to test the regulatory and economic impact of charitable and nonprofit licensees using electronic raffle systems at sporting events to conduct "50/50" raffles (raffles as defined in RCW 9.46.0277).

(1) In a 50/50 raffle, fifty percent of the proceeds from ticket sales are awarded to the winner as a cash prize and the remaining fifty percent are kept by the charitable/nonprofit organization operating the raffle.

(2) Raffle licensees, licensed manufacturers, and service suppliers who wish to be in the pilot project must submit a written request to participate to the director or his designee. An operating agreement must be signed before participating in the pilot project.

(3) Applicants and licensees that choose to participate in the pilot project will pay the following fees to offset agency costs to administer the pilot project:

(a) Manufacturers of the electronic raffle equipment must obtain a Class F manufacturer license and pay:

(i) \$10,000 start-up flat fee; and

(ii) A fee of 1% of gross receipts from selling or leasing electronic raffle systems.

(b) Raffle operators using electronic raffle equipment must obtain a Class F raffle license and pay a fee of 1% of gross raffle receipts.

(c) Arena owners or sporting teams/organizations must obtain a service supplier license for possession of electronic raffle equipment and pay a fee of 1% of gross receipts from the lease or rental of the electronic raffle equipment or other contracted amounts, if any.

(4) The pilot project will begin once the first manufacturer is licensed and their equipment is approved and will continue for eighteen months.

(5) If a licensee fails to comply with the requirements of the pilot project, the director may remove the licensee from the pilot project.

(6) Staff will provide a report to the commission with their recommendations after twelve months of activity.

(7) Licensees in the pilot project may continue to use electronic raffle systems to conduct 50/50 raffles unless the commission finally disapproves its use or until new rules are approved.

Preproposal statement of inquiry was filed as WSR 15-04-091.

Title of Rule and Other Identifying Information: WAC 182-534-0200 Enhanced payments for EPSDT screens for children in out-of-home placement.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on May 26, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA, 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on May 26, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by May 19, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is removing two provider types from the list of providers who are eligible to perform EPSDT screens and bill an enhanced rate: (1) Nurses trained through the department of health to perform EPSDT screens; and (2) registered nurses.

Reasons Supporting Proposal: The department of health no longer trains nurses to perform EPSDT screens. Registered nurses are independent practitioners and are not allowed to make plans for patients.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Tonja Nichols, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1658.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

April 15, 2015  
Jason P. Crabbe  
Rules Coordinator

**WSR 15-09-073**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed April 15, 2015, 2:57 p.m.]

Original Notice.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-534-0200 Enhanced payments for EPSDT screens for children in out-of-home placement.** The ~~((department reimburses))~~ medicaid agency pays providers

an enhanced fee for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) screens provided to children in out-of-home placement. See the ~~((department's))~~ agency's EPSDT ((billing instructions)) provider guide for specific billing code requirements, and see the agency's fee schedule for the fee.

(1) For the purposes of this section, out-of-home placement ~~((is defined as))~~ means temporary, twenty-four hour per day ~~((, temporary))~~, substitute care for a child:

(a) Placed away from the child's parents or guardians in licensed, paid, out-of-home care; and

(b) For whom the department of social and health services or a licensed or certified child placing agency has placement and care responsibility.

(2) The ~~((department))~~ agency pays an enhanced fee to the providers listed in subsection (3) of this section for EPSDT screens provided to only those children in out-of-home placement.

(3) The following providers are eligible to perform EPSDT screens and bill the enhanced rate for children in out-of-home placement:

(a) EPSDT clinics;

(b) Physicians;

(c) Advanced registered nurse practitioners (ARNPs); and

(d) Physician assistants (PAs) working under ~~((the guidance of a physician;~~

~~(e) Nurses specially trained through the department of health (DOH) to perform EPSDT screens; and~~

~~(f) Registered nurses working under the guidance of a physician or ARNP))~~ a physician's guidance.

(4) ~~((In order))~~ To be paid an enhanced fee, services furnished by the providers listed in subsection (3) of this section must meet the federal requirements for EPSDT screens at 42 C.F.R. Part 441 Subpart B ~~((, which were in effect as of December 1, 2001)).~~

(5) The provider must retain documentation of the EPSDT screens in the client's medical file. The provider must use the ~~((department's))~~ agency's Well Child Exam forms or provide equivalent information. The Well Child Exam forms include the required elements for an EPSDT screen. The Well Child Exam forms ~~((DSHS 13-683A through 13-686B))~~ are available for downloading at no charge at ~~((http://www1.dshs.wa.gov/msa/forms/eforms.html))~~ http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx.

(6) The ~~((department conducts evaluations of))~~ agency evaluates client files and payments made under this program. The ~~((department))~~ agency may recover the enhanced payment amount when:

(a) The client was not in out-of-home placement as defined in subsection (1) of this section when the EPSDT screen was provided; or

(b) Documentation was not in the client's medical file (see subsection (5) of this section).

**WSR 15-09-074**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed April 15, 2015, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-068.

Title of Rule and Other Identifying Information: Proposed amendatory section WAC 230-13-005 Amusement game authorized and proposed new section WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.

Hearing Location(s): Red Lion Seattle Airport, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 9 or 10, 2015, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 9 or 10, 2015.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by July 1, 2015.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2015, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is proposing a new amusement game, group 12, which would allow electronic puzzle and pattern solving games, if played according to specific standards set forth in the rule. The commission's current amusement game rules allow for eleven groups or types of games to be played.

The new rule would authorize an electronic amusement game that would allow players to discern a pattern and choose the correct symbol to complete that pattern, such that no prize is ever awarded unless the player correctly completes the skill puzzle. WAC 230-15-050 will need to be changed to allow for more than eleven groups of amusement games.

Statutory Authority for Adoption: RCW 9.46.070, 9.46-0331.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Monty Harmon, President, Harmon Consulting, Inc., a licensed service supplier, private.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 15, 2015  
Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

**WAC 230-13-005 Amusement games authorized.** (1) We authorize the ((eleven)) groups of amusement games set forth in this chapter. Operators must only operate amusement games that meet the standards of at least one of the authorized groups.

(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.

(3) Charitable or nonprofit organizations also may conduct amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.

(4) Operators must operate amusement games as either:

(a) An attended amusement game.

(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and

(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; or

(b) A coin or token activated amusement game.

(i) A "coin or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins or tokens; and

(ii) These games may dispense merchandise prizes, coupons, tickets, or tokens redeemable for merchandise prizes.

(5) Amusement games must not award additional plays as prizes.

NEW SECTION

**WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.** Group 12 games, players must correctly solve a simple puzzle to win a prize which is known to the player before each puzzle is presented:

(1) The game requires a player to:

(a) Determine whether a potential pattern of two or more symbols is presented and to select from a number of symbols to add to two or more existing symbols such that there are then three or more symbols in a pattern, within a predetermined time period; or

(b) Select a symbol from a variety of symbols available to complete an existing pattern of symbols which is missing one correct symbol, so that the pattern is completed if the correct symbol is chosen by the player, within a predetermined time period.

(2) The game must limit the player to a maximum of fifteen seconds within which to solve each puzzle.

(3) The game must allow the player to view the prize that is available before each play of the game.

(4) The game must allow the player to view that available prize without the insertion of money or expenditure of any consideration.

(5) Prizes must be won exclusively by the player's skill in correctly discerning a pattern and correctly choosing the correct symbol to complete that pattern, such that no prize is ever awarded unless the player correctly completes the skill puzzle.

(6) Each game must present its winning patterns so they are capable of completion, within the predetermined time period, by a reasonable person after a reasonable learning period.

(7) Group 12 amusement games are for adults only and may only be operated by licensees where minors are prohibited from entering the area where Group 12 games are operated.

**WSR 15-09-075**

**PROPOSED RULES**

**DAIRY PRODUCTS COMMISSION**

[Filed April 15, 2015, 4:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-073.

Title of Rule and Other Identifying Information: Dairy products commission, chapter 142-30 WAC, Assessment on milk; WAC 142-30-010.

Hearing Location(s): Washington State Dairy Center, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, on May 26, 2015, 11:00 a.m.; and at the Washington State Department of Agriculture Building, 21 North First Avenue, Room 238, Yakima, WA 98902, on May 27, 2015, at 11:00 a.m.

Date of Intended Adoption: June 25, 2015.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 27, 2015.

Assistance for Persons with Disabilities: Contact the Washington department of agriculture receptionist by calling TTY 1-800-833-6388 or 711 no later than May 11, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule amendment is to decrease the amount of the maximum authorized assessment rate on milk produced in Washington state by .01 (one cent) per hundredweight.

Reasons Supporting Proposal: The Washington State Dairy Federation petitioned the Washington state dairy products commission (DPC) to begin the rule-making process to consider a reduction in the milk assessment rate set in WAC 142-30-010. The DPC conducted education-information gathering sessions around the state with stakeholders consisting primarily of dairy farmers responsible for paying assessments. The feedback given by stakeholders at those informational meetings supported the reduction of the assessment rate by \$.01 (one cent) per hundredweight.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 15.44.080, 15.44.130.

Statute Being Implemented: RCW 15.44.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DPC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Janet C. Leister, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687; and Enforcement: Celeste Piette, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose any new costs on any small business that is required to pay assessments under WAC 142-30-010. The only change affected by the proposed rule is to reduce the assessment amount under WAC 142-30-010 (2)(b) and (3) by .01 (one cent) from the current rates of .00625 (five-eighths of one cent) per hundredweight and .00375 (three-eighths of one cent) per hundredweight. The existing reporting and collecting obligations are not changed by this amendment. To the extent that the assessment can be considered a "cost" under chapter 19.85 RCW, the proposed rule amendment would reduce rather than increase costs for small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. DPC is not a listed agency in RCW 34.05.328 (5)(a)(i).

April 15, 2015  
Janet C. Leister  
General Manager

AMENDATORY SECTION (Amending WSR 07-23-095, filed 11/20/07, effective 1/1/08)

**WAC 142-30-010** (~~Declaration of purpose—Effective date.~~) **Assessment on milk produced in the state.** To effectuate the purposes of chapter 15.44 RCW there is hereby levied upon all milk produced in this state an assessment of:

(1) 0.75 percent of the Class I price for 3.5% butterfat milk, as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; or

(2) While the Federal Dairy and Tobacco Adjustment Act of 1983, Title I, Subtitle B-Dairy Promotion Program, is in effect: ~~((a))~~ An assessment rate not to exceed the rate approved at the most recent referendum that would achieve a ten cent per hundredweight credit to local, state or regional promotion organizations provided by Title I, Subtitle B of the Federal Dairy and Tobacco Adjustment Act of 1983(~~and~~

~~(b) An additional assessment of .00625 (five-eighths of one cent) per hundredweight; and~~

~~(3) An additional assessment of .00375 (three eights of one cent) per hundredweight as allowed under RCW 15.44.080(2) and the referendum dated March 24, 1983).~~

**WSR 15-09-076**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed April 16, 2015, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-008.

Title of Rule and Other Identifying Information: Amending WAC 230-15-055 Limit on number of players at each table, 230-15-460 Supervision requirements for house-banked card rooms, 230-15-630 Restricting access and controlling keys, 230-06-030 Restrictions and conditions for gambling promotions and 230-06-031 Using wheels in promotional contests of chance, fund raising events, or gambling activities; and repealing WAC 230-15-453 Using match play or similar coupons in a gambling promotion, 230-15-635 Electronic key control systems, 230-15-640 Keeping individual key control boxes for departments, 230-15-645 Keeping a key control log, 230-15-650 Keys for the gambling operations department, 230-15-655 Keys for the security department, 230-15-660 Keys for the accounting department, 230-15-665 Keys for the surveillance department, 230-15-670 Keeping a master key control box, and 230-15-675 Key control box for emergency key.

Hearing Location(s): Red Lion Seattle Airport, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 9 or 10, 2015, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 9 or 10, 2015.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by July 1, 2015.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2015, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Commission staff regularly evaluates our regulatory processes to ensure they add value and that we do not place unnecessary burdens on individuals or organizations by eliminating duplication already required in the WAC, ensuring consistency between licensees, and allowing for maximum flexibility by each business. This is in line with one of our agency goals of "anticipating and responding to the evolving gambling industry." As part of our regulatory reform process, staff made changes to the Class F and house-banked internal control templates, made changes to the Class F and house-banked card room daily control records packets, and reviewed our card room rules for areas that created extra burdens on staff and licensees without contributing significantly to our mission of protecting the public by ensuring that gambling is legal and honest. We identified the rules listed below for changes:

Limiting the number of players at a table: WAC 230-15-055, the change would remove the nine player limit for Mini Baccarat when the game is operated according to the nonpatented approved game rules posted on our web site and without any modifications as allowed in WAC 230-15-040. This change would allow line betting on Mini Baccarat, as commonly played in tribal casinos and other jurisdictions. This would increase the number of wagering areas from nine to eighteen.

Floor Supervision Rule: WAC 230-15-460, amendments were made to add a definition for gaming area and clarify the

gaming area includes poker tables. The requirement for two levels of supervision was also removed. Second level supervisors are not required to be in the gaming area and are typically in the back offices. We are not aware of issues related to second level supervisors not being present in the gaming area; therefore, the requirement for second level supervision was removed. Depending on the layout of the card room, licensees may be able to reduce the number of supervisors required and save money without impacting supervision of the games.

**Key Control Rules:** WAC 230-15-630, detailed security requirements for keys used to access restricted areas and keeping a key control log are currently outlined in ten rules. We removed nine rules with detailed key control requirements to give licensees the flexibility to set key control standards that best meet their operational needs.

**Card Game Promotion Rules:** Allows card rooms to award promotional prizes on card games by using another element of chance and clarifies what is allowed for gambling promotions.

WAC 230-06-030, amendments were made to clarify what types of activities may be operated as card game gambling promotions. Currently, card game promotions require a large amount of operator and staff time to determine if an activity is authorized or not. Requirements for match play coupons (WAC 230-15-453) have been moved to this rule so all the gambling promotion requirements are in one rule.

WAC 230-15-453 is up for repeal because its content which relates to promotions was moved to WAC 230-06-030.

WAC 230-06-031, an amendment was needed based on changes to WAC 230-06-030.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.-0282.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule changes would not impose additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 16, 2015  
Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-17-056, filed 8/15/14, effective 9/15/14)

**WAC 230-06-030 Restrictions and conditions for gambling promotions.** Licensees may conduct gambling

promotions to encourage players to participate in a gambling activity, but you must follow these restrictions and conditions:

~~(1) ((You must give all players an equal opportunity to participate; and~~

~~(2))) You must establish standards to determine how you will give promotional prizes and items to players. ((You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game)) All restrictions and conditions, including any promotional materials or advertisements, must be clearly posted in the area of the gambling activity. For promotions on card games you must post the restrictions and conditions near the card game where the promotion will be offered; and~~

~~((3))) (2) Except for members-only progressive raffles conducted as authorized in WAC 230-11-091, ((you must not give another chance to participate in a gambling activity as a promotional item)) the promotional prize in a gambling promotion cannot be pull-tabs, bingo paper, raffle tickets, or entry into another licensed gambling activity regulated by us; and~~

~~((4) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements)) (3) You may add additional merchandise or cash prizes to licensed gambling activities as part of a gambling promotion; and~~

~~((5))) (4) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356; and~~

~~(5) You must not give the promotional prizes based on a second element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game or awarding the promotional prize on card games; and~~

~~(6) Promotional coupons (such as match play, lucky bucks, free aces, and similar types of coupons) may be offered as gambling promotions with the following restrictions:~~

~~(a) The promotional coupons have no value and are not considered part of the player's wager in determining the amount wagered.~~

~~(b) Restrictions on the use of promotional coupons must be disclosed on the coupon and any expiration dates must be included on the coupon.~~

~~(c) A promotional coupon by itself is not a gambling activity.~~

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

**WAC 230-06-031 Using wheels in promotional contests of chance, fund-raising events, or gambling activities.**

**Promotional contests of chance (PCOCs)**

(1) Operators may use wheels specifically manufactured for a promotional contest of chance (PCOC), whether commercially made or home made.

(2) Operators must not use professionally manufactured wheels made specifically for gambling activities (for exam-

ple, Big 6 Wheels) in PCOCs unless they receive permission ahead of time from us.

### Fund-raising events

(3) Operators may use commercially made wheels in gambling activities for fund-raising events.

### Separation of PCOCs from gambling activities and promotions

(4) No wheel may be used in conjunction with their gambling activities by(=

- (a) Card room licensees; or
- (b)) pull-tab licensees.

### Card rooms, pull-tabs, bingo, raffles

(5) Licensees and operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in:

- (a) Bingo; or
- (b) Card games; or
- (c) Pull-tabs.

(6) Operators may use commercially made or home made wheels as part of drawings for prizes, good neighbor prizes, or second element of chance prizes as part of bingo games, as set out in WAC 230-10-280 or to award promotional prizes on card games as set out in WAC 230-06-030.

(7) Raffle licensees and operators may use:

- (a) Other types of wheels, such as paddle wheels, in raffles; and
- (b) Commercially made or home made wheels in an alternative drawing format for determining the winner of a raffle. Alternative drawing formats are set out in WAC 230-11-055 and 230-11-060.

AMENDATORY SECTION (Amending WSR 08-23-079, filed 11/18/08, effective 1/1/09)

**WAC 230-15-055 Limit on number of players at each table.** Card game licensees must only allow:

(1) Up to nine players or areas for wagering at any table in house-banked card games. This section does not apply to Mini-Baccarat when the game is operated according to the nonpatented approved game rules posted on the agency's web site and without any modifications as allowed in WAC 230-15-040.

(2) Up to ten players at any table in nonhouse-banked card games.

AMENDATORY SECTION (Amending WSR 08-11-044, filed 5/14/08, effective 7/1/08)

**WAC 230-15-460 Supervision requirements for house-banked card rooms.** (1) House-banked card game licensees must have at least one floor supervisor for each gambling ~~((area. Each supervisor may supervise up to seven tables. We must approve the arrangement of tables in the internal controls.~~

~~(2) Licensees must have two levels of supervision present on the business premises if more than ten tables are open.~~

~~Poker tables operated in a separate gambling area are not included in the calculation of levels of supervision)) area/pit.~~

~~(2) Gambling area/pit is defined as a self-contained group of card tables, including poker tables, physically separated from other tables. The separation may be due to the layout of the tables or physical barriers, such as walls, chains, or ropes.~~

~~(3) A card room employee may act as a dealer and a supervisor during the same shift as long as he or she does not sign forms as both the dealer and the supervisor.~~

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

**WAC 230-15-630 ~~((Restricting access and))~~ Controlling keys and restricting access.** House-banked card game licensees must:

~~(1) Use keys or electronic key control systems to control access to restricted areas of the business premises(=~~

~~(1) Licensees must install and keep key control boxes that, at least:~~

~~(a) Are constructed of metal with a minimum of one key-lock mechanism. We permit coded key boxes or combination key boxes; and~~

~~(b) Are attached to a permanent structure without the hardware used to attach the key box being visible; and~~

~~(c) Are tamper proof; and~~

~~(d) Store keys so that they are identifiable, have identification labels, and are displayed in numeric or alphabetic order; and~~

~~(2) Licensees may decide the location of key control boxes, but the location must not allow an individual to gain access to a restricted area that he or she would not otherwise be authorized to enter.~~

~~(3) If licensees locate key boxes in restricted areas, persons who are not authorized to enter those areas must give their key to the key box to an authorized person. The authorized person must then only open the key box in the presence of the unauthorized person or while under camera coverage)); and~~

~~(2) Restrict access to keys or electronic key control systems to only those licensed card room employees whose specific job functions and duties require access to them; and~~

~~(3) Keep a key control log in the format we require.~~

### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 230-15-453 Using match play or similar coupons in gambling promotions.
- WAC 230-15-635 Electronic key control systems.
- WAC 230-15-640 Keeping individual key control boxes for departments.
- WAC 230-15-645 Keeping a key control log.
- WAC 230-15-650 Keys for the gambling operations department.
- WAC 230-15-655 Keys for the security department.

WAC 230-15-660	Keys for the accounting department.
WAC 230-15-665	Keys for the surveillance department.
WAC 230-15-670	Keeping a master key control box.
WAC 230-15-675	Key control box for the emergency key.

**WSR 15-09-079****PROPOSED RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed April 16, 2015, 11:19 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-091.

Title of Rule and Other Identifying Information: WAC 390-18-050 Commercial advertisers—Public inspection of records.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA, on May 28, 2015, at 9:30 a.m.

Date of Intended Adoption: May 28, 2015.

Submit Written Comments to: Lori Anderson, mail P.O. Box 40908, Olympia, WA 98504-0908, physical 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by May 26, 2015.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will make necessary updates to clarify when electioneering communication records of a commercial advertiser must first be made available for inspection and what records may be inspected under RCW 42.17A.345.

Reasons Supporting Proposal: Before 2005, former RCW 42.17.110 (recodified to RCW 42.17A.345) allowed for public inspection of a commercial advertiser's political advertising records. The Electioneering Communications Act (chapter 445, Laws of 2005) authorized the public to also inspect records of electioneering communications a commercial advertiser accepts or provides. Necessary updates to WAC 390-18-050 were overlooked during the commission's 2006 rule making to implement the act. The rule currently applies to just express advocacy political advertising and does not yet specifically reference electioneering communications as required by RCW 42.17A.345(1). The proposed amendment is necessary to harmonize the rule with current statutory requirements and clarify when electioneering communication records of a commercial advertiser must first be made available for inspection and what records may be inspected.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Statute Being Implemented: RCW 42.17A.345.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Updating the rule to reflect current statutory

requirements may avoid complaints of noncompliance by alleviating confusion over what records may be inspected.

No increased costs to the agency are expected.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-2737; and Enforcement: Philip Stutzman, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

April 16, 2015

Lori Anderson  
Communications and  
Training Officer

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-18-050 Commercial advertisers—Public inspection of records.** (1) Pursuant to RCW 42.17A.345, any person, without reference to or permission from the public disclosure commission, is entitled to inspect ~~((the advertising records of))~~ a commercial ~~((advertiser))~~ advertiser's political advertising or electioneering communications documents and books of account.

(2) No commercial advertiser shall be required to make available for public inspection information regarding advertising or electioneering communications prior to the time when the advertisement or communication has initially received public distribution or broadcast.

(3) The documents and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) The name and address of the person who sponsored the advertising or electioneering communication;

(c) The total cost of the advertising or electioneering communication, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(4) In addition to subsection (3) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include a description of the major work components or tasks, as specified in

(a) through (f) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

### WSR 15-09-089

#### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed April 17, 2015, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-077.

Title of Rule and Other Identifying Information: WAC 458-50-020 Annual reports—Duty to file, 458-50-030 Annual reports—Contents, 458-50-060 Failure to make report—Default valuation—Penalty—Estoppel, 458-50-110 Apportionment reports, and 458-50-130 Taxing district boundary changes—Estoppel.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on June 4, 2015, at 1:30 p.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

*Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: June 11, 2015.

Submit Written Comments to: Jay Jetter, Department of Revenue, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, e-mail jayj@dor.wa.gov, by June 4, 2015.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is

proposing the revised rules above to incorporate legislative changes, to remove outdated language, to ensure consistency with the corresponding statutes in chapter 84.12 RCW, and to more clearly explain and distinguish the annual reports from the apportionment reports, including the required information and filing deadlines.

Reasons Supporting Proposal: Specifically, the rules incorporate legislative changes made to RCW 84.12.260 (section 201, chapter 111, Laws of 2007 and section 2, chapter 132, Laws of 1984) and to RCW 84.09.030 (section 3, chapter 285, Laws of 2007).

Statutory Authority for Adoption: RCW 84.08.010(2) and 84.12.390.

Statute Being Implemented: RCW 84.12.230, 84.12.260, and 84.09.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1575; Implementation and Enforcement: Kathy Beith, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1403.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

April 17, 2015

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending Order PT 75-2, filed 3/19/75)

**WAC 458-50-020 Annual reports—Duty to file.** Each company doing an inter-county or interstate business in this state (~~shall~~) must make and file an annual report with the department. At the time of making such report, each company (~~shall~~) must if directed by the department also file with the department:

(1) Annual reports of the board of directors or other officers to the stockholders of the company.

(2) Duplicate copies of the annual reports made to the federal regulatory agency or agencies exercising jurisdiction over the company.

(3) Duplicate copies of the annual reports made to the Washington state utilities and transportation commission or other Washington state regulatory agency exercising jurisdiction over the company.

(4) Duplicate copies of such other annual or special reports as the department may, from time to time, direct each company to make.

AMENDATORY SECTION (Amending Order PT 75-2, filed 3/19/75)

**WAC 458-50-030 Annual reports—Contents.** The annual report ~~((s shall be made on forms furnished by the department, and shall))~~ must be completed on the template furnished on the department's web site at: <http://www.dor.wa.gov>. The annual report must contain such information as is required to enable the department to determine the true and fair value of a company's operating property in the state ~~((;))~~ and the apportionment thereof to the several counties and taxing districts as part of the apportionment report discussed in WAC 458-50-110. The annual report ~~((shall))~~ must be signed by the president, treasurer or other responsible official of the company.

(1) In determining what types of information ~~((shall be))~~ are required to be included in the annual report, the department may take into account, among other factors, the necessity and worth of such information in valuing, allocating ~~((or)),~~ apportioning, or assessing operating property; whether such information is of the type customarily maintained by the industry for internal accounting or regulatory agency purposes; and the cost and difficulty of obtaining or maintaining such information. The department's determination ~~((shall be))~~ is final, and no company ~~((shall be))~~ is excused from providing such information except upon a clear showing that undue hardship would result.

(2) On or before December 1st of the year preceding the calendar year to be covered by the annual report, the department ~~((shall))~~ must notify the companies of the types of information required to be included in the annual report for such forthcoming year ~~((; Provided, That the foregoing requirement shall not be applicable for calendar year 1975)).~~

AMENDATORY SECTION (Amending Order PT 75-2, filed 3/19/75)

**WAC 458-50-060 Failure to make report—Default valuation—Penalty—Estoppel.** (1) If any company fails to materially comply with the provisions of RCW 84.12.230 and WAC 458-50-020, the department will add to the assessed value a penalty of five percent for every thirty days or fraction thereof, not to exceed ten percent, that the company fails to comply.

(2) If any company, or any of its officers or agents ~~((shall))~~ refuses or neglects to make any report required by law or by the department, or ~~((shall))~~ refuses to permit an inspection and examination of its records, books, accounts, papers or property requested by the department, or ~~((shall))~~ refuses or neglects to appear before the department in obedience to a subpoena, the department ~~((shall))~~ will proceed, in such manner as it ~~((may))~~ deems best, to obtain facts and information upon which to base its valuation, assessment, allocation, and apportionment of such company.

~~((2))~~ (3) Willful failure to file with the department any report required by the department within the time fixed by law, including any extension granted by the department, ~~((shall))~~ constitutes refusal or neglect to make a report, and the department may proceed in accordance with subsection ~~((4))~~ (2) of this rule to value, assess, allocate, and apportion the property of such company as if no report had been made.

~~((3 Penalty))~~ (4) When the department has ascertained the assessed value of the property of such company in accordance with subsection ~~((s (1) or (2), it shall))~~ (2) or (3) of this rule, it must add to the assessed value so ascertained twenty-five percent as a penalty. Such penalty will be in lieu of the penalty provided for in subsection (1) of this rule.

~~((4))~~ (5) Where the department has proceeded in accordance with subsection ~~((s (1) or))~~ (2) or (3) of this rule, such company ~~((shall be))~~ is estopped to question or impeach the valuation, assessment, allocation, or apportionment made by the department in any administrative or judicial proceeding thereafter.

(6) The department will waive or cancel the penalty imposed under subsection (1) of this rule for good cause shown.

(7) The department will waive or cancel the penalty imposed under subsection (1) of this rule when the circumstances under which the failure to materially comply with the provisions of RCW 84.12.230 do not qualify for waiver or cancellation under subsection (5) of this rule if:

(a) The company fully complies with the reporting provisions of RCW 84.12.230 within thirty days of the due date or any extension granted by the department; and

(b) The company has timely complied with the provisions of RCW 84.12.230 for the previous two calendar years. The requirement that a company has timely complied with the provisions of RCW 84.12.230 for the previous two calendar years is waived for any calendar year in which the company was not required to comply with the provisions of RCW 84.12.230.

AMENDATORY SECTION (Amending Order PT 75-2, filed 3/19/75)

**WAC 458-50-110 Apportionment reports.** (1) On or before ~~((April 15 of each year))~~ December 1st of the year preceding the calendar year to be covered by the apportionment report the department ~~((shall))~~ will furnish ~~((taxing district maps and))~~ apportionment report forms or make available a hyperlink on its web site where the company may provide the same information (hereinafter referred to as "apportionment reports") to each railroad, pipeline, telegraph, telephone, electric light and power, and gas company.

(2) Each company ~~((furnished an apportionment report shall))~~ described in subsection (1) of this rule must complete and submit such apportionment report to the department on or before June 1st of the assessment year. Since all apportionment reports must be ~~((in))~~ received by the ~~((department's hands by))~~ department no later than June 1st in order to permit adequate opportunity to properly apportion operating property in accordance with WAC 458-50-100, an extension of time for filing such reports will be granted only upon a showing of undue hardship.

(3) Apportionment reports must contain sufficient information to allow the department to identify the operating property's cost (historical or original), miles, use, and location within a county or taxing district and apportion value in accordance with WAC 458-50-100. Location may be identified by a variety of methods including, but not limited to, the

tax parcel number, address, section/township/range, latitude and longitude, or geospatial coordinates.

(4) If any company, or any of its officers or agents refuses or neglects to make the apportionment report, the department will proceed, in such manner as it deems best, to obtain facts and information upon which to base its apportionment of such company in accordance with RCW 84.12.260 and WAC 458-50-060 (2), (3), and (5).

AMENDATORY SECTION (Amending Order PT 75-2, filed 3/19/75)

**WAC 458-50-130 Taxing district boundary changes—Estoppel.** (1) In accordance with RCW 84.09.030 and WAC 458-12-140, the county assessor is required on or before ~~((March 1))~~ August 31st to transmit certain documents and maps setting forth taxing district boundary changes to the department of revenue, property tax division.

(2) The department ~~((shall))~~ will prepare taxing district maps based upon information submitted to it on or before ~~((March 1))~~ August 31st. Such maps ~~((shall be))~~ must be used to fix taxing district boundaries for purposes of apportioning the operating property of each company among the various counties and taxing districts. Any county or taxing district not having submitted the documents and maps as required by WAC 458-12-140 ~~((shall be))~~ is estopped from questioning the validity of any apportionment of value to it as determined by the department to the extent that such challenge is based upon taxing district boundaries different than as shown on the department's maps.

## WSR 15-09-090

### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed April 17, 2015, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-080.

Title of Rule and Other Identifying Information: WAC 458-20-174 (Rule 174) Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce, explains the application of the business and occupation tax and the retail sales tax on sales to for hire motor carriers operating in interstate or foreign commerce. WAC 458-20-17401 (Rule 17401) Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce, explains the use tax and use tax exemptions that apply to for hire motor carriers.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on May 27, 2015, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

*Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: June 3, 2015.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by May 27, 2015.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to update both rules and plans to include information from ETAs 3185 and 3186 pertaining to the sourcing and attribution of income on leases and rentals of tangible personal property and the use tax liability for lessees on leased tangible personal property. Some general updating is also being proposed.

Reasons Supporting Proposal: To update and add information to the rules.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

April 17, 2015

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-018, filed 6/20/08, effective 7/21/08)

**WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce.** (1) **Introduction.** This ~~((section))~~ rule explains the ~~((retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for))~~ application of the business and occupation tax on sales to for hire motor carriers operating in interstate or foreign commerce. ~~((Addressed are))~~

This rule also explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce, and addresses the requirements ~~((which))~~ that must be met and the documents ~~((which))~~ that must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW

82.12.0254. Use tax complements the retail sales tax, and in most but not all cases mirrors the retail sales tax. Purchases of tangible personal property used or certain services purchased in Washington are subject to use tax if the retail sales tax has not been paid, or where an exemption for sales and use taxes are not available.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **Component parts** mean any tangible personal property that is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires.

(i) Component parts include the axle and wheels, referred to as a "converter gear" or "dolly," that is used to connect a trailer behind a tractor and trailer. Component parts also include tangible personal property that is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether they are permanently attached to the vehicle or held by brackets that are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle.

(ii) Component parts do not include antifreeze, oil, grease, and other lubricants that are considered consumed at the time they are placed into the vehicle, even though they are required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses, and belts.

(b) **Primary property location** is the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(3) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers ((when delivery is made in)) that are sourced to Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment B&O tax classification.** ((This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or 82.08.0263. (See RCW 82.04.250.))) The retailing of interstate transportation equipment B&O tax classification (see RCW 82.04.250) applies to the following((- but only when)) if the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) ((The)) Leases of motor vehicles and trailers without operator; and

(ii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. ((The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.))

(b) **Retailing B&O tax classification.** The retailing B&O tax classification applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, ((which)) that do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) ((Interstate sales deduction for lease income. Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(3)) **Sourcing of sales.** Except as provided in (d) of this subsection, all sales to motor carriers are sourced under the general sourcing provisions of RCW 82.32.730. This includes leases to motor carriers that do not require recurring periodic payments.

(d) **Periodic lease payments.**

(i) Recurring periodic lease payments of leasing transactions described in (a) of this subsection are sourced as follows:

(A) The first payment is sourced to the location where the lessee takes possession of the transportation equipment. This is often the lessor's store location or a delivery location.

(B) Periodic payments made after the first payment are sourced for each period covered by the payment to the primary property location.

(ii) All recurring periodic lease payments of leasing transactions described in (b) of this subsection are sourced to the primary property location provided by the lessee to the lessor. The location where the lessee takes delivery of this type of equipment is immaterial.

**(4) Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when ~~((delivery is made in))~~ the sale is sourced to Washington.

**(a) Sales or leases of motor vehicles and trailers.** RCW 82.08.0263 provides an exemption from the retail sales tax for sales and leases of motor vehicles and trailers to be used for transporting ~~((therein))~~ persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission **(ICC)** or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate ~~((which))~~ that must be completed in its entirety. The buyers' retail sales tax exemption certificate is available on the department's ~~((internet))~~ web site at ~~((http://dor.wa.gov))~~ dor.wa.gov, or can be obtained by contacting the department at:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478  
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

**Exemption Certificate**

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No. . . . ., issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No. . . . ., Serial No. . . . . is entitled to exemption from the Retail Sales Tax under ~~((the provisions of))~~ RCW 82.08.0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated . . . . .

.....  
(name of carrier-purchaser)

By .....  
(title)  
.....  
(address)

The lease of motor vehicles and trailers to motor carriers, with or without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease ~~((However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.))~~ as provided in (c) of this subsection.

**(b) Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the ~~((Interstate Commerce Commission))~~ **ICC** or its successor agency ~~((which))~~ that authorizes transportation by motor vehicle across the boundaries of Washington. ~~((Since))~~ Because carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles ~~((which))~~ that are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in for hire hauling ~~((for hire))~~.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

- (A) Issued for each purchase;
- (B) Incorporated in or stamped upon the purchase order;

or

(C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket exemption certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 ~~((7(e)))~~.

(iii) The buyers' retail sales tax exemption certificate is available on the department's ~~((internet))~~ web site at ~~((http://dor.wa.gov))~~ dor.wa.gov, or can be obtained ~~((by contacting))~~ from the department ~~((at))~~

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478  
1-800-647-7706)

using the address provided in (a) of this subsection.

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

**Exemption Certificate**

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No. . . . ., issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under ~~((the provisions of))~~ RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated. . . . .

.....  
(name of carrier-purchaser)

.....  
(address)

By .....  
(title)

**(c) Taxable sales.** ~~((The following))~~ Sales that do not qualify for exemption under the provisions of RCW 82.08.-0262 or 82.08.0263, ~~((and))~~ are subject to the retail sales tax or deferred sales tax when ~~((delivery is made in Washington))~~ sourced to Washington as follows.

~~(i) Sales ((of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.~~

~~(ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.~~

~~(iii) Towing charges)), including single payment leases, are sourced under the general sourcing provision of RCW 82.32.730.~~

(ii) All recurring periodic lease payments are sourced to the primary property location provided by the lessee to the lessor.

**AMENDATORY SECTION** (Amending WSR 97-11-022, filed 5/13/97, effective 6/13/97)

**WAC 458-20-17401 Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.** (1) **Introduction.** This ~~((section))~~ rule explains the use tax and ~~((the))~~ available use tax exemptions provided by RCW 82.12.0254 ~~((which))~~ that apply to for hire motor carriers operating in interstate or foreign commerce. See subsection (3) of this rule for information on the requirement of substantial use in the normal course of the carrier's business as a for hire carrier.

**(a) Readers may want to refer to WAC 458-20-174.** For hire motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions ~~((which))~~ that apply to motor carriers for the purchase of vehicles, trailers, and parts under RCW 82.08.0262 and 82.08.0263.

**(b) Definitions.** Definitions in WAC 458-20-174 apply to this rule.

**(c) Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

**(2) Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount ~~((upon))~~ on the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. ~~((See also WAC 458-20-178.))~~ For additional information on use tax refer to WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred retail sales or use tax directly to the department of revenue (department) unless the purchase and/or use is exempt from the retail sales and/or use tax. Use tax is determined by the fair market value of the property when first subject to the use tax. See subsection (5) of this rule.

**(3) Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.-0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state.

(b) RCW 82.12.0254 also provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce if both of the following conditions are met:

(i) The user is, or operates under contract with, a holder of a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency; and

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state.

"In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate for hire hauling ~~((for hire))~~.

(c) **Retaining the exemption.** The motor carrier must continue to substantially use the motor vehicle or trailer in interstate for hire hauls during each calendar year to retain the exemption from use tax. This requires that at the start of each

calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use ~~((#))~~ the twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, ~~((1996))~~ 2013, the taxpayer must meet the substantial use test for this vehicle for either the period January through May ~~((1996))~~ 2013 or for the period June 1, ~~((1995))~~ 2012, through May 30, ~~((1996))~~ 2013. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(d) **Maintaining records on a fiscal year basis.** Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles, except for view periods based on the acquisition or disposal of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(e) **Calendar or fiscal year basis only.** Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, ~~((1996))~~ 2012, will need to have met the substantial use test for the period August through December ~~((1996))~~ 2012, or for the period August 1, ~~((1996))~~ 2012, through July 31, ~~((1997))~~ 2013, the period selected being at the taxpayer's option, and for the calendar year ~~((1997))~~ 2013 and each calendar year thereafter ~~((in order))~~ to retain the use tax exemption.

(f) **Methods for determining if motor vehicles and trailers qualify.** The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department ~~((of revenue))~~. The methods are:

(i) **Line crossing.** The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. It makes no difference whether the for hire hauls are partial or full loads. The motor vehicle or trailer must actually cross the boundaries of this state or be used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) **Mileage.** The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul ~~((which))~~ that requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclu-

sively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(ii) **Revenue.** The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) **Other.** Any other method may be used only when approved in advance and in writing by the department ~~((of revenue))~~.

~~((The following examples show how the methods of determining substantial interstate use would be applied to various situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.))~~

**Examples.**

(i) **Example 1.** ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the ~~((tractor/trailer))~~ tractor and trailer (tractor-trailer) rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) **Example 2.** DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be ~~((an))~~ intrastate ~~((haul since))~~ because truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) **Example 3.** AA Express operates one ~~((tractor/trailer))~~ tractor-trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year. Of these hauls, seventy-one are entirely in Washington, ten are

performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the ~~((tractor/trailer)) tractor-trailer~~ rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) Example 4. BDC Hauling operates one ~~((tractor/trailer)) tractor-trailer~~ rig ~~((which)) that~~ has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year, for a total of one hundred thousand miles. Included in this mileage figure are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's ~~tractor-trailer~~ rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the ~~((tractor/trailer)) tractor-trailer~~ rig ~~((Under the mileage method,)) as~~ twenty-eight percent of the ~~((tractor/trailer's)) tractor-trailer's~~ usage was in interstate hauling.

(v) Example 5. GV Trucking operates one ~~((tractor/trailer)) tractor-trailer~~ rig ~~((which)) that~~ has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the ~~((tractor/trailer)) tractor-trailer~~ rig ~~((Under the revenue method,)) as~~ twenty-five percent of GV's usage of the ~~((tractor/trailer)) tractor-trailer~~ rig was in interstate hauling.

(vi) Example 6. XYZ Trucking operates a single ~~((tractor/trailer)) tractor-trailer~~ rig ~~((which)) that~~ has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington, and another for delivery to Portland, Oregon. ~~((Upon)) At~~ delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same ~~tractor-trailer~~ rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, and the Seattle to Kent haul is intrastate. ~~((If using)) Under~~ the mileage method, the mileage associated with the Seattle to Portland and Kent to Portland hauls would be ~~((combined)) added together~~ to determine total interstate miles, even though the ~~tractor-trailer~~ rig made only one trip to Portland. ~~((If using)) Under~~ the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The ~~((mileage and/or)) revenue~~ associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each

individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, it is encouraged that use tax liability for trailers ~~((must))~~ be determined on the basis of those records. However, it is recognized that some motor carriers do not have ~~((no)) an adequate~~ system of tracking or documenting the travel of their trailers and it would be an undue burden to require such recordkeeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. ~~((These)) Motor~~ carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors. Whether the motor carrier uses their records or the ratio of fleetwide trailers to tractors that method must be applied to all trailers within the fleet. The motor carrier may change the method with prior written consent of the department.

(a) Under ~~((this)) the trailer to tractor ratio~~ method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. ~~((However,)) If~~ two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. For example, ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased, and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review for the just-completed calendar year it was determined that one tractor was not used at least twenty-five percent in interstate hauls. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax

must be reported are the two purchased ~~((most nearly))~~ closest to the purchase date of the tractor.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the ~~((review))~~ view period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that ~~((review))~~ view period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year ~~((1996))~~ 2013. Use tax should be reported on the last tax return filed for ~~((1996))~~ 2013 with the taxable value based on the value of the truck at January 1, ~~((1996))~~ 2013. If the motor carrier is using a fiscal year as the view period (see subsection (3)(e) of this rule), the use tax should be reported, based on the value of the truck on the first day of the view period, on the last tax return filed for the view period. The motor carrier must not change from calendar to fiscal year view periods without prior written consent of the department.

(a) **Determining valuation.** The department ~~((of revenue))~~ will accept independent publications containing values of comparable vehicles if those values are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules in effect and used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) ~~((The following examples show how use tax liability would be determined in typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.))~~ **Examples.**

(i) **Example 7.** ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, ~~((1996))~~ 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul ~~((which))~~ that identifies each ~~((truck/tractor))~~ truck or tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, ~~((# reviewing this journal))~~ for the ~~((1997))~~ 2013 calendar year, ABC Trucking determines that two of the trailers failed to meet the twenty-five percent "substantial use" threshold. ABC Trucking must remit use tax directly to the department on its ~~((December 1997))~~ last excise tax return filed for 2013, based on the fair market values of the two trailers as of Janu-

ary 1, ~~((1997))~~ 2013. ~~((Since))~~ Because the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in for hire hauling ~~((for hire))~~.

(ii) **Example 8.** DB Carriers is a motor carrier ~~((which))~~ that is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, ~~((1997))~~ 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method ~~((for determining))~~ to determine interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul ~~((which))~~ that identifies each truck used on a per unit basis. This journal is reviewed at the end of the ~~((1997))~~ 2012 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its ~~((December 1997))~~ last excise tax return filed for 2012, based on the fair market value of the truck as of January 1, ~~((1997))~~ 2012. DB Carriers may not compute the use tax liability based ~~((upon))~~ on the December 31, ~~((1997))~~ 2012, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** The use tax exemption requirements are the same for leased vehicles as for purchased vehicles. Motor vehicles and trailers, leased with or without operator are exempt from the use tax if the user is, or operates under contract with, a holder of a permit issued by the ICC or its successor agency and the vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state. This requires that the leased vehicle be used a minimum of twenty-five percent in interstate hauls. The taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(c) of this ~~((section))~~ rule).

(a) **Substantial use requirement not met.** If the leased vehicle or trailer does not meet the substantial use requirement during the "view period," the use tax applies ~~((only to the portion of the))~~ to each lease payment ~~((which is for))~~ within the "view period" where there was use in Washington ~~((during the "view period." See the examples in subsection (6)(b) of this section. Mileage is an acceptable basis for determining in-state and out-of-state use. For the purposes of determining in-state and out-of-state use of leased vehicles or trailers where use tax is determined to be due, all miles traveled in Washington by the leased vehicle are in-state miles, not~~

withstanding that they may be associated with an interstate haul. The motor carrier must maintain accurate records of actual in-state and out-of-state use to substantiate any claim that a portion of any lease payment was exempt of use tax because of out-of-state use). Use tax will be determined first for each "view period((-))," then for each periodic lease period within the "view period." For example, if a truck was leased on a monthly basis for the years ~~((1996 and 1997))~~ 2013 and 2014 and failed to meet the substantial use requirement in ~~((1996))~~ 2013, but met the requirement in ~~((1997))~~ 2014, use tax would only be due for the monthly payments for January and September of 2013 if those are the only two months during which usage in Washington ~~((which))~~ occurred in ~~((1996))~~ 2013.

(b) ~~((The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.))~~ **Examples.**

(i) Example 9. BG Hauling ~~((is))~~, a for hire carrier ~~((which on January 1, 1996))~~, enters into a lease agreement for a truck without operator on January 1, 2013. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year ~~((1997))~~ 2014. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January ~~((1997))~~ 2014. However, BG Hauling may report use tax only on ~~((that portion of))~~ each lease payment ~~((attributable to))~~ in which payment period there was actual in-state use, provided it maintains accurate records substantiating the truck's in-state and out-of-state activity. ~~((Only mileage incurred while actually outside Washington will be considered out-of-state mileage.))~~ If BG Hauling continues to lease this truck in ~~((1998))~~ 2015, usage will again be reviewed for that period and use tax may or may not be due for the ~~((1998))~~ 2015 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) Example 10. MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, ~~((1996))~~ 2013. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the ~~((1997))~~ 2014 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax ~~((upon))~~ on the amount of lease payments made during ~~((1997))~~ 2014 at the time it files its last tax return ~~((in 1997))~~ for 2014. Provided accurate records are maintained to substantiate in-state and ~~((of))~~ out-of-state use, MG may remit use tax ~~((only upon that portion of))~~ on each lease payment ~~((attributable to))~~ in which the payment period there was actual in-state use. While only the hauling for hire activities are reviewed when deter-

mining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all in-state activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property ~~((which))~~ that becomes a component part (including purchases of services related to that component part) of any motor vehicle or trailer used for transporting ~~((therein))~~ persons or property for hire. This exemption is available only for motor vehicles or trailers owned by, or operated under contract with, a person holding a carrier permit issued by the ~~((Interstate Commerce Commission))~~ ICC or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles ~~((which))~~ that are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer ~~((which))~~ that is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

~~((a))~~ For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

~~((b))~~ The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:

(i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and

(ii) Consumable supplies, such as oil, grease, other lubricants, cleaning solvents and ice.)

**WSR 15-09-094**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 20, 2015, 7:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-088.

Title of Rule and Other Identifying Information: Chapter 308-103 WAC, Rules of procedure for hearings conducted under RCW 46.20.308.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on May 27, 2015, at 3:00 p.m.

Date of Intended Adoption: May 28, 2015.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by May 26, 2015.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by May 26, 2015, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-103-020, 308-103-040, 308-103-050, 308-103-060, 308-103-070, 308-103-080, 308-103-090, 308-103-110, 308-103-130, 308-103-150, 308-103-170, 308-103-180 and 308-103-190, to clarify, revise, and make technical corrections to hearing procedures and filing requirements. Add a new section, WAC 308-103-125, to specify format and length for briefs to be submitted for a hearing.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.308.

Statute Being Implemented: RCW 46.20.308.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark Holloway, Olympia, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Olympia, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3) and 34.05.310 (4)(g).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

April 20, 2015  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-020 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

- (1) "Department" refers to the department of licensing;
- (2) "Hearing" means a formal hearing as authorized and conducted pursuant to RCW 46.20.308(8);

(3) "Hearing office" refers to the physical location from which a hearing officer conducts hearings under RCW 46.20.308. Where appropriate, the term "hearing office" also refers to the staff assigned to a hearing office;

(4) "Hearing officer" means a person who is appointed by the director of the department to conduct hearings under RCW 46.20.308;

(5) "Legal representative" means an attorney licensed and authorized to practice law in the state of Washington;

(6) "Petitioner" refers to ~~((a driver))~~ an individual subject to the provisions of RCW 46.20.308 who has requested a hearing.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-040 Requests for hearings.** The request for a hearing shall be in compliance with the following requirements:

(1) The petitioner must submit his or her formal request for hearing:

(a) Within ~~((thirty))~~ twenty days of the date notice is given under RCW 46.20.308(6) if the petitioner submitted to a breath test;

(b) Within ~~((thirty))~~ twenty days of the date notice is given under RCW 46.20.308(6) if the petitioner is alleged to have refused the breath or blood test; or

(c) Within ~~((thirty))~~ twenty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test;

(2) If a request for a hearing is mailed, it must be received by the department within seven days of the date the request was postmarked in order to be considered timely under this section. This provision may be waived if the request is received by the department within ~~((thirty))~~ twenty days of the date of arrest, or within ~~((thirty))~~ twenty days of the date notice is given in the event notice is given by the department following a blood test, or if the petitioner and the department agree to ~~((a waiver of))~~ waive the sixty-day hearing requirement;

(3) The request for a hearing shall be in writing. The petitioner may use the form provided by the department for this purpose or any other writing. The petitioner may request a hearing online if the petitioner meets the qualifications described on the web site at [www.dol.wa.gov](http://www.dol.wa.gov);

(4) The hearing request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where he or she may identify the language and/or nature of the interpretive services needed;

(5) The request for hearing shall include the following information with respect to the petitioner:

- (a) Full name;
- (b) Mailing address;
- (c) Daytime telephone number, including area code;

(d) Date of birth; and

(e) Driver's license number;

(6) If petitioner will have legal representation at the administrative hearing, the request shall also include the legal representative's name, mailing address, and daytime telephone number, including area code;

(7) The request for a hearing shall be submitted to the Department of Licensing, (~~Driver Services Division~~) Hearings & Interviews, P.O. Box 9048, Olympia, Washington 98507-9048. If the petitioner is entitled to or (~~applying~~) applies for a waiver of the filing fee because of indigence, the request must be submitted to the Department of Licensing, (~~Driver Services Division~~) Hearing & Interviews, P.O. Box 9031, Olympia, Washington 98507-9031;

(8) The written request for hearing shall be accompanied by the applicable nonrefundable filing fee, unless the petitioner is entitled to a waiver of the filing fee because of indigence, in which case a request and justification for the fee waiver shall accompany the hearing request;

(9) A petitioner who has been denied a court-appointed attorney on the underlying related criminal charge because he or she is deemed "not indigent" is not eligible for a fee waiver;

(10) Indigence may be established as follows:

(a) Written verification of court-appointed legal counsel on the associated underlying criminal charge;

(b) Written verification of current involuntary commitment to a public mental health facility;

(c) Verification of current receipt of general assistance, temporary assistance for needy families, refugee resettlement benefits, food stamps, supplemental security income, or medicaid; or

(d) Submission and approval of the department's "Application for Waiver of Hearing Fee" form;

(11) Failure to timely submit a hearing request and/or failure to include the filing fee or application for waiver with the hearing request shall be deemed a waiver of the petitioner's right to a hearing; and

(12) If a request for hearing is denied, the department shall notify the petitioner and the petitioner's legal representative, if any, stating the reason(s) for denial.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-050 Scheduling—Notice of hearing.**

(1) Upon receipt of a timely request for a hearing, the department shall schedule a telephone hearing within sixty days following the arrest or following the date the notice has been given by the department following a blood test, unless otherwise agreed to by the department and the person.

(2) The petitioner or petitioner's legal representative may state a preferred range of hearing dates or unavailable dates. To the extent that such requests can be accommodated within the applicable time limits and hearing officer availability, the department will attempt to do so.

(3) The department shall mail a hearing notice to the petitioner or petitioner's legal representative at least ten days prior to the date of the hearing.

(4) The department's scheduling notice and brochure will include the assigned hearing officer's name, a phone number at which he or she may be contacted, and other information concerning the administrative hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations.

(5) The petitioner or petitioner's legal representative may request that all or part of the hearing be conducted "in person." Such request must be in writing stating the reasons therefore and directed to the assigned hearing officer immediately upon receipt of the scheduling notice. The hearing officer will have the sole discretion to grant or deny this request, and may require a waiver of the (~~sixty-day hearing~~) requirement that the hearing be held within sixty days, the requirement that the hearing be held in the county of arrest, or both requirements as a condition to granting the request.

(6) Each party shall ensure that his or her address and telephone number on file is correct and shall immediately notify the department and/or hearing officer of any change of address or telephone number that occurs during the course of the proceeding.

(7) The administrative hearing may be reassigned to a different hearing officer without notice to the parties.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02, effective 6/3/02)

**WAC 308-103-060 Notice of appearance.** If a petitioner has legal representation at the administrative hearing, the department shall be provided with the legal representative's name, address, and telephone number. The department may require the legal representative to file a written notice of appearance or to provide documentation that an absent petitioner has authorized the legal representative to appear on the party's behalf. The legal representative (~~shall file a written notice of appearance and~~) shall file a notice of withdrawal upon withdrawal of representation.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-070 Continuances.** (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

(2) Requests for a continuance, reschedule, or adjournment must be made in writing, to the assigned hearing officer, and shall include the basis for the request.

(3) Except in the case of an emergency, the hearing officer must receive the continuance request at least two business days before the scheduled hearing. Absent an emergency, requests made with less than two business days' notice may be summarily denied.

(4) The hearing officer may continue, adjourn, or reschedule at any time, including on the date of the administrative hearing.

(5) Hearings that are continued, rescheduled, or adjourned may be reset to a date within sixty days of the driver's arrest, or within sixty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the

event notice is given by the department following a blood test, unless a written waiver of the sixty-day hearing requirement of RCW 46.20.308 accompanies the written continuance request, or unless the petitioner is deemed to have "waived" the statutory time frame.

(6) A petitioner is deemed to have waived the statutory requirement that the hearing be held within sixty days if petitioner requests an action that cannot be accommodated within the sixty-day period.

(7) A party shall not consider a hearing continued, rescheduled, or adjourned until notified by the hearing officer or his or her designee.

(8) The hearing officer may require the party who requests a continuance, reschedule, or adjournment to submit documentary evidence that substantiates the reason for the request.

(9) A second request for a continuance, reschedule, or adjournment will only be granted in the event of an ~~(extreme)~~ emergency and at the discretion of the assigned hearing officer.

(10) Notwithstanding any provisions of this section to the contrary, a hearing officer may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearing officer must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060. Action taken by the hearing officer to enforce a subpoena issued on the petitioner's behalf is considered to be at the request of the petitioner for purposes of WAC 308-103-070(6).

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-080 Deferred prosecutions—~~(Withdrawals)~~ Cancellation of hearings.** (1) In the event a petitioner elects to seek a deferred prosecution, ~~((the petitioner shall notify the assigned hearing officer and file a notice of Intent to Seek Deferred Prosecution, on a form provided by the department, with the hearing officer or the department. To))~~ he or she may be eligible for a stay~~(;)~~. The petitioner must not have previously entered a deferred prosecution program, must have taken the breath or blood test, and must indicate that he or she intends to seek a deferred prosecution. If the petitioner is eligible, a stay of the administrative action shall be entered on the driver's record pursuant to RCW 46.20.308~~((10). If the petitioner is not eligible, he or she will be so notified by the department and the administrative action will continue))~~ (9).

(2) If a stay is entered under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. As provided by RCW 46.20.308~~((10))~~ (9), the stay of the action shall continue but any appeal of the Findings and Conclusion must be undertaken within thirty days of service of the results.

(3) If the petitioner elects to ~~((withdraw))~~ cancel his or her request for a hearing, he or she must notify the department in writing of his or her intent to do so. Upon receiving such a request for a withdrawal, the department shall proceed with the administrative action against the petitioner's driving privilege, unless a stay has been entered on the driver's record due to the filing of a notice of Intent to Seek a Deferred Prosecution.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-090 Subpoenas.** (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308~~((8))~~ (7). All subpoenas shall direct the witness to appear by telephone unless otherwise agreed to by the hearing officer.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at www.dol.wa.gov, and must be signed and issued by a hearing officer. An approved form may be obtained from the department.

(a) A subpoena to a person to provide testimony at a hearing shall specify the date and time ~~((and place))~~ set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena must be personally served by a suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. Proof of service shall be made by affidavit or declaration under penalty of perjury. Service by certified mail must be preapproved by the hearing officer. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(4) The hearing officer may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) A subpoena must be properly served ten days prior to the date of the hearing, excluding weekends and holidays, in order to have full force and effect.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-110 Video evidence.** If the petitioner wishes to submit video evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video evidence shall be submitted sufficiently in advance of the hearing to allow the hearing officer the opportunity to review it prior to the hearing. The hearing officer may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed. Video evidence must be submitted in a format which allows it to be viewed on the department's equipment. Any

costs associated with this requirement is to be the responsibility of the petitioner.

#### NEW SECTION

##### **WAC 308-103-125 Format and length for briefs.** (1)

The text of any brief must be typed or printed in a proportionally spaced typeface and must appear in print as twelve point or larger type with no more than ten characters per inch and double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as ten point or larger type and be the equivalent of single-spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the type-written or printed material in the brief may not be reduced or condensed by photographic or other means.

(2) Briefs shall not exceed twenty pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the hearing officer may grant a motion to file an over-length brief.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02, effective 6/3/02)

**WAC 308-103-130 Interpreters.** (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the department shall appoint an interpreter to assist the party or witness during the hearing. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in hearings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(a) If a hearing impaired person is a party or witness to an adjudicative proceeding, a qualified interpreter shall be appointed to interpret the proceedings. Under RCW ((2.42-050)) 2.42.110, a "qualified interpreter" means a visual language interpreter who is certified by the state or is certified by the registry of interpreters for the deaf.

(b) Whenever an interpreter is appointed to assist a non-English-speaking person, a qualified or certified interpreter shall be appointed to assist the person during the hearing. Under RCW 2.43.020, a "qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for a non-English-speaking person. A "certified interpreter" means an interpreter who is certified by the office of the administrator for the courts.

(2) Relatives of any participant in a proceeding and employees of the department involved in a proceeding shall not be appointed as interpreters in the proceeding unless authorized by the petitioner.

(3) Mode of interpretation:

(a) The consecutive mode of foreign language interpretation shall be used unless the hearing officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency;

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter

considers to provide the most accurate and effective communication with the hearing impaired person;

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants, unless waived by the petitioner. The hearing officer shall ensure that sufficient extra time is provided to permit translation and the hearing officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(4) The department shall pay interpreter fees and expenses.

(5) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the hearing officer conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-150 Conduct of hearings.** Hearings are open to public observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record. The hearing officer's authority includes, but shall not be limited to, the authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308((8));
- (7);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good cause;
- (7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearing officer may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (8) Call additional witnesses and request and/or obtain additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by the petitioner;
- (9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;
- (10) Examine and admit public records, including but not limited to maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section web site at any time before and during the hearing, subject to full opportunity, including the opportunity

to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(13) Issue an order of default;

(14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

(15) Take any other action necessary and authorized by any applicable statute or rule; and

(16) Waive any requirement of these rules unless petitioner shows that he or she would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-170** (~~Temporary license.~~) **Reserved.**  
(~~A temporary license issued by a law enforcement officer pursuant to RCW 46.20.308 may be extended when:~~

~~(1) A hearing is conducted and a decision on the outcome of the hearing is taken under advisement by the hearing officer; or~~

~~(2) A hearing is continued or rescheduled outside of the initial sixty-day effective period of the temporary license.)~~

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-180 Final order.** (1) Every decision and order shall:

~~((1))~~ (a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

~~((2))~~ (b) Designate all parties and representatives participating in the proceeding;

~~((3))~~ (c) Contain a final order disposing of all contested issues; and

~~((4))~~ (d) Contain a statement describing the right to appeal.

(2) In the event the original hearing officer is unavailable, the department may assign the case to another hearing officer to either hear the case if the record has not closed, or in a case where the record is closed, make a determination as to the finding of fact and conclusions of law based on the record submitted.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-190 Reconsideration and appeals.** (1) The petitioner's rights to appeal are provided in RCW 46.20.308~~((9))~~ (8), and nothing herein is intended to detract from that statute.

(2) Grounds for a petition for reconsideration are limited to evidence or legal argument which are material to the petitioner and were not produced at the time of the hearing, or for other good and sufficient reason as determined by the hearing officer.

(3) The petition must state with particularity any new evidence or new legal argument that is proposed and why it could not have been discovered using due diligence prior to the hearing. The petition must specify with particularity the portions of the initial order to which the petition applies.

(4) A petition for reconsideration of a final order shall be filed with the hearing officer who signed that final order, within ten days of the date the final order is mailed to the petitioner.

(5) The petition shall be reviewed by the hearing officer who entered the original final order, if reasonably available. If the original hearing officer assigned to the case is unavailable, the department, within its discretion, may assign the case to another hearing officer to preside over the motion. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(6) If the petition is granted in whole or in part, a new order shall be issued in the same form as the original order, and shall include the designation "amended" in its title. This amended order shall reference the petition for reconsideration in its preamble, which sets out what the hearing officer considered. Any amended order shall include the "Findings of Fact and Conclusions of Law" from the original final order with amendments.

(7) The relief granted pursuant to a petition for reconsideration is limited to review of the designated evidence and/or argument as identified in the petition. At the hearing officer's discretion, a supplemental hearing may be scheduled. Such a petition is not grounds for a new hearing, and the record already established shall remain undisturbed.

(8) A petition for reconsideration does not stay the department's action on the petitioner's driving privilege as ordered by the original final order. A petitioner seeking a stay must file a separate petition for that purpose. The hearing officer will grant a stay only if the hearing officer determines that it is likely that the petitioner will prevail and the action be reversed and that denying the stay will create irreparable harm to the petitioner. If the hearing officer grants such a petition for a stay, the hearing officer shall sign an order releasing the action and crediting any time already served, and subsequently sign an order sustaining or reversing the action, as determined by the amended final order. Disposition denying a stay is not subject to review.

(9) An amended final order shall be issued either denying reconsideration or, in the event reconsideration is granted, dissolving or modifying the original final order. The date of the amended final order begins the thirty-day period for the petitioner to appeal the amended final order, and there is no longer a right to appeal the original final order.

(10) The filing of a petition for reconsideration is not a prerequisite for filing an appeal. An order denying reconsideration is not subject to appeal.

**WSR 15-09-097**  
**PROPOSED RULES**  
**COMMUNITY COLLEGES**  
**OF SPOKANE**

[Filed April 20, 2015, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-046.

Title of Rule and Other Identifying Information: Chapter 132Q-20 WAC, Traffic rules and regulations.

Hearing Location(s): Community Colleges of Spokane (CCS) Board of Trustees Meeting, The Lodge Building, 3305 West Fort George Wright Drive, Spokane, WA, on June 16, 2015, at 8:30 a.m.

Date of Intended Adoption: June 16, 2015.

Submit Written Comments to: Kathleen Roberson, CCS, Mailstop 1006, P.O. Box 6000, Spokane, WA 99217-6000, e-mail [kathleen.roberson@ccs.spokane.edu](mailto:kathleen.roberson@ccs.spokane.edu), fax (509) 434-5279, by June 5, 2015.

Assistance for Persons with Disabilities: Contact Kathleen Roberson by June 5, 2015, (509) 434-5275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to reflect the centralization of security operations including title changes and protocol for parking enforcement appeals.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: CCS, governmental.

Name of Agency Personnel Responsible for Drafting: Kathleen Roberson, 501 North Riverpoint Boulevard, Suite 204, Spokane, WA 99202, (509) 434-5275; Implementation and Enforcement: CCS, 501 North Riverpoint Boulevard, Suite 204, Spokane, WA 99202, (509) 434-5275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. CCS is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

April 20, 2015  
 Kathleen Roberson  
 Executive Assistant to the  
 Chief Financial Officer

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-060 Valid permit.** A valid CCS parking permit is:

(1) An unexpired student or employee parking permit registered and properly displayed; or

(2) A visitor or special parking permit authorized by the ~~((appropriate vice president))~~ chief administration officer or designee, and properly displayed; or

(3) An invited guest or vendor parking permit issued by the sponsoring department and authorized by the ~~((appropriate vice president))~~ chief administration officer or designee, and properly displayed.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-090 Permit revocation.** Parking permits are the property of CCS and may be recalled by the ~~((appropriate vice president))~~ chief administration officer or designee for any of the following reasons:

(1) When the purpose for which the permit was issued changes or no longer exists; or

(2) When a permit is used for an unregistered vehicle or by an unauthorized individual; or

(3) Falsification on a parking permit application; or

(4) Continued violations of parking regulations; or

(5) Counterfeiting or altering a parking permit.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-110 Right to appeal permit revocation/refusal.** When a student parking permit has been recalled pursuant to WAC 132Q-20-090, or has been refused in accordance with WAC 132Q-20-100, or when a fine or penalty has been levied against a violator of the rules set forth in this chapter, such action by the ~~((appropriate vice president))~~ chief administration officer or designee, may be appealed pursuant to WAC 132Q-108-050. Employees of Community Colleges of Spokane shall appeal permit revocations, refusals to grant permits, and fines or penalties levied for violations to the ~~((appropriate vice president))~~ chief administration officer whose decision on the matter is final.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-130 Designation of parking spaces.** The parking spaces available on campus shall be designated and allocated by the ~~((appropriate vice president))~~ chief administration officer or designee, in such a manner that best achieves the objectives of the rules in this chapter.

(1) Faculty, staff, student, and visitor spaces are designated for their use; and

(2) Parking spaces for the exclusive use by persons of disability are designated;

(3) A CCS parking permit along with an official state disabled parking permit allows the permit holder to park in any designated employee or disabled parking space;

(4) Other special use spaces may be designated; and

(5) Parking at metered parking requires payment.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-150 Parking hours.** Parking permits are required to park at CCS facilities between the hours of 6:30 a.m. and 5:00 p.m. Monday through Friday. The rules and regulations pertaining to the use of certain parking per-

mits in specific areas are contained in WAC 132Q-20-130. Students and employees may park in any of the spaces or stalls designated in WAC 132Q-20-140 (~~except visitor's areas~~) on a first-come, first-served basis after 3:30 p.m. Custodial and authorized employees may park on campus from 10:00 p.m. to 6:30 a.m., and are required to follow regular parking regulations and obtain parking permits.

AMENDATORY SECTION (Amending WSR 00-14-007, filed 6/26/00, effective 7/27/00)

**WAC 132Q-20-160 Overnight parking.** Overnight parking is prohibited except when approval is granted by the (~~appropriate vice president~~) chief administration officer or designee.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

**WAC 132Q-20-170 Regulatory signs and directions.** The (~~appropriate vice president~~) chief administration officer or designee is authorized to erect signs, barricades and other structures and to paint marks or other directions upon the entry ways and streets on campus and upon the various parking lots owned, leased or operated by the colleges. Such signs, barricades, structures, markings, and directions, shall be made and placed to best achieve the objectives stated in WAC 132Q-20-010 and the rules and regulations contained in this chapter.

Drivers of vehicles shall observe and obey the signs, barricades, structures, markings and directions erected pursuant to this section. Drivers shall also comply with the directions given them by the campus patrol in the control and regulation of traffic.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

**WAC 132Q-20-180 Speed limit.** No vehicle shall be operated on the campuses at a speed in excess of the posted speed limit or such slower speed as is reasonable and prudent in the circumstances. No person operating a vehicle of any type shall at any time use the campus parking lots for testing, racing, or other unauthorized activities unless authorized by the (~~appropriate vice president~~) chief administration officer or designee.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

**WAC 132Q-20-200 Special traffic and parking regulations and restrictions authorized.** When special occasions create additional and/or heavy traffic and during emergencies, the (~~appropriate vice president~~) chief administration officer or designee, is authorized to impose additional traffic and parking regulations and restrictions to achieve the objectives specified in WAC 132Q-20-010.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-210 Two-wheeled motor bikes or bicycles.** (1) All two-wheeled vehicles powered by a motor shall park in a space designated for *motorcycles only*.

(2) Only vehicles authorized by the (~~appropriate vice president~~) chief administration officer or designee may be driven or ridden on campus sidewalks.

(3) Skateboards and roller blades/skates are not permitted on campus.

AMENDATORY SECTION (Amending WSR 12-04-024, filed 1/25/12, effective 2/25/12)

**WAC 132Q-20-220 Report of accidents.** The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or *total of claimed damage to either or both vehicles exceeding the reporting threshold for property damage accidents pursuant to state patrol WAC 446-85-010*, shall immediately report the accident to the (~~appropriate vice president~~) chief administration officer or designee, and shall within twenty-four hours after such accident, file a state of Washington motor vehicle accident report if required.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-240 Enforcement.** (1) Enforcement of the parking rules is continuous throughout the year.

(2) The (~~appropriate vice president~~) chief administration officer or designee shall be responsible for the enforcement of the rules contained in this chapter.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

**WAC 132Q-20-260 Fines and penalties violations.** (1) Fines may be levied by the (~~appropriate vice president~~) chief administration officer or designee for all violations of the rules contained in this chapter. A current schedule of fines is available from the campus safety office.

(2) Violators have the right to due process and may appeal to the college parking appeals board created in WAC 132Q-20-265, whose decision is final.

(3) Vehicles parked on any campus in violation of any of the rules contained in this chapter, may be impounded or detained by use of mechanical devices at the discretion of the campus safety office. If a vehicle is impounded, it may be taken to such place for storage as the (~~appropriate vice president~~) chief administration officer or designee selects. The expenses of such impounding and storage shall be the sole responsibility of the owner or operator of the vehicle. CCS shall not be liable for loss or damage of any kind resulting from such impounding and storage.

(4) At the discretion of the (~~appropriate vice president~~) chief administration officer or designee, an accumulation of traffic violations by a student may be cause for disciplinary action, pursuant to chapter 132Q-30 WAC. In the case of students, failure to pay fines shall be grounds for the college, in

addition to disciplinary action, to deny admission to CCS, registration, official transcripts, graduation or other administrative action. Failure to pay fines may result in the refusal to issue a permit.

(5) For students and employees, refusal to pay a fine still existing after exhaustion of the appellate process shall be grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 13-15-150, filed 7/23/13, effective 8/23/13)

**WAC 132Q-20-265 Appeals.** (1) ~~((Each college))~~ CCS shall establish a parking appeals board consisting of no less than ~~((three))~~ seven members ~~((appointed by the president))~~. The appeals board membership shall ~~((be evenly balanced among faculty, students and classified staff))~~ consist of one faculty, one student and one classified staff from each college as appointed by that college's president, as well as one non-campus employee appointed by the chancellor.

(2) The parking appeals boards shall use criteria on which to fairly judge appeals including, but not limited to:

- (a) Did an institutional error occur?
- (b) Were there extenuating circumstances that caused the error to occur?
- (c) Did the person make a good faith effort to comply with the parking rules?

## WSR 15-09-098

### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed April 20, 2015, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-06-002.

Title of Rule and Other Identifying Information: Chapter 16-406 WAC, Washington standards for apricots, the purpose of this chapter is to provide the grade, size and marking requirements for the packing of fresh apricots.

Hearing Location(s): Department of Agriculture, 270 9th Street N.E., Suite 101-A, East Wenatchee, WA 98802, on May 26, 2015, at 11 a.m.; and at the Department of Agriculture, Conference Room 238, 21 North 1st Avenue, Yakima, WA 98902, on May 27, 2015, at 11 a.m.

Date of Intended Adoption: June 9, 2015.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 27, 2015.

Assistance for Persons with Disabilities: Contact the agency receptionist, by May 5, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules on this subject will be amended to clean up the current standards and to rewrite in plain talk for easier interpretation of the standards. There are no significant changes being proposed to this chapter and it will not affect the fruit industry's current practices.

Reasons Supporting Proposal: Amending the rule will provide clear explicit language written in plain talk which clearly defines the Washington standards for apricots.

Statutory Authority for Adoption: RCW 15.17.030, [15.17.]050, [15.17.]060, chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.17 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Chuck Drago, 21 North 1st Avenue, Suite 226, Yakima, WA 98902, (509) 225-6910; Implementation: Karen Cozzetto, 21 North 1st Avenue, Suite 226, Yakima, WA 98902, (509) 225-6906; and Enforcement: Jim Nelson, 270 9th Street N.E., Suite 101-A, East Wenatchee, WA 98802, (509) 662-6161.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments make no significant changes to the rules and will not affect the fruit industry's current practices.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 20, 2015

Brad J. Avy

Assistant Director

AMENDATORY SECTION (Amending WSR 05-12-036, filed 5/25/05, effective 6/25/05)

**WAC 16-406-005** ~~((What definitions are important to understanding this chapter?))~~ Definitions in this chapter. ~~((The following definitions are important to this chapter:))~~

**"Aggregate"** means that injury areas on an apricot's surface may be combined into one circular area with a diameter equal to the maximum diameter specified for the particular injury.

**"Damage"** means an injury to an apricot that is readily apparent during grading and handling.

**"Department"** means the Washington state department of agriculture (WSDA).

**"Diameter"** means the greatest diameter, measured through the center of the apricot, at right angles to a line running from the stem to the blossom end.

~~((1) Apricots having a diameter of 1-1/2 inches or larger, ring measurement, may be considered "large."~~

~~((2) Apricots having a diameter of less than 1-1/2 inches may be considered "small."))~~

**"Director"** means the director of the ~~((Washington state))~~ department of agriculture or the director's ~~((designee))~~ designated representative. As used in this chapter, WSDA refers to the director unless the context states otherwise.

**"Dirt"** includes spray residue present to the extent that it is readily apparent.

**"Lot"** means, unless otherwise stated in this chapter, a distinct unit of fruits or vegetables.

**"Mature"** means apricots have reached a growth stage that will insure the proper completion of the ripening process.

"Serious damage" means(=

- (1) Immaturity; or
- (2) Any deformity; or

(3) Injuries either causing skin breaks exceeding 3/8 of an inch in diameter or that seriously affects the apricot's appearance)) any specific defect defined in this section; or an equally objectionable variation of any one of these defects; or any other defect or a combination of defects which seriously detracts from the appearance or the edible or shipping quality of the fruit.

"Well formed" means having a shape that is characteristic of the variety.

AMENDATORY SECTION (Amending WSR 05-12-036, filed 5/25/05, effective 6/25/05)

**WAC 16-406-010 ((How do you determine the maturity of an apricot?)) Grades.** ((The information in the following table must be considered when determining an apricot's maturity:

<b>MATURITY CHARACTERISTIC</b>	<b>EXPLANATION</b>
(1) <b>Ambering</b>	"Ambering," which many authorities on apricots recognize as an indicator of maturity, refers to the replacement of the green colored flesh immediately around the pit with an amber shade of flesh.
(2) <b>Springiness</b>	"Springiness" develops in connection with the separation of the flesh from the pit. It is an indication that the apricot is reaching proper tree maturity for picking for fresh shipment. Springiness may be detected by: <ul style="list-style-type: none"> <li>• External pressure on the apricot; or</li> <li>• Cutting the apricot in half at right angles to the longitudinal axis and noting how one half or both halves slip away from the pit.</li> </ul>
(3) <b>Taste</b>	On a tree whose fruit is ready for harvest for fresh shipment, it is quite common to find apricots that are fairly palatable because they have lost much of their green taste. However, in using this test, do not be misled by apricots that, because of worm infestation, may be maturing abnormally.
(4) <b>Separation of fruit from the stem</b>	The way apricots separate from their stems is an indication of their maturity. For example, immature apricots tend to tear the adjacent skin and flesh more than apricots that are near proper maturity.)

<b>WASHINGTON APRICOT GRADES</b>	<b>CHARACTERISTICS</b>
<b><u>Washington No. 1</u></b>	Washington No. 1 consist of <u>apricots of one variety that are:</u> <ul style="list-style-type: none"> <li>• <u>Mature but not soft;</u></li> <li>• <u>Not overripe or shriveled;</u></li> <li>• <u>Well formed;</u></li> <li>• <u>Free from decay and worm holes;</u></li> <li>• <u>Free from damage caused by dirt, limb rubs, growth cracks, bruises, scale, hail, disease, insects or mechanical or other means. (See tolerances WAC 16-406-020.)</u></li> </ul>
<b><u>Washington No. 2</u></b>	Washington No. 2 consist of <u>apricots of one variety that are:</u> <ul style="list-style-type: none"> <li>• <u>Mature but not soft;</u></li> <li>• <u>Not overripe or shriveled;</u></li> <li>• <u>Free from decay and worm holes;</u></li> <li>• <u>Free from serious damage caused by dirt, growth cracks, bruises, hail, insect pests, mechanical or other means. (See grade and size tolerances WAC 16-406-020.)</u></li> </ul>
<b><u>Washington combination</u></b>	<ul style="list-style-type: none"> <li>• <u>Washington combination consists of a combination of Washington No. 1 and Washington No. 2 apricots.</u></li> <li>• <u>To meet Washington combination, at least fifty percent of the apricots in any container must meet the requirements of Washington No. 1 grade. (See grade and size tolerances WAC 16-406-020.)</u></li> </ul>
<b><u>Culls</u></b>	<ul style="list-style-type: none"> <li>• <u>Culls consist of apricots that do not meet the grade requirements of this section and can be immature or seriously damaged by growth cracks, hail, insect pests, mechanical or other means.</u></li> </ul>

<u>WASHINGTON APRICOT GRADES</u>	<u>CHARACTERISTICS</u>
	<ul style="list-style-type: none"> <li>• Cull apricots for fresh market must be clearly marked with the word <u>CULLS</u> in large letters at least two inches high. (See marking and packing requirements WAC 16-406-030.)</li> </ul>

**AMENDATORY SECTION** (Amending WSR 05-20-074, filed 10/4/05, effective 11/4/05)

**WAC 16-406-015** (~~What is considered "damage" and "serious damage" to apricots?~~) **Damage and serious damage.** ((The following tables explain the differences between "damage" and "serious damage" as applied to apricots:

Except for the Riland variety, the following are considered <del>damage</del> :	Except for the Riland variety, the following are considered <del>serious damage</del> :
(6) <del>Bruises</del> exceeding five percent of the apricot's surface.	(3) <del>Bruises</del> exceeding ten percent of the surface of the apricot.
(7) <del>Hail marks</del> that are:	(4) <del>Hail marks</del> that are more than:
(a) Not shallow and superficial; or	(a) 3/16 of an inch deep; or
(b) More than 3/8 of an inch in diameter in the aggregate; or	(b) 1/2 of an inch in diameter in the aggregate; or
(c) More than 1/8 inch in diameter when the skin has been broken.	(c) 1/2 inch in diameter when the skin has been broken.

Table 1  
"Damage" and "Serious Damage" for All Varieties of Apricots ~~except~~ the Riland Variety

Except for the Riland variety, the following are considered <del>damage</del> :	Except for the Riland variety, the following are considered <del>serious damage</del> :
(1) <del>Well-healed growth cracks</del> over 3/8 of an inch in length.	(1) <del>Well-healed growth cracks</del> that are more than 1/2 inch in length.
(2) <del>Punctures</del> over 3/16 of an inch in diameter.	(2) <del>Any deformity or injury causing the skin to break</del> more than 3/8 of an inch in diameter or which seriously affects the apricot's appearance.
(3) <del>Stem pulls</del> over 3/8 of an inch in diameter.	
(4) <del>Smooth shallow limb rubs</del> more than 1/4 of an inch in diameter.	
(5) <del>Russeting</del> affecting more than ten percent of the apricot's surface.	

Table 2  
"Damage" and "Serious Damage" for the Riland Variety of Apricots

For the Riland variety, the following are considered <del>damage</del> :	For the Riland variety, the following are considered <del>serious damage</del> :
(1) <del>Growth cracks</del> exceeding 3/8 inches in length.	(1) <del>Growth cracks</del> that are not well healed and are more than 1/2 inch in length.
(2) <del>Punctures</del> exceeding 1/4 of an inch in diameter.	
(3) <del>Stem pulls</del> exceeding 1/2 inch in diameter.	
(4) <del>Smooth shallow limb rubs</del> more than 1/4 of an inch in diameter.	

For the Riland variety, the following are considered <b>damage:</b>	For the Riland variety, the following are considered <b>serious damage:</b>
(5) <del>Russeting</del> affecting more than ten percent of the apricot's surface.	
(6) <del>Bruises</del> exceeding five percent of the apricot's surface.	(2) <del>Bruises</del> exceeding ten percent of the surface of the apricot.
(7) <del>Hail marks</del> that are:	(3) <del>Hail marks</del> that are more than:
(a) Not shallow and superficial; or	(a) 3/16 of an inch deep; or
(b) More than 3/8 of an inch in diameter in the aggregate; or	(b) 1/2 of an inch in diameter in the aggregate; or
(c) More than 1/8 inch in diameter when the skin has been broken.	(c) 1/2 inch in diameter when the skin has been broken.)

<b>Damage:</b>	<b>Serious damage:</b>
(1) <u>Well-healed growth cracks</u> over 3/8 of an inch in length.	(1) <u>Well-healed growth cracks</u> that are more than 1/2 inch in length.
(2) <u>Punctures</u> over 3/16 of an inch in diameter. Riland variety exceeding 1/2 inch.	(2) <u>Any deformity or injury causing the skin to break</u> more than 3/8 of an inch in diameter or which seriously affects the apricot's appearance.
(3) <u>Stem pulls</u> over 3/8 of an inch in diameter. Riland variety exceeding 1/2 inch.	
(4) <u>Smooth shallow limbrubs</u> more than 1/4 of an inch in diameter.	
(5) <u>Russeting</u> affecting more than ten percent of the apricot's surface which is: (a) <u>Reddish to brown</u> affecting more than ten percent of the surface; or (b) <u>Thick, rough and very dark</u> affecting more than five percent of the surface.	
(6) <u>Bruises</u> exceeding five percent of the apricot's surface.	(3) <u>Bruises</u> exceeding ten percent of the surface of the apricot.
(7) <u>Hail marks</u> that are: (a) <u>Not shallow and superficial</u> ; or (b) <u>More than 3/8 of an inch in diameter in the aggregate</u> ; or	(4) <u>Hail marks</u> that are more than: (a) <u>3/16 of an inch deep</u> ; or (b) <u>1/2 inch in diameter in the aggregate</u> ; or

<b>Damage:</b>	<b>Serious damage:</b>
(c) <u>More than 1/8 inch in diameter when the skin has been broken.</u> <u>One well-healed hail mark, not exceeding 1/8 inch in diameter is allowed.</u>	(c) <u>1/2 inch in diameter when the skin has been broken.</u> <u>Four well-healed hail marks where each mark does not exceed 1/8 inch in diameter is allowed.</u>
(8) <u>Dirt, appearing to the extent that it is readily apparent.</u>	(5) <u>Dirt, which is readily apparent and seriously affects the appearance.</u>

AMENDATORY SECTION (Amending WSR 05-12-036, filed 5/25/05, effective 6/25/05)

**WAC 16-406-020** (~~What tolerances apply to apricots?~~) **Grade and size tolerances.** ((+)) Numerical count may be used to determine percent of grade tolerances.

(1) When containers are marked with a numerical count, the apricots in any container must not vary more than one-quarter inch in diameter.

(2) To allow for variations incident to proper sizing, no more than ten percent, by count, in any package may be below the specified minimum size.

(3) To allow for variations incident to proper grading and handling, the following tolerances apply ((to apricots)):

(a) No more than ten percent ((of the apricots)) in any lot may be below grade requirements.

(b) ((Serious damage by insects must affect)) No more than five percent ((of the apricots in any lot)) for defects or damage by insect causing serious damage.

(c) No more than one percent ((must be affected by)) decay or internal breakdown.

(d) ((In addition,)) An additional tolerance: For Washington No. 1 grade, no more than ten percent, by count, ((of the apricots)) in any lot may be damaged (but not seriously damaged) by bruising.

((2)) (4) When applying the tolerances in subsection (1) of this section to the Washington combination grade:

(a) No part of any tolerance ((must)) can be used to reduce the percentage of Washington No. 1 apricots required for the combination grade.

(b) ~~((However,))~~ Individual containers may contain forty percent Washington No. 1 grade apricots if the entire lot averages fifty percent.

AMENDATORY SECTION (Amending WSR 05-12-036, filed 5/25/05, effective 6/25/05)

~~WAC 16-406-025 ((How are apricot tolerances applied to individual samples?))~~ **Application of tolerances.** ~~((If the averages for the entire lot are within the tolerances specified for the grade, the contents of individual samples are subject to the following limitations:))~~ Individual samples are subject to the following tolerances, provided the averages for the entire lot are within the tolerance specified in WAC 16-406-020.

<b>Package Weight <del>((and/or))</del> and Apricot Grade</b>	<b>With a Tolerance of:</b>	<b><del>((Individual Sample in Any Lot:))</del> Sample Tolerance:</b>	<b>Defects Allowed in a Sample</b>
(1) Packages containing more than ten pounds	Ten percent or more	Must have no more than one and one-half times the tolerance specified	No more than one apricot affected by decay or internal breakdown <del>((is permitted in any sample))</del> .
(2) Packages containing more than ten pounds	Less than ten percent	Must have no more than double the tolerance specified	No more than one apricot affected by decay or internal breakdown <del>((is permitted in any sample))</del> .
(3) Washington No. 1 grade packages containing ten pounds or less	Ten percent or less	May have more than three times the tolerances specified	At least one defective apricot may be permitted in any sample and one apricot or more than six percent (whichever is the larger amount) may be affected by decay or internal breakdown.
(4) Washington No. 2 grade packages containing ten pounds or less	Ten percent or less	May have more than three times the tolerances specified	N/A

AMENDATORY SECTION (Amending WSR 05-12-036, filed 5/25/05, effective 6/25/05)

**WAC 16-406-030 ~~((What))~~ Marking and packing requirements ~~((apply to apricots?))~~.**

((Note: The marking requirements in this section do not apply to apricots being sold or shipped to canneries.

~~(1) When a numerical count is used to pack apricots, the apricots in any container must not vary more than one-quarter inch in diameter.~~

~~(2) To allow for variations incident to proper sizing, no more than ten percent, by count, of the apricots in any package may be below the specified minimum size.~~

~~(3) Numerical count may be used to determine apricot grades.~~

~~(4) When apricots are prepared for market and/or offered for sale in containers (either open or closed,))~~ (1) The following information must be clearly ~~((stamped))~~ marked on each container:

- (a) Variety;
- (b) Grade;
- (c) Packer's, grower's or shipper's name and address; and
- (d) Count; or
- (e) Net weight and minimum diameter.

(2) Open catch weight bags are not required to meet the container marking requirements.

(3) Packed culls for fresh market must be clearly marked with the word "CULLS" in large letters at least two inches high as well as meeting all other marking requirements contained in this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-406-012 Do all apricot varieties mature in the same way?
- WAC 16-406-060 What grades apply to apricots?

**WSR 15-09-099  
PROPOSED RULES  
PUBLIC DISCLOSURE COMMISSION**

[Filed April 20, 2015, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-06-066.

Title of Rule and Other Identifying Information: WAC 390-37-020 Enforcement procedures—Initiation of a complaint and 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA, on May 28, 2015, at 9:30 a.m.

Date of Intended Adoption: May 28, 2015.

Submit Written Comments to: Lori Anderson, mail P.O. Box 40908, Olympia, WA 98504-0908, physical 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by May 26, 2015.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 390-37-040 currently requires a complaint filed with the commission to be signed by the complainant/member of the public under oath, if the complaint relates to an elected official or a candidate for elective office. The proposed amendments would (1) require that all complaints, regardless of the subject, filed with the commission be signed by the complainant/member of the public under oath and (2) clarify what information should be included with the complaint. These amendments attempt to (1) improve the efficiency of the complaint process by establishing more standardized procedures for filing complaints and (2) encourage more complete complaints.

Reasons Supporting Proposal: The commission believes these amendments will ultimately reduce the time needed to process complaints and make the preliminary analysis more efficient.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Statute Being Implemented: RCW 42.17A.345.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No increased costs to the agency are expected.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-2737; and Enforcement: Philip Stutzman, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

April 20, 2015

Lori Anderson  
Communications and  
Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-37-020 Enforcement procedures—(~~Initiation of complaint~~) Alleging a violation.** ~~((1) A complaint alleging a)~~ Alleged violations of chapter 42.17A RCW may be brought to the attention of the commission staff by:

~~((a))~~ (1) A member of the public;

~~((b))~~ (2) The commission staff;

~~((c))~~ (3) A commission member, who shall then be disqualified from participating in the decision of an enforcement ~~(hearing)~~ matter that may arise from ~~(the)~~ a complaint regarding the alleged violation(s);

~~((d))~~ (4) Referral from the office of the attorney general or any other law enforcement agency; or

~~((e))~~ (5) A state agency, local agency or member of a state or local agency.

~~((2) The person or entity against whom a complaint is filed shall be known as the respondent.)~~

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission.** (1) A complaint filed with the commission ~~(relating to an elected official or a candidate for elective office, shall)~~ must be in writing ~~(and signed by the complainant under oath)~~. Complainants are encouraged to use the complaint form provided by the commission on its web site.

(2) ~~(A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall be made in writing.~~

~~(3))~~ A complaint ~~(filed under the provisions of either subsection (1) or (2) of this section shall)~~ must include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible;

(b) All available documentation and other evidence which the complainant is able to supply ~~(to demonstrate a reason for believing that a violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred; and)~~ that supports the allegations made in the complaint. Information about where documents or evidence can be obtained should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, e-mail addresses, and U.S. mail address, if known, of any witnesses or other persons who have knowledge of facts that support the complaint;

(d) The complainant's name, e-mail address, U.S. mail address, and telephone number ~~(and other contact information for the complainant.); and~~

(e) The signature of the complainant certifying under penalty of perjury under the laws of the state of Washington

that the information provided with the complaint is true and correct to the best of his or her knowledge and belief.

(3) The person or entity against whom a complaint is filed is known as the respondent.

**WSR 15-09-100**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)

[Filed April 20, 2015, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-084.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on June 9, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 10, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., June 9, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 26, 2015, TTY (360) 664-6178 or (360) 664-6092 or e-mail [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0010 to include the following changes:

- To clarify the definitions of eating and set-up help in response to recent board of appeals decisions;
- To add new definitions related to modified adjusted gross income eligibility group and to clarify existing definitions related to long-term care services;
- To clarify the definition of informal support in response to decisions from the health care authority board of appeals. The department will also amend WAC 388-106-0130 in response to decisions from the health care authority board of appeals; and
- To amend existing definitions to include enhanced services facilities.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rachele Ames, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

April 17, 2015

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-10 issue of the Register.

**WSR 15-09-105**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 20, 2015, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-088.

Title of Rule and Other Identifying Information: WAC 392-129-150 School emergency closure—Implementation of superintendent of public instruction's determination of eligibility.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 Washington Street, Olympia, WA 98504-7200, on May 28, 2015, at 10:00 a.m.

Date of Intended Adoption: May 29, 2015.

Submit Written Comments to: Michael J. (Mike) Dooley, P.O. Box 47200, Olympia, WA 98504-7200, e-mail [mike.dooley@k12.wa.us](mailto:mike.dooley@k12.wa.us), fax (360) 725-6505, by May 21, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by May 21, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amended rule provides further clarification for school emergency closure eligibility.

Reasons Supporting Proposal: WAC 392-129-150 requires an emergency declaration by the governor to excuse five days by the superintendent of public instruction for a school emergency closure. These proposed changes to WAC 392-129-150 will keep the emergency declaration by the governor, and absent an emergency declaration by the governor, allow the superintendent of public instruction to excuse five days for a school emergency closure when the unforeseen natural event, mechanical failure, or action or inaction by one or more persons caused a loss of life or significant injury to a

person or persons on a school campus, and the event prevented operation of the school.

Statutory Authority for Adoption: RCW 28A.41.170(2), 28A.150.290.

Statute Being Implemented: RCW 28A.150.290.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This amended rule provides further clarification for school emergency closure eligibility.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Michael J. (Mike) Dooley, OSPI, Olympia, Washington, (360) 725-6305; Implementation: T. J. Kelly, OSPI, Olympia, Washington, (360) 725-3601; and Enforcement: JoLynn Berge, OSPI, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It has minimal to no impact on state funding.

A cost-benefit analysis is not required under RCW 34.05.328. It has minimal to no impact on state funding.

April 20, 2015  
Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 08-13-049, filed 6/12/08, effective 7/13/08)

**WAC 392-129-150 School emergency closure—Implementation of superintendent of public instruction's determination of eligibility.** (1) If the superintendent of public instruction determines that the school district has provided a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district from operating the school, the school district shall receive its full annual allocation of state moneys. However, the superintendent of public instruction may only excuse the school district for up to two scheduled school days per incident and not for more than three scheduled school days per school year. Provided, the superintendent may excuse more than two scheduled school days per incident or three scheduled school days per year.

(a) When the unforeseen natural event, mechanical failure, or action or inaction by one or more persons caused a loss of life or significant injury to a person or persons on a school campus; or

(b) Where the school is located in a county which was subject to a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

(2) If the district did not conclusively demonstrate that it was prevented from operating the school(s), its allocation of state moneys shall be reduced by:

~~((2))~~ (a) Dividing the number of days lost by one hundred eighty;

~~((2))~~ (b) Multiplying the result obtained in subsection (1) of this section by the annual average full-time equivalent enrollment in the school; and

~~((3))~~ (c) Dividing the result obtained in subsection (2) of this section by the annual average full-time equivalent enrollment in the school district.

**WSR 15-09-110**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Physical Therapy)  
[Filed April 21, 2015, 8:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-104.

Title of Rule and Other Identifying Information: Chapter 246-915 WAC, Physical therapists and physical therapist assistants. Proposing rules: (1) That restate the education and training requirements identified in the law needed to receive an initial endorsement to perform spinal manipulation and manipulative mobilization of the spine, and to establish requirements as a clinical supervisor; and (2) for continuing education and training requirements for suicide screening, and referral for physical therapists (PT) and physical therapist assistants (PTA).

Hearing Location(s): The Heathman Lodge, General Grant Room, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on June 1, 2015, at 10:30 a.m.

Date of Intended Adoption: June 1, 2015.

Submit Written Comments to: Kris Waidely, Program Manager, Board of Physical Therapy, P.O. Box 47852, Olympia, WA 98501-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 27, 2015.

Assistance for Persons with Disabilities: Contact Kris Waidely by May 26, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement ESHB 2160 (chapter 116, Laws of 2014). The law authorizes qualified PTs to do spinal manipulation after they have received an endorsement from the department. The rules identify the qualifications required for a licensed PT to receive an endorsement to do spinal manipulation and define the qualifications to be a clinical supervisor. The proposed rules also implement ESHB 2315 (chapter 7, Laws of 2014) that requires rules be adopted identifying a one-time, three-hour training for suicide screening and referral for PTs and PTAs.

Reasons Supporting Proposal: ESHB 2160 expands the scope of practice of PTs to perform spinal manipulation. The law establishes the education and training requirements to receive an initial endorsement to perform spinal manipulation and manipulative mobilization of the spine. Rules are needed to establish the qualifications to be a clinical supervisor for the training. It's the legislative intent of ESHB 2315 that educating PTs and PTAs in suicide screening and referral may help lower the suicide rate in Washington. Rules are needed to establish this one-time training.

Statutory Authority for Adoption: RCW 18.74.023 and 43.70.442.

Statute Being Implemented: RCW 18.74.085 and 43.70.442.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidely, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4847, fax (360) 236-2901, e-mail kris.waidely@doh.wa.gov.

April 21, 2015  
Blake T. Maresh  
Executive Director

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

**WAC 246-915-085 Continuing competency.** Licensed physical therapists and physical therapist assistants must provide evidence of continuing competency in the form of continuing education and employment related to physical therapy every two years.

(1) ~~((Education—))~~ Licensed physical therapists and physical therapist assistants must complete 40 hours of continuing education every two years ~~((as required in chapter 246-12 WAC, Part 7.~~

~~((a))~~.

(2) Physical therapists and physical therapist assistants are required to complete a one-time training in suicide assessment that includes risk assessment, screening, and referral elements appropriate for this profession. The training must be at least three hours in length and must meet the requirements for training per WAC 246-915-086.

A physical therapist or physical therapist assistant must complete a one-time training required by this section during the first full continued competency reporting period after June 12, 2014, or the first full continued competency reporting period after initial licensure, whichever occurs later.

(3) Acceptable continuing education specifically relating to the practice of physical therapy~~((;~~

~~((b))~~ includes, but is not limited to, the following:

(a) Participation in a course with specific goals and objectives relating to the practice of physical therapy;

~~((c))~~ (b) Audio or video recordings or other multimedia devices, and/or book/article review. A maximum of ten hours may be used for books/articles reviewed;

~~((d))~~ (c) Correspondence course work completed.

~~((e))~~ (4) A physical therapist with a spinal manipulation endorsement must complete at least ten hours of continu-

ing education per continuing competency reporting period directly related to spinal manipulation. At least five hours of the training must be related to procedural technique and application of spinal manipulation.

~~((5))~~ In addition to the ~~((requirements in subsection (1) of this section,))~~ required continuing education hours, physical therapists and physical therapist assistants must complete 200 hours involving the application of physical therapy knowledge and skills, which may be obtained as follows:

(a) In the clinical practice of physical therapy; or

(b) In nonclinical activities that involve the direct application of physical therapy skills and knowledge, examples of which include, but are not limited to:

(i) Active service on boards or in physical therapy school or education program accrediting bodies;

(ii) Physical therapy teaching or presentations on:

(A) Patient/client management, prevention and wellness;

(B) Physical therapy ethics and standards of practice;

(C) Professional advocacy/involvement;

(iii) Developing course work in physical therapy schools or education programs or physical therapy continuing education courses;

(iv) Physical therapy research as a principal or associate researcher; and

(v) Physical therapy consulting.

~~((3-Licensees))~~ (6) Licensed physical therapists shall maintain records of all activities relating to continuing education and professional experience for a period of four years. Acceptable documentation shall mean:

(a) Continuing education. Certificates of completion, course sponsors, goals and objectives of the course, credentials of the presenter as a recognized authority on the subject presented, dates of attendance and total hours, for all continuing education being reported.

(b) Audio or video recordings or other multimedia devices, and/or book/article review. A two-page synopsis of each item reviewed must be written by the licensee.

(i) For audio or video recordings or other multimedia devices, a two-page double-spaced synopsis for every one to four hours of running time must be written by the licensee. Time spent writing a synopsis is not reportable.

(ii) For book/article review, a two-page double-spaced synopsis on each subject reviewed must be written by the licensee. Time spent writing a synopsis is not reportable.

(c) Correspondence course work completed. Course description and/or syllabus and copies of the completed and scored examination must be kept on file by the licensee.

(d) Physical therapy employment. Certified copies of employment records or proof acceptable to the board of physical therapy employment for the hours being reported.

#### NEW SECTION

**WAC 246-915-086 Suicide assessment training standards.** (1) A qualifying training in suicide assessment must:

(a) Be an empirically supported training in suicide assessment that includes risk assessment, screening, and referral;

(b) Be provided by a single provider and must be at least three hours in length which may be provided in one or more sessions.

(2) The hours spent completing a training program in suicide assessment under this section count toward meeting any applicable continued competency requirements.

#### NEW SECTION

**WAC 246-915-380 Spinal manipulation—Endorsement. (Effective July 1, 2015, until June 30, 2020.)** (1) A physical therapist may perform spinal manipulation only after being issued a spinal manipulation endorsement by the secretary. The secretary, upon approval by the board, shall issue an endorsement to a physical therapist who has at least one year of full-time, orthopedic, postgraduate practice experience that consists of direct patient care, averaging at least thirty-six hours a week, and who provides evidence in a manner acceptable to the board of all of the following additional requirements:

(a) Training in differential diagnosis of no less than one hundred hours outlined within a course curriculum;

(b) Didactic and practical training related to the delivery of spinal manipulative procedures of no less than two hundred fifty hours clearly delineated and outlined in a course curriculum;

(c) Specific training in spinal diagnostic imaging of no less than one hundred fifty hours outlined in a course curriculum; and

(d) At least three hundred hours of supervised clinical practical experience in spinal manipulative procedures. The supervised clinical practical experience must:

(i) Be supervised by a clinical supervisor who:

(A) Holds a spinal manipulation endorsement under this section;

(B) Is a licensed chiropractor or osteopathic physician and surgeon; or

(C) Holds an endorsement or advanced certification the training requirements for which are commensurate with the training requirements as specified in WAC 246-915-382;

(ii) Be under the close supervision of the clinical supervisor for a minimum of the first one hundred fifty hours of the supervised clinical practical experience, after which the supervised clinical practical experience must be under the direct supervision of the clinical supervisor;

(iii) Be completed within eighteen months of completing the educational requirements in (a) through (c) of this subsection, unless the physical therapist has completed the educational requirements in (a) through (c) of this subsection prior to July 1, 2015, in which case the supervised clinical practical experience must be completed by January 1, 2017.

(2) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section shall consult with a health care practitioner, other than a physical therapist, authorized to perform spinal manipulation if spinal manipulative procedures are required beyond six treatments.

(3) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section may not:

(a) Have a practice in which spinal manipulation constitutes the majority of the services provided;

(b) Practice or utilize chiropractic manipulative therapy in any form;

(c) Delegate spinal manipulation; or

(d) Bill a health carrier for spinal manipulation separately from, or in addition to, other physical therapy procedures.

(4) A physical therapist holding a spinal manipulation endorsement under this section shall complete continuing education directly related to spinal manipulation as specified in WAC 246-915-085.

(5) If a physical therapist is intending to perform spinal manipulation on a patient who the physical therapist knows is being treated by a chiropractor for the same diagnosis, the physical therapist shall make reasonable efforts to coordinate patient care with the chiropractor to prevent conflict or duplication of services.

#### NEW SECTION

**WAC 246-915-381 Spinal manipulation—Endorsement. (Effective July 1, 2020.)** (1) A physical therapist may perform spinal manipulation only after being issued a spinal manipulation endorsement by the secretary. The secretary, upon approval by the board, shall issue an endorsement to a physical therapist who has at least one year of full-time, orthopedic, postgraduate practice experience that consists of direct patient care and averages at least thirty-six hours a week and who provides evidence in a manner acceptable to the board of all of the following additional requirements:

(a) Training in differential diagnosis of no less than one hundred hours outlined within a course curriculum;

(b) Didactic and practical training related to the delivery of spinal manipulative procedures of no less than two hundred fifty hours clearly delineated and outlined in a course curriculum;

(c) Specific training in spinal diagnostic imaging of no less than one hundred fifty hours outlined in a course curriculum; and

(d) At least three hundred hours of supervised clinical practical experience in spinal manipulative procedures. The supervised clinical practical experience must:

(i) Be supervised by a clinical supervisor who:

(A) Holds a spinal manipulation endorsement under this section; or

(B) Is a licensed chiropractor or osteopathic physician and surgeon;

(ii) Be under the close supervision of the clinical supervisor for a minimum of the first one hundred fifty hours of the supervised clinical practical experience, after which the supervised clinical practical experience must be under the direct supervision of the clinical supervisor as defined in RCW 18.74.010;

(iii) Be completed within eighteen months of completing the educational requirements in (a) through (c) of this subsection, unless the physical therapist has completed the educational requirements in (a) through (c) of this subsection prior to July 1, 2015, in which case the supervised clinical practical experience must be completed by January 1, 2017.

(2) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section shall consult

with a health care practitioner, other than a physical therapist, authorized to perform spinal manipulation if spinal manipulative procedures are required beyond six treatments.

(3) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section may not:

(a) Have a practice in which spinal manipulation constitutes the majority of the services provided;

(b) Practice or utilize chiropractic manipulative therapy in any form;

(c) Delegate spinal manipulation; or

(d) Bill a health carrier for spinal manipulation separately from, or in addition to, other physical therapy procedures.

(4) A physical therapist holding a spinal manipulation endorsement under this section shall complete continuing education directly related to spinal manipulation as specified in WAC 246-915-085.

(5) If a physical therapist is intending to perform spinal manipulation on a patient who the physical therapist knows is being treated by a chiropractor for the same diagnosis, the physical therapist shall make reasonable efforts to coordinate patient care with the chiropractor to prevent conflict or duplication of services.

#### NEW SECTION

**WAC 246-915-382 Spinal manipulation—Clinical supervisor.** To qualify as a clinical supervisor under WAC 246-915-380 (1)(d)(i)(C), a person must be a licensed physical therapist who holds an endorsement or advanced certification for which the training requirements are commensurate with the training requirements in WAC 246-915-380 (1)(a) through (d). A clinical supervisor must provide direct and close supervision per the definitions in RCW 18.74.010, and the clinical supervisor under WAC 246-915-380 (1)(d)(i)(C) must have at least one of these credentials:

(1) Orthopedic Manual Therapy Fellowship/Fellow American Academy of Orthopedic Manual Physical Therapy designation trained under an American Board of Physical Therapy residencies and Fellowship Education.

(2) Orthopedic Physical Therapy Residency trained under an American Board of Physical Therapy residencies and Fellowship Education credentialed program.

(3) Orthopedic Certified Specialist/Orthopedic Clinical Specialist designation (American Board of Physical Therapy Specialties).

(4) Orthopedic manual physical therapy certification trained (Certified Functional Manual Therapist (Institute of Physical Art)).

(5) Certified Manual Physical Therapist (North American Institute of Orthopaedic Manual Therapy/NAIOMT).

(6) Certified Orthopedic Manual Therapist (Maitland Australian Physiotherapy Seminars/MAPS).

(7) North American Institute of Orthopaedic Manual Therapy/NAIOMT.

(8) Ola Grimsby Institute, and Manual Therapy Certification (Evidence in Motion/EIM).

(9) University of St. Augustine for Health Sciences.

(10) Other certifications approved by the board.

#### **WSR 15-09-112**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

(Board of Hearing and Speech)

[Filed April 21, 2015, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-03-068.

Title of Rule and Other Identifying Information: Chapter 246-828 WAC, Hearing and speech, amending the chapter to implement EHB 2108 (chapter 189, Laws of 2014) to establish standards for a nine-month certificate as a route to licensure for hearing aid specialists. Other changes include general updates for housekeeping, exam standards, continuing education (CE), sexual misconduct standards, and adding a provision for temporary practice permits for military spouses.

Hearing Location(s): Department of Health, Creekside Two at CenterPoint, 20425 72nd Avenue South, Suite 309, Kent, WA 98032, on May 27, 2015, at 9:00 a.m.

Date of Intended Adoption: May 27, 2015.

Submit Written Comments to: Janette Benham, Program Manager, Board of Hearing and Speech, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May, 20, 2015.

Assistance for Persons with Disabilities: Contact Janette Benham by May 13, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of hearing and speech is proposing rule amendments to implement EHB 2108 which changed the hearing instrument fitter/dispenser credential to a hearing aid specialist credential and added a route to licensure for hearing aid specialists that includes a practical exam and a nine month certificate from a hearing aid specialist program. The rules also propose general housekeeping updates, adding CE requirements for speech-language pathology assistants, adding multicultural education as an acceptable CE category, updating exam standards, updating sexual misconduct rules, and adding a provision for a temporary practice permit for military spouses.

Reasons Supporting Proposal: EHB 2108 amended chapter 18.35 RCW to change the hearing instrument fitter/dispenser credential to a hearing aid specialist credential and add a practical exam and a nine month certificate as a pathway to licensure for hearing aid specialists. In addition, RCW 43.70.041 requires a review of rules every five years. The board is updating and revising rules for general housekeeping changes to meet these requirements.

Statutory Authority for Adoption: RCW 18.35.161, 18.130.062, 18.130.020, and EHB 2108.

Statute Being Implemented: Chapter 18.35 RCW, EHB 2108, RCW 43.70.041, 18.340.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, board of hearing and speech, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Janette Benham, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4857.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule

would not impose more than minor costs on businesses in the industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Janette Benham, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4857, fax (360) 236-2901, e-mail janette.benham@doh.wa.

April 21, 2015  
James E. Deal  
Chair

AMENDATORY SECTION (Amending WSR 03-21-114, filed 10/20/03, effective 11/20/03)

**WAC 246-828-020 Examinations.** ~~((1) The examination required of hearing instrument fitter/dispenser license applicants shall be the International Institute for Hearing Instrument Studies (HHIS) including a passing score according to standards established by the International Hearing Society.~~

~~Applications for examinations shall be received by the department at least sixty days prior to the date of the scheduled examination. If the application is received less than sixty days before the next scheduled examination, the applicant will be scheduled for the second examination following receipt of the application.~~

~~(2) The examination required of audiology license applicants shall be the National Examination in Audiology (NESPA), including a passing examination score of six hundred or greater.~~

~~(3) The examination required of speech-language pathologist license applicants shall be the National Examination in Speech Language Pathology (NESPA), including a passing examination score of six hundred or greater.)~~ (1) All hearing aid specialist credential applicants are required to take the written International Licensing Exam developed by the International Hearing Society or other entity approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(2) Hearing aid specialist credential applicants who have completed a board-approved nine-month certificate program are required to take the practical examination approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(3) Audiology credential applicants are required to take the Praxis audiology exam or other entity approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(4) Speech-language pathologist credential applicants are required to take the Praxis speech-language pathology exam or other entity approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(5) All credential applicants are required to take and pass a jurisprudence examination approved by the board. The passing score on the jurisprudence examination is one hundred percent.

AMENDATORY SECTION (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

**WAC 246-828-025 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree(;) or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution ~~((shall))~~ must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

(4) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

(5) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct ~~((patient/client))~~ patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work.

(a) "Full-time professional experience" means at least 30 hours per week over 36 weeks. Postgraduate professional work experience must be obtained over a period of at least 36 weeks. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

(b) "Part-time equivalent" means any of the following:

(i) 15-19 hours per week over 72 weeks;

(ii) 20-24 hours per week over 60 weeks;

(iii) 25-29 hours per week over 48 weeks.

~~((3))~~ "Supervising speech-language pathologist" means a licensed speech-language pathologist or speech-language pathologist certified as an educational staff associate by the superintendent of public instruction.

~~(4) "Direct supervision of a speech-language pathology assistant" means the supervising speech-language pathologist is on-site and in view during the procedures or tasks.~~

~~(5) "Indirect supervision of a speech-language pathology assistant" means the procedures or tasks are performed under~~

~~the speech language pathologist's overall direction and control, but the speech language pathologist's presence is not required during the performance of the procedures or tasks.)~~

(6) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

**AMENDATORY SECTION** (Amending WSR 95-19-017, filed 9/7/95, effective 10/8/95)

**WAC 246-828-040 Examination review and appeal procedures—Hearing aid specialist.** (1) ~~(Each applicant who takes the examination for licensure and does not pass any part of the examination shall be provided information indicating the area of the examination in which the applicant was deficient with the notice of the examination results.~~

~~(2))~~ Any applicant who does not pass ~~((a part of))~~ the examination may request an informal review by the board of ~~((his or her))~~ the examination results. This request must be in writing and must be received by the department within thirty days of the ~~((postmark of the notice of examination results))~~ date the examination results were transmitted to the applicant.

~~((3))~~ (2) The procedure for the informal review is as follows:

(a) An applicant submitting a written request for an informal review by the deadline described in subsection ~~((2))~~ (1) of this section ~~((shall))~~ will be contacted by the department to arrange an appointment to appear ~~((personally in the Olympia office))~~ in person at a time and place determined by the department to review the ~~((part or parts of the examination failed))~~ examination.

(b) The applicant ~~((shall))~~ will be provided a form to complete ~~((in the Olympia office))~~ in defense of the applicant's examination answers ((and/or examination performance)) at the time of the examination review.

(c) The applicant ~~((shall))~~ will be identified only by applicant number for the purpose of this procedure. Letters of reference or requests for special consideration ~~((shall))~~ will not be read or considered by the board.

(d) ~~((That))~~ The applicant may bring textbooks or published material for use in completing the informal review, but such material must be retained by the ~~((Olympia office))~~ department until the board has completed the informal review ~~((request submitted by the applicant)).~~

(e) The applicant ~~((shall))~~ will not be allowed to take any notes or materials from the ~~((office upon leaving))~~ review location.

(f) The information submitted to the board for its consideration in the informal review must state the specific reason or reasons why the results of the examination should be changed. The board ~~((shall))~~ will not modify examination results unless the applicant can prove or show conclusive evidence of error in examination content or procedure, or bias, prejudice, or discrimination in the examination process. The board ~~((shall))~~ will not consider a challenge to the examination unless the total revised score including the questions or sections to be reviewed could result in a passing score in the examination.

(g) The board ~~((shall))~~ will schedule a closed session meeting to conduct the informal review of the material submitted by the applicant.

(h) The applicant ~~((shall))~~ will be notified in writing of the results of the informal review.

~~((4))~~ Any applicant who is not satisfied with the result of the examination review may request that a formal hearing be held before the board pursuant to the Administrative Procedure Act. Such a hearing request must be received by the department within thirty days of postmark of the notification of the result of the board's informal review of the applicant's examination results. The request must be in writing and must state the specific reasons why the results of the examination should be changed. The board shall not modify examination results unless the applicant can prove or show conclusive evidence of error in examination content or procedure, or bias, prejudice, or discrimination in the examination process. The board shall not consider a challenge to the examination unless the total revised score including the questions or sections to be reconsidered could result in a passing score in the examination.

(5) The hearing shall not be scheduled until the applicant and the state's attorney have appeared before an administrative law judge for a prehearing conference to consider the following:

- ~~(a) The simplification of issues;~~
- ~~(b) The necessity of amendments to the notice of specific reasons for the examination result modification;~~
- ~~(c) The possibility of obtaining stipulations, admission of facts and documents;~~
- ~~(d) The limitation of the number of expert witnesses;~~
- ~~(e) A schedule for completion of all discovery; and;~~
- ~~(f) Such other matters as may aid in the disposition of the proceeding.~~

~~(6) The administrative law judge shall enter an order which recites the actions taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent prehearing order.~~

~~(7) Applicants shall receive at least twenty days notice of the time and place of the formal hearing. The hearing shall be restricted to the specific reasons the applicant has identified as the basis for a change in the examination score.)~~

**AMENDATORY SECTION** (Amending WSR 06-19-109, filed 9/20/06, effective 10/21/06)

**WAC 246-828-045 Interim permit—Audiologist and speech-language pathologist.** (1) The department ~~((shall))~~ will issue an interim permit to any audiologist or speech-language pathologist applicant who has shown to the satisfaction of the department that the applicant:

(a) Has completed the academic course work and clinical practicum as required in RCW 18.35.040.

(b) Is supervised by a speech-language pathologist or audiologist who is licensed and in good standing under chap-

ter 18.35 RCW(~~(, in good standing for at least two years))~~ unless otherwise approved by the board.

(c) Has paid the application and permit fee as required by WAC 246-828-990.

~~(2) ((RCW 18.35.030, 18.35.110, 18.35.120 apply to interim permit holders. An audiology interim permit holder may engage in the fitting and dispensing of hearing instruments.~~

~~(3))~~ The interim permit must contain the name and title of the supervisor licensed under chapter 18.35 RCW.

~~((4) A licensed audiologist or speech-language pathologist under chapter 18.35 RCW may supervise up to four interim permit holders concurrently.)~~ (3) The interim permit expires one year from the date it is issued. The board may extend the interim permit an additional twenty-four months to accommodate part-time postgraduate professional work experience or upon request of the interim permit holder due to illness or extenuating circumstances.

AMENDATORY SECTION (Amending WSR 06-19-109, filed 9/20/06, effective 10/21/06)

**WAC 246-828-04503 Postgraduate professional work experience—Audiologist and speech-language pathologist.** (1) The interim permit period must consist of at least thirty-six weeks of full-time postgraduate professional work experience or its part-time equivalent.

(a) Postgraduate professional work experience of less than fifteen hours per week does not meet the requirement and may not be counted toward the postgraduate professional work experience. Experience of more than thirty hours per week may not be used to shorten the postgraduate professional work experience to less than thirty-six weeks.

(b) The supervisor must submit to the department, on a form provided by the department, documentation of supervision and progress during the postgraduate professional work experience, at the end of each three-month period.

(2) The supervisor must cosign all purchase agreements in the fitting and dispensing of hearing instruments.

~~((3) The interim permit expires one year from the date it is issued. The board may extend the interim permit an additional twenty-four months to accommodate part-time postgraduate professional work experience or upon request of the interim permit holder due to illness or extenuating circumstances.))~~

AMENDATORY SECTION (Amending WSR 06-19-109, filed 9/20/06, effective 10/21/06)

**WAC 246-828-04505 Supervisor delegation for audiologist and speech-language pathologist interim permit holders.** (1) The supervisor may delegate portions of the supervisory activities to another qualified supervisor of the same discipline in another facility. Before delegating supervision responsibility the supervisor must ~~((seek))~~ obtain department approval.

(2) The department may approve ~~((transfer of an interim permit holder to another eligible))~~ a qualified supervisor upon the written request of ~~((either))~~ the supervisor or the interim permit holder.

(3) ~~((The interim permit holder must immediately report the termination of the supervisor to the department in writing. The interim permit holder may only resume practice after the supervisor is approved by the department.~~

(4)) The supervisor of an interim permit holder who desires to terminate the responsibility as supervisor must immediately notify the department in writing of the termination. The supervisor is responsible for the interim permit holder until the notification of termination is received by the department.

(4) The interim permit holder must immediately report the termination of a supervisor to the department in writing. The interim permit holder may only practice with an approved supervisor.

(5) An audiologist or speech-language pathologist licensed and in good standing under chapter 18.35 RCW may supervise up to four interim permit holders concurrently.

AMENDATORY SECTION (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

**WAC 246-828-075 Supervisors of students.** (1) Students enrolled in a board approved program may perform ~~((the duties of a))~~ hearing ~~((instrument fitter/dispenser))~~ aid specialist, audiologist, speech-language pathologist, or speech-language pathology assistant duties in the course of their training under ~~((appropriate))~~ supervision.

(a) A speech-language pathology student((s)) must be supervised by a speech-language pathologist licensed and in good standing under chapter 18.35 RCW((, in good standing for at least two years)).

(b) An audiology student((s)) must be supervised by an audiologist licensed in good standing under chapter 18.35 RCW((, in good standing for at least two years)).

(c) A hearing ((instrument fitter and dispenser)) aid specialist student((s)) must be supervised by ((either)) a hearing ((instrument fitter/dispenser or a licensed)) aid specialist or an audiologist licensed and in good standing under chapter 18.35 RCW((, in good standing for at least two years)) who has practiced for at least thirty-six of the last forty-eight months immediately preceding the beginning of supervision.

(2) Students may only perform ~~((only))~~ those activities ~~((that are))~~ within the scope of ~~((the profession as defined by the training program in which they are enrolled))~~ practice for which they are adequately trained.

(3) The student ~~((shall))~~ must at all times wear an identification badge readily visible to the public that identifies him or her as a student.

(4) The licensee who is supervising hearing ~~((instrument fitting and dispensing students must be physically present on the premises at all times. The supervisor))~~ aid specialist students must cosign all purchase agreements for the sale of hearing instruments. A supervisor may only be in a supervisor/supervisee relationship with a maximum of three students at a time.

(5) The licensee who is supervising speech-language pathology or audiology students may include simultaneous observations with the student or the submission of written reports or summaries by the student for supervisor monitoring, review and approval. At least fifty percent of each stu-

dent's time in each diagnostic evaluation, including screening and identification, must be observed directly by a supervisor. The observations may take place on site or by closed-circuit television.

AMENDATORY SECTION (Amending WSR 98-06-079, filed 3/3/98, effective 4/3/98)

**WAC 246-828-080 Minimum standards of equipment.** Minimum equipment in the fitting and dispensing of hearing instruments ~~((shall))~~ **must** include:

(1) Access to a selection of hearing instrument models, and hearing instrument supplies and services sufficiently complete to accommodate the various ~~((user))~~ **patient or client** needs.

(2) Facilities for the personal comfort of customers.

(3) A test environment with background noise no greater than current American National Standards Institute (ANSI) specifications ~~((S3.1-1960 (R-1971)))~~ S3.6-1996 plus 15 decibels (dB). When nonstandard environments must be used, appropriate procedures ~~((shall))~~ **must** be employed and documented.

(4) Pure tone audiometer calibrated in accordance with WAC 246-828-090.

(5) Equipment appropriate for conducting speech audiometry (testing).

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-090 Standards for equipment calibration.** (1) All electronic equipment utilized by licensees for the determination of audiometric thresholds for pure tones and for speech ~~((shall))~~ **must** conform to all current standards of the American National Standards Institute (ANSI). Licensees ~~((shall insure))~~ **must confirm** that all such audiometric equipment has been evaluated electrically and acoustically at least once each year, adjusted or repaired if necessary, and that conformity with ~~((such))~~ ANSI standards was determined at that time. Licensees **must** maintain calibration records permanently and ~~((licensees shall))~~ make the records available for inspection by the department at any time. No licensee may certify the calibration of his or her own equipment unless authorized to do so by the department. In addition, all licensees must use routine procedures for the daily inspection of audiometric equipment, or prior to use if used less often than on a daily basis, to generally determine that it is in normal working order.

(2) Hearing instruments, assistive listening devices, and electronic equipment used for assessment ~~((and/))~~ or monitoring of auditory and vestibular function must be maintained according to manufacturer's specifications.

(3) All instrumental technology used to diagnose ~~((and/))~~ or treat disorders of communication, swallowing, and hearing ~~((shall))~~ **must** be maintained in proper working order and be properly calibrated according to ~~((accepted standards))~~ manufacturer's specifications.

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-095 Audiology minimum standards of practice.** Licensed audiologists are independent practitioners who provide a comprehensive array of services related to the identification, assessment, ~~((habitation/))~~ habilitation and rehabilitation, and prevention of auditory and vestibular impairments.

Audiologists serve in a number of roles including but not limited to clinician, therapist, teacher, consultant, researcher, and administrator. Audiologists provide services in hospitals, clinics, schools, nursing facilities, care centers, private practice, and other settings in which audiological services are relevant. Audiologists provide services to individuals of all ages.

Audiologists ~~((must))~~ **may** engage in and supervise only those aspects of the profession that are within the scope of their education, training, and experience.

Standard procedures for providing audiology services may include one or more of the following:

(1) Case history including:

(a) Documentation of referrals.

(b) Historical review of the nature, onset, progression and stability of the hearing problem, and associated otic and ~~((/or))~~ vestibular symptoms.

(c) Review of communication difficulties.

(d) Review of medical, pharmacology, vocational, social, and family history pertinent to the etiology, assessment, and management of the underlying hearing disorder.

(2) Physical examination of the external ear including:

(a) Otoscopic examination of the external auditory canal to detect:

(i) Congenital or traumatic abnormalities of the external canal or tympanic membrane.

(ii) Inflammation or irritation of the external canal or tympanic membrane.

(iii) Perforation of the tympanic membrane ~~((and/))~~ or discharge from the external canal.

(iv) A foreign body or impacted cerumen in the external canal.

(b) Cerumen management to clean the external canal and to remove excess cerumen for the preservation of hearing.

(c) Referral for otologic evaluation and ~~((/or))~~ treatment when necessary.

(3) Identification of audiometry:

(a) Hearing screening administered as needed, requested, or mandated for those persons who may be identified as at risk for hearing impairment.

(b) Referral of persons who fail the screening for rescreening, audiologic assessment ~~((and/))~~, or for medical or other examination and services.

(c) Audiologists may perform speech and language screening measures for initial identification and referral.

(4) Assessment of auditory function including:

(a) The administration of behavioral and ~~((/or))~~ objective measures of the peripheral and central auditory system to determine the presence, degree, and nature of hearing loss or central auditory impairment, the effect of the hearing impairment on communication, and ~~((/or))~~ the site of the lesion

within the auditory system. Assessment may also include procedures to detect and quantify nonorganic hearing loss.

(i) When traditional audiometric techniques cannot be employed as in infants, children, or multiple impaired patients or clients, developmentally appropriate behavioral and ~~(or)~~ objective measures may be employed.

(ii) Assessment and intervention of central auditory processing disorders in which there is evidence of communication disorders may be provided in collaboration with other professionals.

(b) Interpretation of measurement recommendations for habilitative ~~(+)~~ or rehabilitative management ~~((and+))~~ or referral for further evaluation and the counseling of the patient or client and family.

(5) Assessment of vestibular function including administration and interpretation of behavioral and objective measures of equilibrium to detect pathology within the vestibular system, to determine the site of lesion, to monitor changes in balance, and to determine the contribution of visual, vestibular, and proprioceptive systems to balance.

(6) Habilitation ~~(+)~~ and rehabilitation of auditory and vestibular disorders including:

(a) Aural rehabilitation therapy.

(b) Fitting and dispensing of hearing instruments and assistive listening devices.

(c) Habilitative and rehabilitative nonmedical management of disorders of equilibrium.

(7) Industrial and community hearing conservation programs.

(8) Intraoperative neurophysiologic monitoring.

(9) Standardized and nonstandardized procedures may be employed for assessment ~~(;)~~ and habilitation ~~(+)~~ or rehabilitation of auditory and vestibular disorders. When standardized procedures are employed they must be conducted according to the standardized procedure or exception documented. Nonstandardized measures must be conducted according to established principles and procedures of the profession.

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-100 Hearing instrument fitting and dispensing—~~((Minimal))~~ Minimum standards of practice. Minimum procedures in the fitting and dispensing of hearing instruments include:**

(1) Obtaining case history including:

(a) ~~((As required by WAC 246 828 280,))~~ Documentation of referrals ~~((, or as otherwise required by this chapter)).~~

(b) Historical evaluation including inquiry regarding hearing loss, onset of loss, and any associated symptoms including significant noise in the ears, vertigo, acute or chronic dizziness, nausea, earaches, or other such discomfort which may indicate the presence of medical illness. Specific inquiry should be made to determine if hearing loss has been sudden or rapidly progressive in the past ninety days, if there has been any active drainage or infection in ears during the past ninety days, and if there are any specific physical problems that may relate to the use of a hearing instrument.

(2) Examining the ears to reasonably determine if any of the following conditions exist:

(a) Impacted ear wax.

(b) Foreign body within the ear canal.

(c) Discharge in the ear canal.

(d) Presence of inflammation or irritation of the ear canal.

(e) Perforation of the ear drum.

(f) Any other abnormality.

(3) Hearing testing to include the following:

(a) Hearing loss, or residual hearing, ~~((shall))~~ must be established for each ear using pure tone threshold audiometry by air and bone conduction with effective masking as required.

(b) Appropriate live voice or recorded speech audiometry by ear phones to determine the following: Speech reception threshold, most comfortable level, uncomfortable level, and ~~((the speech discrimination percent))~~ word recognition score.

(c) Hearing testing ~~((shall))~~ must be conducted in ~~((the appropriate environment as required by))~~ compliance with WAC 246-828-080 ~~((, minimum standards of equipment, or as otherwise required by this chapter))~~ and 246-828-090.

(d) When pure tone audiometry indicates an air-bone gap of 15 ~~((dB))~~ decibels (dB) or more ~~((;))~~ at 500, 1000, and 2000 hertz (Hz) ~~((;))~~ the presence of unilateral hearing loss ~~((;))~~ or any inconsistent audiometric findings, the patient or client ~~((shall))~~ must be advised of the potential help available through medical treatment. If the patient or client declines medical treatment, has been appropriately treated previously, or has been advised against medical treatment, the licensee ~~((shall))~~ must make an appropriate notation in the patient's or client's record.

(e) In the event a patient or client is referred to a licensee by an M.A. audiologist, otologist, otolaryngologist, or by a ~~((fitter/dispenser duty))~~ hearing aid specialist licensed under chapter 18.35 RCW, and the audiometric results obtained within the previous six months are provided to the licensee as a part of this referral, the applicable provisions of WAC 246-828-100 ~~((shall))~~ are not ~~((be))~~ required. However, a confirmatory audiometric examination is recommended.

(4) Medical evaluation requirements:

(a) ~~((If the prospective hearing instrument user is eighteen years of age or older, the hearing instrument dispenser may afford the prospective user an opportunity to waive the medical evaluation requirements of (b) of this subsection if the hearing instrument dispenser:~~

~~((i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;~~

~~((ii) Does not in any way actively encourage the prospective user to waive the medical evaluation;~~

~~((iii) Offers the prospective user the opportunity to sign the following statement:~~

~~I have been advised by (hearing instrument fitter/dispenser or audiologist name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation before purchasing a hearing instrument; and~~

~~((iv) Provides the prospective user with a copy of the signed waiver statement.~~

(b) Except as provided in (a) of this subsection, a hearing instrument dispenser shall not sell a hearing instrument unless the prospective user has presented to the hearing instrument dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing instrument. The medical evaluation must have taken place within the preceding six months.) Except as provided in (b) of this subsection, a hearing aid specialist or audiologist may not sell a hearing instrument unless the prospective patient or client has presented a written statement signed by a licensed physician that states that the patient's or client's hearing loss has been medically evaluated and the patient or client may be considered a candidate for a hearing instrument. The medical evaluation must have taken place within the preceding six months.

(b) If the prospective patient or client is eighteen years of age or older, the hearing aid specialist or audiologist may afford the prospective patient or client an opportunity to waive the medical evaluation requirements of (a) of this subsection if the hearing aid specialist or audiologist:

(i) Informs the prospective patient or client that the exercise of the waiver is not in the patient or client's best health interest;

(ii) Does not in any way actively encourage the prospective patient or client to waive the medical evaluation;

(iii) Offers the prospective patient or client the opportunity to sign the following statement:

I have been advised by (hearing aid specialist or audiologist name) the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation before purchasing a hearing instrument; and

(iv) Provides the prospective patient or client with a copy of the signed waiver statement.

(5) Selection and fitting of the hearing instrument includes providing the patient or client:

(a) Information regarding the selection of the most appropriate method and model for amplification for the needs of the patient or client.

(b) The cost of the recommended instruments and services.

(c) ~~((An appropriate))~~ A custom made ear mold, when applicable.

(d) Final fitting of the hearing instrument to ensure physical and operational comfort.

(e) Adequate instructions and appropriate post-fitting adjustments to ensure the most successful use of the hearing instrument.

~~(6) Keeping records ((on)) for every patient or client ((to whom the licensee/certificate holder renders service)) in connection with the dispensing of a hearing instrument. ((These records must be preserved for at least three years after the dispensing of the first hearing instrument to the client. If other hearing instruments are subsequently dispensed to that client.))~~ Cumulative records must be ((maintained)) retained for all hearing instruments dispensed for at least three years ((after the most recent dispensing of an)) from the date the last hearing instrument ((to that)) was dispensed to the patient

or client. The records must be available for the department inspection and must include:

(a) Patient's or client's case history.

(b) Source of referral and ((appropriate)) documents.

(c) Medical clearance for the hearing instrument ((user) patient or client or the waiver set forth in subsection (4)((a)) (b)(iii) of this section which has been signed after being fully informed that it is in the best health interest to seek medical evaluation.

(d) Copies of any contracts and receipts executed in connection with the fitting and dispensing of each hearing instrument provided.

(e) A complete record of tests, test results, and services provided ((except for minor services)).

(f) All correspondence specifically related to the service given ((the client)) or the hearing ((instrument or)) instrument(s) dispensed to the patient or client.

**AMENDATORY SECTION** (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-105 Speech-language pathology—Minimum standards of practice.** Licensed speech-language pathologists are independent practitioners who provide a comprehensive array of services related to the identification, assessment, habilitation((/)) and rehabilitation, of communication disorders and dysphagia. Speech-language pathologists serve in a number of roles including but not limited to clinician, therapist, teacher, consultant, researcher, and administrator. Speech-language pathologists provide services in hospitals, clinics, schools, nursing facilities, care centers, private practice, and other settings in which speech-language pathology services are relevant. Speech-language pathologists provide services to individuals of all ages.

Services ~~((must))~~ may be provided and products dispensed only when benefit can reasonably be expected. All services provided and products dispensed must be evaluated for effectiveness. A ~~((certified))~~ licensed speech-language pathologist must engage in and supervise only those aspects of the profession that are within the scope of their education, training, and experience. Speech-language pathologists must provide services appropriate to each individual in his or her care, which may include one or more of the following standard procedures:

(1) Case history, including:

(a) Documentation of referrals.

(b) Review of ~~((the))~~ communication, cognitive ~~((and/))~~, or swallowing problems.

(c) Review of pertinent medical, pharmacological, social, and educational status.

(2) Examination of the oral mechanism for the purposes of determining adequacy for speech communication and swallowing.

(3) Screening to include: Speech and language.

(a) Hearing screening, limited to pure-tone air conduction and screening tympanometry.

(b) Swallowing screening. Children under the age of three years who are considered at risk are assessed, not screened;

(4) Assessment may include the following:

(a) Language may include parameters of phonology, morphology, syntax, semantics, and pragmatics; and include receptive and expressive communication in oral, written, graphic, and manual modalities;

(b) Speech may include articulation, fluency, and voice (including respiration, phonation, and resonance). Treatment ~~((shall))~~ must address appropriate areas;

(c) Swallowing;

(d) Cognitive aspects of communication may include communication disability and other functional disabilities associated with cognitive impairment;

(e) Central auditory processing disorders in collaboration with other qualified professionals;

(f) Social aspects of communication may include challenging behaviors, ineffective social skills, and lack of communication opportunities;

(g) Augmentative and alternative communication include the development of techniques and strategies that include selecting ~~((and))~~ and dispensing of aids and devices (excluding hearing instruments) and providing training to individuals, their families, and other communication partners in their use.

(5) Habilitation ~~((and))~~ and rehabilitation of communication and swallowing including:

(a) Treatment of speech disorders including articulation, fluency, and voice.

(b) Treatment of language disorders including phonology, morphology, syntax, semantics, and pragmatics ~~((and include))~~, including receptive and expressive communication in oral, written, graphic, and manual modalities.

(c) Treatment of swallowing disorders.

(d) Treatment of the cognitive aspects of communication.

(e) Treatment of central auditory processing disorders in which there is evidence of speech, language, ~~((and))~~ or other cognitive communication disorders.

(f) Treatment of individuals with hearing loss, including aural rehabilitation and related counseling.

(g) Treatment of social aspects of communication, including challenging behaviors, ineffective social skills, and lack of communication opportunities.

(6) All services must be provided with referral to other qualified resources when appropriate.

**AMENDATORY SECTION** (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

**WAC 246-828-112 Speech-language pathology assistants—Minimum standards of practice.** (1) "Supervising speech-language pathologist" means a licensed speech-language pathologist or speech-language pathologist certified as an educational staff associate by the superintendent of public instruction.

(2) A speech-language pathology assistant may only perform procedures or tasks delegated by the speech-language pathologist and must maintain patient/client/student confidentiality as directed by the speech-language pathologist.

~~((2))~~ (3) Speech-language pathology assistants may not represent themselves as speech-language pathologists.

~~((3))~~ (4) The speech-language pathology assistant must be ~~((continually))~~ supervised by the speech-language pathologist while performing procedures or tasks listed in subsections (4) and (5) of this section. The following procedures or tasks may only be performed under direct supervision and at the speech-language pathologist's discretion:

(a) Participating during parent conferences, case conferences, or interdisciplinary team meetings with the speech-language pathologist present.

(b) Assisting the speech-language pathologist during evaluations ~~((and))~~ and assessments of patients/clients/students.

~~((4))~~ (5) The following procedures or tasks may be performed under direct or indirect supervision at the discretion of the supervising speech-language pathologist:

(a) Perform speech-language and hearing screenings for the speech-language pathologist. The speech-language pathology assistant may not interpret the results.

(b) Document patient/client/student performance (such as data, charts, graphs, progress notes, and treatment notes) and report this information to the speech-language pathologist.

(c) Implement treatment plans and protocols including individualized education programs (IEP) or individualized family service plans (IFSP) developed by the speech-language pathologist. These plans, programs, and protocols may include speech, language, augmentative and alternative communication (AAC), assistive technology (AT), and oral-motor therapies.

(d) Perform clerical duties such as preparing materials and scheduling activities as directed by the speech-language pathologist.

(e) Check and maintain equipment as directed by the speech-language pathologist.

(f) Sign treatment notes, progress notes, and other paperwork as directed by the speech-language pathologist.

~~((5))~~ (6) The following procedures and tasks are excluded from the speech-language pathology assistant scope of practice:

(a) Tasks that require diagnosis, evaluation, or clinical interpretation.

(b) Screening and diagnosis of feeding and swallowing disorders.

(c) Development or modification of treatment plans.

(d) Implementation of therapy outside of the treatment plan.

(e) Selection of caseload.

(f) Discharge or exit patients/clients/students.

(g) Referral of patients/clients/students for additional services.

**AMENDATORY SECTION** (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-220 Unfair or deceptive practices, unethical conduct and unfair methods of competition—Used or rebuilt products.** (1) A licensee may not represent, directly or indirectly, that any industry product or part thereof is new, unused, or rebuilt, if it is not.

(2) In the marketing of a hearing instrument which has been used, or which contains used parts, a licensee must fully

and nondeceptively disclose that the product or its parts are used in all advertising and promotional literature relating to the product, on the container, box or package in which the product is packed or enclosed and, if the product has the appearance of being new, on the product itself. The required disclosure may be made by use of words such as "used," "secondhand," "repaired," or "rebuilt," whichever most accurately describes the product involved.

(3) A licensee ~~((shall))~~ may not misrepresent the identity of the rebuilder of a hearing instrument. If the rebuilding of a hearing instrument was done by other than the original manufacturer, a licensee ~~((shall))~~ must disclose this fact wherever the original manufacturer is identified.

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-270 Personal disclosure.** A ~~((licensee))~~ licensed audiologist or hearing aid specialist who contacts a ~~((prospective purchaser))~~ patient or client away from the licensee's place of business must:

(1) When the contact is in person, present the prospective ~~((purchaser))~~ patient or client with written notice of:

(a) ~~((His or her name, the name of his or her business firm, his or her))~~ Licensee's name, business name, business address and telephone number; and

(b) ~~((The))~~ Licensee's department-issued credential number ~~((of his or her license)).~~

(2) When a licensee contacts a patient or client by telephone ~~((contact with prospective purchasers))~~ the licensee must disclose the ~~((name of the licensee,))~~ licensee's name, the name and ~~((location of his or her principal))~~ address of the licensee's establishment, and the purpose of call.

(3) When the contact is through a direct mail piece or other advertising initiated by the licensee, the material must clearly show ~~((on all promotional items the business/establishment))~~ the licensee's establishment name ~~((, the principal))~~ and establishment address ~~((and telephone number, not just the address or telephone number where he/she will be on given days.~~

(4) ~~A principal establishment is one which is bonded under RCW 18.35.240).~~ If in-person or telephone contact is made as a result of the direct mail or other advertising, the prospective patient or client must be offered the licensee's establishment phone number.

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-290 Purchaser ~~((recision))~~ rescission rights.** In addition to the receipt and disclosure information required by RCW 18.35.030, 18.35.185, 63.14.040 and 63.14.120, every retail agreement for the sale of hearing instruments ~~((shall))~~ must contain or have attached the following notice to buyer in twelve point ~~((type))~~ font or larger. The language in part 1 under "Notice to Buyer" is intended to have the same legal effect as the notices required in RCW 63.14.040(2) and 63.14.120(3) and may be substituted for those notices.

The rights summarized in the "Notice to Buyer" must be made known to the purchaser before the contract is executed.

The licensee must provide this "Notice to Buyer" in writing to the purchaser. The purchaser must ~~((demonstrate knowledge of these rights by initialing each numbered section))~~ acknowledge receipt of the "Notice to Buyer" ~~((and))~~ by signing his or her name in the ~~((appropriate))~~ designated space following the "Notice to Buyer."

**Notice to Buyer**

Do not sign this agreement before you read it or if any spaces intended for the agreed terms are blank.

You are entitled to receive a copy of this agreement at the time you sign it.

The seller's business address must be shown on the agreement.

**Section 1 CANCELLATION - WITHIN THREE DAYS**

~~((Purchaser's Initial .....~~

You may cancel this agreement within three days, without explaining your reasons, if the seller solicited it in person and you signed it at a place other than the seller's business address.

To cancel this agreement without explaining your reasons, you must notify the seller in writing that you are canceling the agreement. You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be ~~((mailed))~~ postmarked or delivered by midnight of the third business day after you signed this agreement.

Any merchandise you received under this agreement must be in its original condition. You must return it to the ~~((seller))~~ seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement.

You will incur no additional liability for canceling the agreement.

**Section 2 ~~((RECISSION))~~ RESCISSION - WITHIN THIRTY DAYS**

~~((Purchaser's Initial .....~~

You may rescind (or terminate) the agreement within thirty days, for reasonable cause. This thirty-day period is called the ~~((recission))~~ rescission period."

To rescind this agreement, you must notify the seller in writing that you are rescinding the agreement for reasonable cause pursuant to RCW 18.35.185(1). (Reasonable cause does not include cosmetic concerns or a mere change of mind.) You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be ~~((mailed))~~ postmarked or delivered by midnight of the thirtieth day after delivery of the hearing instrument.

Any merchandise you received under this agreement must be in its original condition, except for normal wear and tear. You must return it to the ~~((seller))~~ seller's business

address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement. However, for each hearing instrument you return, the seller may keep either one hundred fifty dollars or fifteen percent of the total purchase price, whichever is less. ~~(The seller also may deduct any costs incurred in making traded-in goods ready for resale).~~ plus the price originally charged for custom-made earmolds.

The seller must refund your money and return your traded goods, or have them postmarked and in the mail to you, within ten business days after receiving your notice of ~~(rescission)~~ rescission.

You will incur no additional liability for rescinding the agreement.

**Section 3 EXTENSION OF ~~((RECISSION))~~ RESCISSION PERIOD ~~((Purchaser's Initial .....~~)**

If you notify the seller within the thirty-day ~~((rescission))~~ rescission period that your hearing instrument has developed a problem that constitutes reasonable cause to rescind the agreement or that prevents you from evaluating your hearing instrument, the seller must extend the ~~((rescission))~~ rescission period. The ~~((rescission))~~ rescission period stops running on the date you notify the seller of the problem and starts running again on the date the seller notifies you that your hearing instrument is ready for redelivery.

You and the seller may agree to a ~~((rescission))~~ rescission period longer than thirty days.

Whenever the ~~((rescission))~~ rescission period is extended, the seller must provide you written notice of the last date upon which you may demand a refund and return of traded goods.

_____ Signature of Purchaser	_____ Date
_____ Signature of Seller	_____ Date
_____ Delivery Acknowledgment - Signature of Purchaser	_____ Date

**AMENDATORY SECTION** (Amending WSR 10-16-116, filed 8/2/10, effective 9/2/10)

**WAC 246-828-305 How to obtain a temporary practice permit while the national background check is completed.** Fingerprint-based national background checks may cause a delay in licensing or certification. Individuals who satisfy all other licensing or certification requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

- (a) Holds an unrestricted, active license or certification to practice as a speech-language pathologist, speech-language pathology assistant, audiologist, or hearing ~~((instrument fitter/dispenser))~~ aid specialist in another state that has

substantially equivalent licensing or certification standards to those in Washington state;

(b) Is not subject to denial of a license or certification or issuance of a conditional or restricted license or certification; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of practice under this chapter.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license or certification is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license or certification.

(b) Meet all requirements and qualifications for the license or certification, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license or certification to practice as a speech-language pathologist, speech-language pathology assistant, audiologist, or hearing ~~((instrument fitter/dispenser))~~ aid specialist from another state that has substantially equivalent licensing or certification standards as Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

**NEW SECTION**

**WAC 246-828-315 Temporary practice permit—Military spouse.** A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. The board adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

**AMENDATORY SECTION** (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-320 Minimum standards for fitting and dispensing locations.** (1) The hours of business of each hearing instrument establishment ~~((shall))~~ must be prominently ~~((and continuously))~~ displayed and visible to the public at each regular place or places of business owned or operated by that establishment.

(2) Any regular place or places of business or any activities resulting from these locations must meet the minimum standards for facilities and equipment essential for the testing of hearing and the fitting and dispensing of hearing instruments required in WAC 246-828-080 and 246-828-090.

~~((3)) The term "place or places of business" means a location where a licensee engages or intends to engage in the fitting and dispensing of hearing instruments at a permanent address(es) open to the public on a regular basis.))~~

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-330 Notice of availability and location of follow-up services.** Every licensee ~~((shall))~~ must provide to a hearing instrument purchaser, in writing prior to the signing of the contract, notice of availability of services. The notice ~~((shall))~~ must include the specific location of the follow-up service, including date and time if applicable.

AMENDATORY SECTION (Amending WSR 04-02-068, filed 1/7/04, effective 2/7/04)

**WAC 246-828-350 Reasonable cause for ~~((rescission))~~ rescission.** RCW 18.35.190(2) allows the purchaser of the hearing instrument(s) to rescind the purchase and recover moneys for reasonable cause. The term "reasonable cause" includes:

(1) Any material misstatement of fact or misrepresentation by the licensee regarding the hearing instrument(s) or fitting and dispensing services to be provided which the purchaser relied on or which induced the purchaser into making the agreement;

(2) Failure by the licensee to provide the purchaser with the hearing instrument(s) and fitting and dispensing services which conform to those specified in the purchase agreement between the parties;

(3) Diagnosis of a medical condition unknown to the purchaser at the time of purchase, which precludes the purchaser from using the hearing instrument(s);

(4) Failure by the licensee to remedy a significant material defect of the hearing instrument(s) within a reasonable period of time in accordance with RCW 18.35.190 (2)(c);

(5) The hearing instrument(s) ~~((and))~~ or fitting and dispensing services would not be in accordance with accepted practices of the industry; and

(6) Failure by the licensee to meet any standard of conduct prescribed in the laws regarding the fitting and dispensing of hearing instruments and this failure adversely affects in any way the transaction which the purchaser seeks to rescind.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-828-370 ~~((AIDS))~~ HIV/AIDS prevention and information education requirements.** Applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 07-07-065, filed 3/15/07, effective 4/15/07)

**WAC 246-828-510 Continuing education.** The ~~((ultimate aim of))~~ purpose of continuing education is to ensure the highest quality professional care. The objectives are to

improve and increase the ability of the hearing ~~((instrument fitter/dispenser))~~ aid specialist, audiologist ~~((and))~~, speech-language pathologist, and speech-language pathology assistant to deliver the highest possible quality professional care and keep the professional abreast of current developments.

Continuing education consists of educational activities designed to review existing concepts and techniques and to convey information and knowledge about advances in hearing instrument ~~((fitting/dispensing))~~ fitting and dispensing, audiology, and speech-language pathology fields as applied to the work setting.

(1) Continuing education requirement. ~~((Licensees))~~ Credential holders must complete a minimum of thirty hours of continuing education every three years in the ~~((following))~~ categories(~~(:~~

~~((a))~~ (a) At least one hour on infection control.

~~((b))~~ below. At least one hour of the continuing education must be on infection control. Multicultural education aimed at removing barriers to access to care may count for up to five hours of continuing education. At least twenty-five hours of continuing education must be related to profession specific skills and competencies.

(a) Courses, seminars, workshops and postgraduate programs offered by accredited educational institutions. These educational activities ~~((shall))~~ must be recorded on an official transcript or ~~((certificate))~~ by documentation stating the number of continuing education ~~((units))~~ hours completed.

~~((e))~~ (b) Courses, seminars and workshops offering continuing clock or continuing educational units offered by profession-related organizations or industries. These ~~((units shall))~~ activities will be accepted with ~~((proof of completion))~~ documentation of the number of continuing education hours completed.

~~((f))~~ (c) Attendance at a continuing education program having a featured speaker(s) or panel, which has been provided by, sponsored by, or endorsed by a profession-related organization or industry. This activity will be accepted with documentation of the number of continuing education hours completed.

~~((g))~~ (d) Participation as a speaker or panel member in a continuing education program which has been provided by, sponsored by, or endorsed by a profession-related organization or industry. A maximum of eight hours, including preparation time, may be applied to the total three-year requirement.

~~((h))~~ (e) Completion of a written, video, internet, or audio continuing education program which has been provided by, sponsored by, or endorsed by a profession-related organization or industry. Only programs in which proof of completion is provided or with tests that are (independently graded shall) not self-graded will be accepted.

(2) ~~((General information:~~

~~((a))~~ The effective date of the continuing education requirement shall be three years after the licensee's 2007 renewal date.

~~((b))~~ The board shall not grant credit for preparation time, except as provided in subsection (1)(e) of this section.

~~((3))~~ The board may grant an exception for continuing education requirements under certain circumstances including, but not limited to, severe illness. The ((licensee))  creden-

tial holder must submit a written request for exception to the board for review (~~(, a written request for exception)~~). The board will approve or deny the request.

~~((4) This section incorporates by reference the requirements of)~~ (3) Credential holders may be randomly audited for continuing education compliance as specified in chapter 246-12 WAC, Part 7.

AMENDATORY SECTION (Amending WSR 93-17-044, filed 8/12/93, effective 9/12/93)

**WAC 246-828-570 Adjudicative proceedings.** The board adopts the model procedural rules for adjudicative proceedings as adopted by the department of health and contained in chapter 246-11 WAC, including subsequent amendments.

AMENDATORY SECTION (Amending WSR 06-10-025, filed 4/26/06, effective 5/27/06)

**WAC 246-828-600 Approval of programs for ~~((two-year degree in hearing instrument fitter/dispenser))~~ hearing aid specialist instruction.** ~~((The))~~ (1) Minimum educational requirements for licensure to practice as a hearing ~~((instrument fitter/dispenser))~~ aid specialist in Washington ~~((is))~~ are:

(a) Satisfactory completion of a two-year degree program in hearing ~~((instrument/fitter dispenser))~~ aid specialist instruction approved by the board. The board will consider for approval any program which meets the requirements as outlined in this ~~((chapter-~~

~~((1))~~ section; or

(b) A two-year or four-year degree in a field of study approved by the board from an accredited institution and satisfactory completion of a nine-month certificate program in hearing aid specialist instruction approved by the board. Two-year and four-year degrees must be completed prior to enrolling in a nine-month certificate program. The board will consider for approval any program which meets the requirements as outlined in this section.

Acceptable prerequisite degrees for entry into nine-month certificate programs are baccalaureate or associate degrees from accredited institutions in any field of study which include five credits each of 100 level or greater English composition, basic math, and humanities.

(2) Procedure for approval of two-year degree programs in hearing aid specialist instruction:

(a) An authorized representative of an institution may apply for approval from the board.

~~((2))~~ (b) The application for approval must be submitted on forms provided by the department.

~~((3))~~ (c) The authorized representative of the program may request approval of the program as of the date of the application or retroactively to a specified date.

~~((4))~~ (d) The program application for approval must include, but may not be limited to, documentation required by the board pertaining to ~~((the))~~ curriculum standards as set in WAC 246-828-615 ~~((two-year degree in hearing instrument fitter/dispenser instruction standards))~~.

~~((5))~~ (e) A program must be fully recognized by the appropriate accreditation body in that jurisdiction.

~~((6))~~ (f) The board will evaluate the application and may conduct a site inspection of the program prior to granting approval by the board.

~~((7))~~ (g) Upon completion of the evaluation of the application, the board may grant or deny approval or grant approval conditioned upon appropriate modification of the application.

~~((8) The)~~ (h) An authorized representative of an approved program ~~((shall))~~ must notify the board of significant changes with respect to information provided on the application within sixty days of change.

~~((9) The board may inspect an approved program at reasonable intervals for compliance. Refer to WAC 246-828-605 Site review procedures for initial and continuing approval of program for two-year degree in hearing instrument fitter/dispenser instruction. The board may withdraw its approval if it finds the program has failed to comply with requirements of law, administrative rules, or representations in the application.)~~ (3) Procedure for approval of nine-month certificate programs in hearing aid specialist instruction:

(a) An authorized representative of a program may apply for approval from the board.

(b) The application for approval must be submitted on forms provided by the department.

(c) The authorized representative of the program may request approval of the program as of the date of the application or retroactively to a specified date.

(d) The program application for approval must include, but may not be limited to, documentation required by the board pertaining to curriculum standards as set in WAC 246-828-615.

(e) The board will evaluate the application and may conduct a site inspection of the program prior to granting approval by the board.

(f) Upon completion of the evaluation of the application, the board may grant or deny approval or grant approval conditioned upon appropriate modification of the application.

(g) An authorized representative of an approved program must notify the board of significant changes with respect to information provided on the application within sixty days of change.

(4) The board may inspect a currently approved program or a program requesting approval. These inspections may be at any reasonable time during the normal business hours of the program. The board may withdraw its approval if it finds the program has failed to comply with requirements of law, administrative rules, or representations in the application.

AMENDATORY SECTION (Amending WSR 06-10-025, filed 4/26/06, effective 5/27/06)

**WAC 246-828-610 Process for denying or rescinding approval of a program for ~~((two-year degree in hearing instrument fitter/dispenser))~~ hearing aid specialist instruction.** ~~((In the event))~~ If the board ~~((denies))~~ issues a notice of intent to deny an application, rescind~~((s))~~ approval, or grant~~((s))~~ conditional approval, the authorized representative of the applicant's program may request a review within thirty days ~~((of the board's adverse decision/action. Should a request for review of an adverse action be made after thirty~~

days following the board's action, the contesting party must submit a new application to be considered for review)). Failure to request a review will result in the notice of intent becoming a final decision of the board. A program aggrieved by a final decision of the board affecting its approval status may appeal the board's decision in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, or submit a new application to be considered for review.

AMENDATORY SECTION (Amending WSR 06-10-025, filed 4/26/06, effective 5/27/06)

**WAC 246-828-615 Standards for ~~((approval of program for two year degree in hearing instrument fitter/dispenser instruction))~~ hearing aid specialist programs.** The curriculum of the program ~~((shall))~~ must include the components listed in this ~~((chapter))~~ section.

(1) The standards in this section are intended as minimum components of a curriculum, and are not intended as an exact description of program curricula. To ~~((assure))~~ ensure a graduate or certificate holder is competent and can function on his or her own, the curriculum should be designed to ~~((assure))~~ ensure proficiency in all ~~((these fields))~~ curriculum components through extensive practical work experience in addition to ~~((classroom teaching))~~ academic instruction. All ~~((the))~~ necessary instruments and laboratories based on industry standards are a prerequisite.

(2) Minimum ~~((areas of standard))~~ requirements for two-year degree programs:

(a) **Supervised practicum:** Including hands-on experience with patients.

(i) The supervised practicum must consist of a minimum of five hundred twenty hours.

(ii) Two hundred sixty of the five hundred twenty hours must be directly supervised. The remaining hours may be directly or indirectly supervised.

(b) **English composition:** Written presentations.

(c) **Occupational communications:** Oral presentations, documentation of professional activities.

(d) **Occupational human relations:** Code of professional ethics, interpersonal skills, teamwork.

(e) ~~((Basic math and computers))~~ **Acoustics:** The physics of sound~~((;))~~ and basic acoustics~~((; methods of programming hearing instruments, calculating pricing, costs and other business related math skills)).~~

(f) **Hearing instrument sciences:** Basic electronics, circuit designs of hearing instruments, testing methodology of instruments, test standards, familiarity with all major types of instruments on the market, basic signal processing, programming of digital instruments using computers.

(g) **Hearing physiology and anatomy:** Anatomy and physiology of the human auditory system.

(h) **Pathophysiology of auditory system:** Introductory level study of genetic disorders and infectious diseases of the auditory system.

(i) **Psychological aspects of hearing loss:** Curricula should be designed so the student understands:

(i) How hearing loss affects patients and others close to them;

(ii) How to follow up with patients after initial fitting; and

(iii) Methods of ~~((teaching))~~ instruction on effective communication ~~((skills to the hearing impaired))~~ strategies for individuals with hearing impairments.

(j) **Audiometrics:** Performing pure tone and speech audiometry and interpretation, measuring output of instruments both in the lab and in the ear.

(k) **Earmolds:** Emphasis on ~~((practical skills and safety))~~ impression-taking techniques, practical skills, safety, selection, and modification. Direct supervision is required for all earmold impressions.

(l) **Instrument selection:** Recommending the best technology according to the patient's or client's needs from ~~((conventional))~~ basic through advanced ~~((digital/programmable))~~ analog and digital instruments, including referrals for ~~((medical))~~ medically implantable devices.

(m) **Health care and business:** Laws governing the profession, insurance aspects, health care management, advertising, marketing, purchase agreements, and sales.

(n) **Introduction to speech-language pathology and audiology.**

(o) **Overview of ~~((cochlear implants))~~ medically implantable devices,** including criteria for referral~~((s for medical implantable devices)).~~

(3) Minimum requirements for nine-month certificate programs:

(a) **Supervised practicum:** Including hands-on experience with patients.

(i) The supervised practicum must consist of a minimum of five hundred twenty hours.

(ii) Two hundred sixty of the five hundred twenty hours must be directly supervised. The remaining hours may be directly or indirectly supervised.

(iii) Methods of instruction on effective communication strategies for individuals with hearing impairments.

(b) **Occupational communications:** Documentation of professional activities.

(c) **Occupational human relations:** Code of professional ethics.

(d) **Acoustics:** The physics of sound and basic acoustics.

(e) **Hearing instrument sciences:** Basic electronics, circuit designs of hearing instruments, testing methodology of instruments, test standards, familiarity with all major types of instruments on the market, basic signal processing, programming of digital instruments using computers.

(f) **Hearing physiology and anatomy:** Anatomy and physiology of the human auditory system.

(g) **Pathophysiology of auditory system:** Introductory level study of genetic disorders and infectious diseases of the auditory system.

(h) **Psychological aspects of hearing loss:** Curricula should be designed so the student understands:

(i) How hearing loss affects patients and others close to them;

(ii) How to follow up with patients after initial fitting; and

(iii) Methods of instruction on effective communication strategies for individuals with hearing impairments.

(i) **Audiometrics:** Performing pure tone and speech audiometry and interpretation, measuring output of instruments both in the lab and in the ear.

(j) **Earmolds:** Emphasis on impression-taking techniques, practical skills, safety, selection, and modification. Direct supervision is required for all earmold impressions.

(k) **Instrument selection:** Recommending the best technology according to the patient's or client's needs from basic through advanced analog and digital instruments, including referrals for medically implantable devices.

(l) **Health care and business:** Laws governing the profession, insurance aspects, health care management, advertising, marketing, purchase agreements, and sales.

(m) **Introduction to speech-language pathology and audiology.**

(n) **Overview of medically implantable devices, including criteria for referral.**

AMENDATORY SECTION (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

**WAC 246-828-617 Requirements for speech-language pathology assistant certification.** An applicant for certification as a speech-language pathology assistant must have the following minimum qualifications:

(1) An associate of arts or sciences degree, or a certificate of proficiency, with transcripts showing forty-five quarter hours or thirty semester hours of speech-language pathology course work and transcripts showing forty-five quarter hours or thirty semester hours of general education credit from a board-approved institution of higher education as defined in WAC 246-828-025 (1)(b). Transcripts must reflect, or applicant must demonstrate, one hundred hours of supervised patient/client/student work experience completed within a one-year time frame, or clinical experience practicum, with at least fifty of those hours under direct supervision; or

(2) A bachelor of arts or bachelor of sciences degree with transcripts from a speech, language, and hearing program from a board-approved institution of higher education as defined in WAC 246-828-025 (1)(b). Transcripts must reflect, or applicant must demonstrate, one hundred hours of supervised patient/client/student work experience completed within a one-year time frame, or clinical experience practicum, with at least fifty of those hours under direct supervision(~~;~~ or

~~(3) A completed work experience verification form and competency checklist form developed by the board and submitted as part of the application verifying 600 hours of supervised experience within three years of application. Both forms must be submitted by July 1, 2011, to qualify for certification under this subsection. The competency checklist form shall indicate and verify that the applicant has demonstrated competencies in all the following categories:~~

- ~~(a) Interpersonal skills;~~
- ~~(b) Understanding of critical supervision issues;~~
- ~~(c) Administering treatment protocols;~~
- ~~(d) Maintaining clinical documentation and communication;~~

~~(e) Upholding ethical behavior and maintaining confidentiality;~~

~~(f) Following health and safety precautions;~~

~~(g) Foundational knowledge of the profession)).~~

AMENDATORY SECTION (Amending WSR 07-09-093, filed 4/18/07, effective 5/19/07)

**WAC 246-828-620 Definitions—Sexual misconduct.** The following definitions are applicable to the sexual misconduct rule, WAC 246-828-625:

(1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Health care provider" means an individual applying for a credential or credentialed in a profession listed in chapter 18.35 RCW: Hearing (~~(instrument fitter/dispensers)~~) aid specialists, audiologists, and speech-language pathologists, and speech-language pathology assistants.

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of the health care provider.

(5) "Patient" or "client" means an individual who receives health care from a health care provider.

AMENDATORY SECTION (Amending WSR 07-09-093, filed 4/18/07, effective 5/19/07)

**WAC 246-828-625 Sexual misconduct.** (1) A health care provider (~~shall~~) may not engage, or attempt to engage, in sexual misconduct with a current patient, client, or (~~with a~~) key party (~~(of a current client or patient)~~), inside or outside the health care setting. Sexual misconduct (~~shall~~) constitutes grounds for disciplinary action. Sexual misconduct includes but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

~~((g))~~ (h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

~~((h))~~ (i) Dressing or undressing in the presence of the patient, client or key party;

~~((i))~~ (j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

~~((j))~~ (k) Encouraging masturbation or other sex act in the presence of the health care provider;

~~((k))~~ (l) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

~~((l))~~ (m) Suggesting or discussing the possibility of a dating ((or beginning a), sexual or romantic relationship ((before) after the professional relationship ends;

~~((m))~~ (n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient, client or key party;

(p) Discussing the sexual history, preferences or fantasies of the health care provider;

~~((n))~~ (q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

~~((o))~~ (r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

~~((p))~~ (s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

~~((q))~~ (t) Photographing or filming the body or any body part or pose' of a patient, client, or key party, other than for legitimate health care purposes; and

~~((r))~~ (u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

~~((3))~~ (3) A health care provider ~~((shall))~~ may not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

~~((3))~~ After a health care provider has terminated providing services to the client or patient, ~~((4))~~ (4) A health care provider ~~((shall))~~ may not engage, or attempt to engage, in ~~((dating or beginning a sexual or romantic relationship))~~ the activities listed in subsection (1) of this section with a former ((client or) patient, client or key party ((of a former client or patient if:)) within two years after the provider-patient/client relationship ends.

(5) After the two-year period of time described in subsection (3) of this section, a health care provider may not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the ~~((former))~~ patient, client or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity ~~((and))~~ or special knowledge ~~((held or acquired by the health care provider related to))~~ of the professional relationship.

~~((4))~~ (6) When evaluating whether a health care provider is prohibited from engaging, or attempting to engage, in sexual misconduct, the board of hearing and speech will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or the client's personal or private information was shared with the health care provider;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability;

(i) Normal revisit cycle for the profession and service; and

~~((7))~~ (7) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

~~((5))~~ (8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-828-360 Procedure for declaratory ruling.

WAC 246-828-605 Site review procedures for initial and continuing approval of program for two-year degree in hearing instrument fitter/dispenser instruction.

**WSR 15-09-117**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)  
[Filed April 21, 2015, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-096.

Title of Rule and Other Identifying Information: WAC 182-530-4100 Washington preferred drug list and 182-530-4125 Generics first for a client's first course of treatment.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on May 26, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on May 26, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by May 19, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is filing rules to clarify conditions for the dispensing and use of nonpreferred generic drugs.

Reasons Supporting Proposal: These revisions will improve clarity for the reader.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Charles Apte, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

April 21, 2015  
Jason R. P. Crabbe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-530-4100 Washington preferred drug list (PDL).** Under RCW 69.41.190 and 70.14.050, the ~~((department))~~ medicare agency and other state agencies cooperate in developing and maintaining the Washington preferred drug list (PDL).

(1) Washington state contracts with evidence-based practice center~~((s))~~s for systematic drug reviews ~~((of drug(s)))~~.

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center~~((s))~~s.

(3) The P&T committee makes recommendations to state agencies as to which drug~~((s))~~s to include on the Washington PDL under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL that have been studied by ~~((the))~~ an evidence-based practice center~~((s))~~s and reviewed by the P&T committee and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as written (DAW) rules under WAC ~~((388-530-4150))~~ 182-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by ~~((the))~~ an evidence-based practice center~~((s))~~s and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug which the ~~((department))~~ agency determines as covered is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met ~~((department))~~ agency-established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs that have been studied by ~~((the))~~ an evidence-based practice center and have been reviewed by the P&T committee may be included in the Washington PDL.

(11) When a brand-name drug has been reviewed by the P&T committee, the ~~((department))~~ agency may immediately designate an available, less expensive, equally effective, generic equivalent as a preferred drug. For the purpose of this chapter, generic equivalent drugs are those identified in the ~~((FDA's))~~ Food and Drug Administration's approved drug products with therapeutic equivalence evaluations (orange book).

(12) The dispensing of a brand name or nonpreferred generic drug in a drug class on the Washington PDL as a client's first course of treatment within that therapeutic class may be subject to restrictions under WAC ~~((388-530-4125))~~.

~~and WAC 388-530-4150(10))~~ 182-530-4125 and 182-530-4150(10).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-530-4125 Generics first for a client's first course of treatment.** The ~~((department))~~ medicaid agency uses point-of-sale (POS) claim messaging to ~~((communicate to))~~ tell pharmacies to use a preferred generic drug for the client's first course of treatment in specific drug classes.

(1) The ~~((department))~~ agency may require preferred generic drug~~((s))~~ on the Washington preferred drug list (PDL) be used before any brand name or nonpreferred generic drugs for a client's first course of treatment within that therapeutic class of drugs, when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC ~~((388-530-4000))~~ 182-530-4000 has reviewed the drug class and recommended to the ~~((department))~~ agency that the drug class is appropriate to require generic drugs as a client's first course of treatment.

(2) For drug classes selected by the ~~((department which))~~ agency that meet the criteria of subsection (1) of this section, only preferred generic drugs are covered for a client's first course of treatment, except as identified in subsection (3) of this section.

(3) Endorsing practitioners' prescriptions written "Dispense as written (DAW)" for preferred and nonpreferred brand name drugs and nonpreferred generics in the specific drug classes on the Washington PDL reviewed by the DUR board will be subject to authorization to establish medical necessity as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

**WSR 15-09-118**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 21, 2015, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-061.

Title of Rule and Other Identifying Information: WAC 296-20-1103 Travel expense.

Hearing Location(s): Department of Labor and Industries (L&I), Rooms S118 and S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on June 2, 2015, at 1:00 p.m.

Date of Intended Adoption: June 30, 2015.

Submit Written Comments to: Laurinda Grytness, P.O. Box 44329, Olympia, WA 98504-4329, e-mail Laurinda.grytness@lni.wa.gov, fax (360) 902-5035, by June 3, 2015, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by May 20, 2015, TTY (360) 902-5797 or (360) 902-4226.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendment will affect workers participating in a vocational retraining plan. The existing rule excludes workers in vocational retraining from receiving reimbursement for the first fifteen miles of an authorized one-way trip and the first and last fifteen miles of an authorized round trip. The proposed amendment will allow workers who are actively participating in a vocational retraining plan to receive reimbursement for travel associated with the retraining without a reduction of mileage.

Reasons Supporting Proposal: In response to a petition for rule making, L&I is proposing to amend the travel expense rule, WAC 296-20-1103, to align with RCW 51.32.-099 (3)(e) regarding the reimbursement of the cost of transportation for a worker who is actively participating in a retraining plan.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.32.099 (3)(e).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Laurinda Grytness, Tumwater, Washington, (360) 902-6362; Implementation: Mike Ratko, Tumwater, Washington, (360) 902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC 296-20-1103 is an interpretive rule and incorporates state statute; therefore chapter 19.85 RCW does not apply to this rule.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 296-20-1103 is an interpretive rule and not a significant legislative rule under RCW 34.05.328 so no cost-benefit analysis is required.

April 21, 2015

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 10-15-105, filed 7/20/10, effective 9/1/10)

**WAC 296-20-1103 Travel expense.** (1) The department or self-insurer will reimburse travel expense incurred by workers for ~~((the following reasons))~~:

~~((1))~~ (a) Examinations at department's or self-insurer's request;

~~((2))~~ (b) Approved vocational retraining or vocational services at department's or self-insurer's request;

~~((3))~~ (c) Fitting of prosthetic device; ~~((and~~

~~((4))~~ (d) Upon prior authorization for treatment ~~((or vocational retraining))~~ when worker must travel more than fifteen miles one-way from the worker's home to the nearest point of adequate treatment ~~((or vocational retraining))~~. Travel expense *is not* payable when adequate treatment is available within fifteen miles of injured worker's home, yet the injured worker prefers to report to an attending provider outside the worker's home area.

(2) Under subsection ~~((s(3) and (4)))~~ (1)(c) and (d) of this section, when travel expense is authorized the first fifteen miles one-way are not payable. The first and last fifteen miles are not payable on an authorized round trip.

(3) Travel expenses will be reimbursed at the current department rate.

(4) Receipts are required for all expenses except parking expenses under ten dollars.

(5) Claims for reimbursement of travel expenses must be received by the department or self-insurer within one year after the date expenses are incurred. Refer to WAC 296-20-125 and to department policy for additional rules.

**WSR 15-09-132**  
**PROPOSED RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed April 22, 2015, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-06-058.

Title of Rule and Other Identifying Information: Chapter 478-168 WAC, Regulations for the University of Washington libraries.

Hearing Location(s): Room 142, Gerberding Hall, University of Washington, Seattle Campus, on May 29, 2015, at 12:00 noon.

Date of Intended Adoption: July 9, 2015.

Submit Written Comments to: Rebecca Goodwin Deardorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195-1210 [98195-1210], e-mail rules@uw.edu, by May 29, 2015.

Assistance for Persons with Disabilities: Contact disability services office by May 18, 2015, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 478-168 WAC, Regulations of the University of Washington libraries, establishes the loan code, access to and conditions for use of materials held in the university libraries system, as well as access to, and conditions for use of materials held in the Marian Gould Gallagher Law Library. These proposed amendments will bring the chapter up-to-date to conform with current practices by both library organizations within the University of Washington.

Reasons Supporting Proposal: The University of Washington faculty council on university libraries has also reviewed and supports the proposed WAC rule amendments.

Statutory Authority for Adoption: RCW 28B.15.031 and 28B.20.130.

Statute Being Implemented: RCW 28B.15.031 and 28B.20.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Thomas Deardorff, Coordinator for Access Services, UW Libraries, 170D Suzzallo Library, UW

Seattle Campus, (206) 685-1469 and Jonathan Franklin, Associate Law Librarian, Law Library, L156 William H. Gates Hall, UW Seattle Campus, (206) 543-4089; and Enforcement: Lizabeth (Betsy) Wilson, Vice Provost for Digital Initiatives and Dean of University Libraries, UW Libraries, 482E Suzzallo Library, UW Seattle Campus, (206) 543-1763 and Penny Hazelton, Associate Dean for Library and Technology Services, Professor of Law, Law Library, L168 William H. Gates Hall, UW Seattle Campus, (206) 543-4089.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose a disproportionate impact on small businesses or affect a school district under Title 28A RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The University of Washington does not consider this rule making to be a significant legislative rule.

April 22, 2015

Rebecca Goodwin Deardorff  
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-070 Marian Gould Gallagher Law Library—Access to facilities.** (1) Access to the Marian Gould Gallagher Law Library is limited. Only University of Washington faculty and University of Washington law school students may use the library as a study hall (i.e., for use not related to that library's materials). In general, the ~~((reading room))~~ library is open for use by any person having need of the library's legal materials. However, when necessary to serve University of Washington faculty and University of Washington law school students effectively, the law librarian may restrict access to the library or any part of the library.

(2) ~~((The faculty library is for the use of University of Washington law faculty only, but books may be taken by library staff from the faculty library))~~ The law librarian may designate an area of the library for the exclusive use of faculty. Materials located in any area designated exclusively for faculty may be taken by library staff for the limited use of other patrons.

AMENDATORY SECTION (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-080 Marian Gould Gallagher Law Library—Use of materials.** (1) In the use of library materials, the Marian Gould Gallagher Law Library serves the students, faculty, and staff of the law school, the students, faculty, and staff of other university departments, faculty of other colleges and universities, librarians of other libraries, judges, members of the Washington bar and persons who have a degree from the law school. The law librarian has discretion to specify other groups of patrons and to set priorities of use among all groups of patrons. However, University of Washington law school faculty and law school students have priority when other patrons need the same materials. The law

librarian also has discretion to establish restrictions specific to particular library materials or a single library item.

(2) Circulation regulations may differ according to type of material and usage.

(3) Because of the reference nature of ~~((much))~~ some of the collection, ~~((many of the books))~~ some materials do not circulate and must be used in the library. The law librarian shall define the phrase "in the library."

(4) Each borrower is responsible for materials ~~((which))~~ he or she checks out at the circulation ~~((desks))~~ desk.

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-092 Marian Gould Gallagher Law Library—Student identification cards—Conditions of use.** (1) ~~((To ensure prompt access to the library collection,))~~ University of Washington law school students must carry official ~~((law school))~~ identification cards ~~((issued at the time of enrollment in the school))~~ to enter the library when it is not staffed.

(2) An identification card is authorized for use only by the student whose name appears on the card.

(3) Student identification must be presented for the completion of each in-person circulation transaction.

(4) Each student must maintain current validation of the student's card.

(5) Each student ~~((shall))~~ must keep the ~~((library))~~ appropriate university office informed of changes of name and address.

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-094 Marian Gould Gallagher Law Library—Official registration of other library users.** (1) All library users other than University of Washington ~~((law school))~~ faculty ~~((and))~~ staff, and ~~((University of Washington law school))~~ students must complete a registration ~~((card))~~ form for library records at the ~~((main))~~ circulation desk.

(2) Information required includes name, permanent address, ~~((telephone number, and user category))~~ and additional requested contact information.

(3) Each borrower ~~((shall))~~ must keep the ~~((library))~~ appropriate university office informed of changes of name, permanent address, ~~((telephone number, and user category))~~ and additional requested contact information.

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-096 Marian Gould Gallagher Law Library—~~((Daily))~~ Registration by library users—Procedures.** (1) All eligible library users other than University of Washington ~~((law school))~~ faculty ~~((and))~~ staff, and ~~((University of Washington law school))~~ students must present identification and register at the ~~((main))~~ circulation desk upon entering ~~((and leaving))~~ the library.

(2) ~~((Proper))~~ Identification and visitor's permits shall be as specified by the law librarian.

~~((3))~~ When in the law library, all eligible library users other than University of Washington law school faculty and staff and University of Washington law school students must display a visitor's permit on the person or at the workplace when there. Visitor's permits are issued at the time of daily registration.

~~((4))~~ Permits must be returned to the main circulation desk upon leaving the library.

~~((5))~~ Failure to return permits may result in the revocation of library privileges.

**AMENDATORY SECTION** (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-168-180 Identification card—Conditions of use.** (1) Each borrower is responsible for obtaining an official identification card from the appropriate university office or a library borrower's card from the library account services.

(2) An identification card is authorized for use only by the individual whose name appears on the card.

(3) Official identification must be presented for the completion of each in-person circulation transaction.

(4) Each borrower is responsible for materials checked out on ~~((his/her))~~ his or her University of Washington identification card or library borrower's card. Library materials are not to be loaned to others ~~((except as designated in WAC 478-168-180(6)))~~.

(5) ~~((Campus))~~ All borrowers are responsible for keeping the ~~((registrar or payroll))~~ appropriate university office informed of changes of address. ~~((Off-campus borrowers are responsible for keeping the library account services informed of changes of address.))~~

~~((6))~~ Each University of Washington faculty, academic personnel, administrative personnel, professional staff, visiting scholar, and other individuals as authorized by the dean of university libraries, may designate up to two proxies or couriers for the purpose of picking up materials for his/her use.

**AMENDATORY SECTION** (Amending WSR 05-21-133, filed 10/19/05, effective 11/19/05)

**WAC 478-168-310 Fines and charges.** (1) All borrowers are subject to a uniform system of fines and charges for late return of library material and for replacement costs when required. The dean of university libraries or ~~((his/her))~~ his or her designee will set the schedule of fines and charges on a regular basis.

(2) The approved schedule of fines and charges will be available ~~((online and in the Libraries Operations Manual))~~ on the University of Washington libraries web site.

(3) Fines are monetary sanctions for the late return of material. ~~((Fines are levied only when an overdue item is returned prior to billing.))~~

(4) ~~((Billing charges are))~~ A fee is levied to defray the costs incurred by the libraries in billing, processing sanctions, and other activities related to the recovery of material that is ~~((substantially))~~ overdue.

(5) Replacement charges are levied to pay for the replacement of ~~((substantially))~~ overdue material. The replacement charges include the cost of the material and the

cost of processing the material for the shelves. All library materials, regardless of fines and fees paid, remain state property.

(6) Binding, mending, and damage charges are levied to repair material, to prepare replacement materials for circulation or to compensate for the decreased value of materials due to irreparable damage.

**AMENDATORY SECTION** (Amending WSR 04-13-087, filed 6/17/04, effective 9/21/04)

**WAC 478-168-380 Appeal of library charges.** (1) The ~~((library has))~~ libraries have the right to reduce or forgive fines and charges for borrowers in accordance with the guidelines ~~((specified in the *Libraries Operations Manual*))~~ available on the University of Washington libraries web site. Borrowers can appeal unresolved problems to the library fines appeals committee.

(2) The libraries inform potential appellants of the availability of the appeals process at the time of billing and in all correspondence regarding the application of sanctions.

(3) Meetings of the libraries fines appeals committee are considered brief adjudicative procedures as defined by the Administrative Procedure Act (chapter 34.05 RCW). Committee meetings are conducted in conformance with the act and other applicable laws.

(4) A completed appeals form must be submitted within six months of billing for the charges to be appealed.

**WSR 15-09-134**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)  
[Filed April 22, 2015, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-20-110.

Title of Rule and Other Identifying Information: WAC 182-533-0320 Maternity support services—Client eligibility, 182-533-0325 Maternity support services—Provider requirements, and 182-533-0345 Maternity support services—Payment.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on May 26, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on May 26, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by 5:00 p.m. on May 18, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these rules in order to clarify billing requirements, allow group services, and remove language referencing fee-for-service and managed care organization. Although this language is being removed from WAC, maternity support services continues to be fee-for-service and managed care clients are eligible outside of their plan.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Heather Weiher, 626 8th Avenue S.E., Olympia, WA 98504, (360) 725-1293.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small business.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

April 22, 2015  
Jason R. P. Crabbe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

**WAC 182-533-0320 Maternity support services—Client eligibility.** (1) To receive maternity support services (MSS), a client must:

(a) Be covered under categorically needy, medically needy, or state-funded medical programs under Washington apple health; and

(b) Be within the eligibility period of a maternity cycle as defined in WAC 182-533-0315.

(2) ~~((Clients who meet the eligibility criteria in this section and are enrolled in an agency contracted managed care organization (MCO) are eligible for MSS outside their plan.~~

~~(3))~~ Clients who do not agree with an eligibility decision for MSS have a right to a fair hearing under chapter 182-526 WAC.

**AMENDATORY SECTION** (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

**WAC 182-533-0325 Maternity support services—Provider requirements.** Maternity support service providers may include community clinics, federally qualified health centers, local health departments, hospitals, nonprofit organizations, and private clinics.

(1) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, a provider must:

(a) Be enrolled as an eligible provider with the medicaid agency (see WAC 182-502-0010).

(b) Be currently approved as an MSS/ICM provider by the medicaid agency.

(c) Meet the requirements in this chapter, chapter 182-502 WAC and the medicaid agency's current billing instructions.

(d) Ensure that professional staff providing services:

(i) Meet the minimum regulatory and educational qualifications for the scope of services provided under WAC 182-533-0327; and

(ii) Follow the requirements in this chapter and the medicaid agency's current billing instructions.

(e) Screen each client for risk factors.

(f) Screen clients for ICM eligibility.

(g) Conduct case conferences under WAC 182-533-0327(2).

(h) Develop and implement an individualized care plan for each client.

(i) Initiate and participate in care coordination activities throughout the maternity cycle with at least MSS interdisciplinary team members, the client's prenatal care provider, and the Women, Infants, and Children (WIC) Nutrition Program.

(j) Comply with Section 1902 (a)(23) of the Social Security Act regarding the client's freedom to choose a provider.

(k) Comply with Section 1915 (g)(1) of the Social Security Act regarding the client's voluntary receipt of services.

(2) MSS providers may provide services in any of the following locations:

(a) A provider's office or clinic.

(b) The client's residence.

(c) An alternate site that is not the client's residence. (The reason for using an alternate site for visitation instead of the home must be documented in the client's record.)

(3) An individual or service organization that has a written contractual agreement with a qualified MSS provider also may provide MSS and ICM services to eligible clients.

(a) The provider must:

(i) Keep a copy of the written subcontractor agreement on file;

(ii) Ensure that an individual or service organization staff member providing MSS/ICM services (the subcontractor) meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

(iii) Ensure that the subcontractor provides MSS/ICM services under the requirements of this chapter; and

(iv) Maintain professional, financial, and administrative responsibility for the subcontractor.

(b) The provider must:

(i) Bill for services using the provider's ~~((assigned billing number))~~ national provider identifier and MSS/ICM taxonomy; and

(ii) Reimburse the subcontractor for MSS/ICM services provided under the written agreement.

AMENDATORY SECTION (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

**WAC 182-533-0345 Maternity support services—Payment.** The medicaid agency ~~((must))~~ pays for the covered maternity support services (MSS) described in WAC 182-533-0330 ~~((on a fee-for-service basis))~~, subject to the requirements in this section:

(1) MSS ~~((must be))~~ are:

(a) Provided to a client who meets the eligibility requirements in WAC 182-533-0320.

(b) Provided to a client ~~((on an individual basis in))~~ during a face-to-face encounter on an individual basis or in a group setting. If provided in a group setting, the group must consist of at least three but no more than twelve clients.

(c) Provided by a provider that meets the criteria ~~((established))~~ in WAC 182-533-0325. When provided in a group setting, services may not be provided by a community health worker.

(d) Provided according to the ~~((medicaid))~~ agency's ((current billing instructions)) maternity support services (MSS)/infant case management (ICM) provider guide.

(e) Documented in the client's record or chart.

(f) Billed using:

(i) The eligible client's agency-assigned client identification number;

(ii) The appropriate procedure codes ~~((and))~~, modifiers, and allowed number of units identified in the agency's ((current billing instructions)) MSS/ICM provider guide; and

(iii) The ~~((agency-assigned MSS/ICM provider number. (The medicaid agency pays the provider for providing MSS services to eligible clients, not the provider's subcontractor who provides MSS services. See WAC 182-533-0325(3) about subcontracting for services.))~~ provider's national provider identifier and MSS/ICM taxonomy.

(2) The ~~((medicaid))~~ agency:

(a) ~~((Must pay))~~ Reimburses providers for MSS-covered services using the agency's published fee schedule.

(b) Pays MSS-covered services in units of time with one unit being equal to fifteen minutes of one-to-one service delivered face-to-face.

~~((b) When directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium, may determine the maximum number of units allowed per client.~~

~~((e) Must publish the maximum number of units allowed per client in the agency's current billing instructions.))~~ (c) Pays MSS-covered services in units of time with one unit being more than or equal to sixty minutes for group services delivered face-to-face.

(3) The provider may request authorization for a limitation extension under WAC 182-501-0169 to exceed the number of allowed MSS units of service ~~((under WAC 182-501-0169.~~

~~((4) For a client enrolled in a managed care plan who is eligible to receive MSS, the medicaid agency must pay for MSS delivered outside the plan on a fee-for-service basis as described in this section.))~~

**WSR 15-09-136**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed April 22, 2015, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-123.

Title of Rule and Other Identifying Information: WAC 182-500-0010 Medical assistance definition—A and 182-503-0130 Washington apple health—Authorized representative.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on May 26, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on May 26, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by 5:00 p.m. on May 18, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is creating a new rule regarding client authorized representatives, specifically how to designate, serve as, and terminate an authorized representative.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Mick Petersen, P.O. Box 42716, Olympia, WA 98504-45534 [98504-2716], (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small business.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

April 22, 2015  
 Jason R. P. Crabbe  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-500-0010 Medical assistance definition—**

**A. "Administrative renewal"** means the agency uses verification from electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095) with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

**"Agency"** means the Washington state health care authority (HCA), created ~~((pursuant to))~~ under chapter 41.05 RCW.

**"Agency's designee"** means the Washington state department of social and health services (DSHS), created ~~((pursuant to))~~ under chapter 43.20A RCW.

**"Allowable costs"** are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients ~~((are))~~ or not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

**"Alternative benefits plan"** means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Ancillary services"** means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

**"Apple health for kids"** is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

**"Attested income"** means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

**"Authorization"** means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

**"Authorized representative"** ~~((means a family member, friend, organization or someone acting responsibly on behalf of a person who is designated by the person to act on his or her behalf in all matters relating to an application or~~

~~renewal of Washington apple health or other ongoing communications with agency or its designee. The authorization must be made in writing and signed by the person unless the person's medical condition prevents such written authorization. Authority to act on behalf of an applicant or beneficiary under state law can substitute for the person's authorization. The power to act as an authorized representative ends when the person or a court-appointed guardian of the person informs the agency or its designee that the representative is no longer authorized to act on his or her behalf, or when the agency learns of a change in the legal authority upon which the authorization is based)) is defined under WAC 182-503-0130.~~

#### NEW SECTION

#### **WAC 182-503-0130 Authorized representative. (1) Designating an authorized representative (AREP).**

(a) A person may designate an AREP to act on his or her behalf in eligibility-related interactions with the medicaid agency by completing the agency's Authorized Representative Designation Form, or through any of the modalities described in 42 C.F.R. 435.907(a) and 42 C.F.R. 435.923.

(b) A court-appointed legal guardian with authority to make financial decisions on a person's behalf is that person's AREP.

(c) An agreement creating power of attorney (POA) that grants decision-making authority regarding the person's financial interactions with the agency establishes the POA as the AREP.

(d) If someone is unable to designate an AREP due to a medical condition, a person may designate himself or herself as the AREP by signing the agency's Authorized Representative Designation Form.

(2) **Serving as an AREP.** To serve as an AREP, a person or organization must:

(a) Have a good-faith belief that the information he or she provides to the agency is correct.

(b) Report any change in circumstance required under WAC 182-504-0105 unless doing so would exceed the scope of authorized representation or violate state or federal law.

(c) A provider, staff member, or volunteer of an organization must also comply with 42 C.F.R. 435.923(d-e).

#### **(3) Terminating an AREP.**

(a) The person or the AREP may terminate the authorized representation at any time for any reason by notifying the agency verbally or in writing.

(b) Authorized representation terminates automatically when the person dies.

Title of Rule and Other Identifying Information: WAC 246-817-460 Sexual misconduct, the dental quality assurance commission (commission) is proposing rule modification to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a dental provider.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on June 5, 2015, at 8:05 a.m.

Date of Intended Adoption: June 5, 2015.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 29, 2015.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by June 1, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies what forcible or nonconsensual acts are within the definition of sexual misconduct by dental providers. The commission's proposed rule adds acts of sexual misconduct that are forcible or nonconsensual and do not involve a patient, client, or key party. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the commission be consistent in its enforcement activities to more fully comply with RCW 18.130.062 and Executive Order 06-03.

Reasons Supporting Proposal: The commission's experience with investigations and enforcement under the current rule has raised the need to clarify what acts constitute sexual misconduct by dental providers.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.130.050.

Statute Being Implemented: RCW 18.130.062 and Executive Order 06-03.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv), rules that only clarify language of a rule without changing its effect.

Trina Castle  
Executive Director

**WSR 15-09-138**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Dental Quality Assurance Commission)

[Filed April 22, 2015, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-24-021.

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

**WAC 246-817-460 Sexual misconduct.** (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall consti-

tute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care provider's scope of practice;
- (c) Rubbing against a patient or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient or key party;
- (j) Removing patient's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the health care provider;
- (l) Masturbation or other sex act by the health care provider in the presence of the patient or key party;
- (m) Soliciting a date with a patient or key party;
- (n) Discussing the sexual history, preferences or fantasies of the health care provider;
- (o) Any behavior, gestures, or expressions that can reasonably be interpreted as seductive or sexual;
- (p) Sexually demeaning behavior including any verbal or physical contact which can reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient or key party;
- (q) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient; and
- (r) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(3) A health care provider shall not:

- (a) Offer to provide health care services in exchange for sexual favors;
- (b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;
- (c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(~~(3)~~) (4) A health care provider shall not engage in the activities listed in subsection (1) of this section with a former patient or key party if the health care provider:

- (a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the health care provider's personal or sexual needs.

(~~((4))~~) (5) When evaluating whether a health care provider has engaged or has attempted to engage in sexual misconduct, the commission will consider factors(~~(:)~~) including, but not limited to:

- (a) Documentation of a formal termination;
- (b) Transfer of care to another health care provider;
- (c) Duration of the health care provider-patient relationship;
- (d) Amount of time that has passed since the last dental health care services to the patient;
- (e) Communication between the health care provider and the patient between the last dental health care services rendered and commencement of the personal relationship;
- (f) Extent to which the patient's personal or private information was shared with the health care provider;
- (g) Nature of the patient's health condition during and since the professional relationship; and
- (h) The patient's emotional dependence and vulnerability.

(~~((5))~~) (6) Patient or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(~~((6))~~) (7) These rules do not prohibit:

- (a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;
- (b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the dental profession; or
- (c) Providing dental services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient.

#### WSR 15-09-140

#### PROPOSED RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 22, 2015, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-077.

Title of Rule and Other Identifying Information: Chapter 392-117 WAC, Timely reporting; chapter 392-121 WAC, Finance—General apportionment; chapter 392-122 WAC, Finance—Categorical apportionment; chapter 392-123 WAC, Finance—School district budgeting; chapter 392-127 WAC, Finance—Certificated instructional staff ratio (46:1000) compliance; chapter 392-129 WAC, Finance—Emergency school closure; chapter 392-134 WAC, Finance—Apportionment for part-time public school attendance; chapter 392-138 WAC, Finance—Associated student body moneys; and chapter 392-140 WAC, Finance—Special allocations.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington, Olympia, WA 98504-7200, on May 26, 2015, at 1:00 p.m.

Date of Intended Adoption: May 29, 2015.

Submit Written Comments to: T. J. Kelly, Director, OSPI, School Apportionment and Financial Services, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Thomas.kelly@k12.wa.us, fax (360) 664-3683, by May 19, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by May 19, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2012, Initiative 1240 authorized charter schools to open and operate as public schools in Washington state. The purpose of these proposed rules is to amend OSPI's existing apportionment and finance rules to include public charter schools. The proposed rules will have the effect of defining charter schools' reporting requirements, how they will receive general and categorical apportionment and special allocation for full- and part-time student enrollment, and their budgeting requirements. The proposed rules will also define how charter schools will comply with legal requirements pertaining to certificated instructional staff ratio, school closure, and associated student body moneys.

Reasons Supporting Proposal: The proposed amendments are required to ensure that OSPI's apportionment and finance rules meet the intent of Initiative 1240 (2012).

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: Chapter 28A.150 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, Olympia, Washington, (360) 725-6301; and Enforcement: JoLynn Berge, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

April 20, 2015  
Randy Dorn  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-005 Authority.** The authority for this chapter is RCW 28A.150.290 which establishes that the superintendent of public instruction shall have the power and duty to make rules and regulations that are necessary for the proper administration of allocations for basic education and other purposes and RCW 28A.300.040, which states that the powers and duties of the superintendent of public instruction include:

(1) To have supervision over all matters pertaining to the public schools;

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools; and

(3) To print and distribute forms that are necessary to discharge the duties of officials charged with the administration of the laws relating to the common schools.

This chapter is further authorized under RCW 28A.710.-040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

**AMENDATORY SECTION** (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-030 Failure to submit timely general apportionment data.** In the event any school district, charter school, or educational service district fails to submit data by the due date established or in the form required by the superintendent of public instruction and the data are unavailable for calculations pursuant to this chapter or the biennial Operating Appropriations Act, the superintendent of public instruction shall either:

(1) Perform calculations and make payments as if the school district, charter school, or educational service district reported zero data; or

(2) Delay calculations and payments to the school district, charter school, or educational service district until the next monthly apportionment payment or until after data are submitted in the form required.

If a school district, charter school, or educational service district is unable to report by the due date or in the form required by the superintendent of public instruction due to extenuating circumstances, the district or charter school may request to make a tentative report. If the superintendent of public instruction agrees that extenuating circumstances exist and if the tentative report is received in time for the calculations, the superintendent of public instruction may use such tentative report for calculations and payments until such time as the district or charter school submits the final required data: Provided, That a tentative report shall not be used for more than one monthly apportionment calculation without consent of the superintendent of public instruction.

**AMENDATORY SECTION** (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-035 Failure to submit timely annual financial statements.** A school district's or charter school's apportionment payments shall be delayed by the superintendent of public instruction if a school district or charter school fails to submit its annual financial statements (Report F-196) to the superintendent of public instruction by the established due date. An educational service district's apportionment payments shall be delayed by the superintendent of public instruction if an educational service district fails to submit its annual financial statements (Report F-185) to the superintendent of public instruction by the established due date. The first apportionment payment to be delayed will be for the month in which the annual financial statements are due. The

first apportionment payment shall be delayed no less than thirty days. The first apportionment payment and subsequent apportionment payments shall be delayed until the annual financial statements are filed in approvable form.

AMENDATORY SECTION (Amending WSR 00-12-037, filed 5/31/00, effective 7/1/00)

**WAC 392-117-045 Corrections to data reported to the superintendent of public instruction.** School districts, charter school, and educational service districts shall submit corrections to district or charter school enrollment, personnel, and other data affecting state apportionment as provided in this section.

(1) If at any time prior to the completion of audit of data by the state auditor a school district, charter school, or educational service district discovers that data have been reported to the superintendent of public instruction in error, the district or charter school shall submit revised data. The "completion of audit" means the date of the exit conference held by the state auditor with district or charter school staff as part of the district's regular financial and state compliance audit.

(2) During audit of data, districts or charter schools submitting revised data shall provide a copy of revisions to the state auditor. "During audit" means between the entrance conference and the exit conference held by the state auditor with district or charter school staff as part of the district's or charter school's regular financial and state compliance audit.

(3) After audit of data by the state auditor, the district or charter school shall report revisions only as part of the audit resolution process pursuant to chapter 392-115 WAC. "After audit" means after the exit conference held by the state auditor with district or charter school staff as part of the district's or charter school's regular financial and state compliance audit.

(4) Unless the superintendent of public instruction provides instructions to the contrary, revised data shall be submitted in the same manner as the original report. The revised report shall contain an original signature of the educational service district superintendent ~~((or))~~, the school district superintendent, the charter school's lead administrator, or the authorized official.

AMENDATORY SECTION (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-050 Documentation requirements.** School districts, charter schools, and educational service districts shall provide upon request by the superintendent of public instruction and for audit purposes, documentation to support all data reported to the superintendent of public instruction pursuant to this chapter.

#### NEW SECTION

**WAC 392-117-055 Required reporting contracts for charter schools.** Each public charter school in its first year of operation must contract with the charter school's resident education service district school district for the purpose of reporting general apportionment data, educational data, and year end financial report data to the superintendent of public

instruction under this chapter. The superintendent may withhold apportionment payments to charter schools that do not comply with this section.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-121-001 Authority.** The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations as are necessary for the proper administration of chapter 28A.150 RCW. This general authority is supplemented by RCW 28A.150.400 which authorizes the superintendent of public instruction to develop apportionment factors based on data and statistics derived in an annual period established by the superintendent of public instruction.

This chapter is further authorized under RCW 28A.710.-040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-003 Purpose.** The purpose of this chapter is to set forth policies and procedures related to the general apportionment of state moneys for the operation of ~~((common))~~ public schools within the state of Washington. This section shall apply for apportionment purposes only and shall not apply to program approval standards for basic education entitlement.

AMENDATORY SECTION (Amending WSR 92-23-044, filed 11/16/92, effective 12/17/92)

**WAC 392-121-011 General provisions.** The following general provisions apply to this chapter:

(1) Calculations made by the superintendent of public instruction shall use the most current school district information for the school year or charter school on file with the superintendent of public instruction at the time of the calculation unless otherwise provided in this chapter or in chapter 392-117 WAC, Timely reporting.

(2) Full-time equivalent staff shall be rounded to the nearest three decimal places.

(3) Full-time equivalent enrollment shall be rounded to the nearest two decimal places.

(4) Ratios of full-time equivalent staff to students shall be expressed as a ratio of staff to one thousand students and shall be rounded to the nearest two decimal places (e.g., 51.21/1000).

(5) Unless otherwise stated, report forms, staff, salary, and enrollment data references in these rules are report forms, staff, salary, or enrollment data for the school year for which calculations pursuant to this chapter are being made.

(6) Employee assignments and account codes for program, duty, and activity shall mean the same as defined in the accounting manual for public school districts in the state of Washington and in instructions for personnel reporting provided by the superintendent of public instruction.

(7) School districts and charter schools shall have available upon request by the superintendent of public instruction and for audit purposes, such documentation as necessary to support all data reported to the superintendent of public instruction pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 92-23-044, filed 11/16/92, effective 12/17/92)

**WAC 392-121-021 Reporting requirements.** The provisions of chapter 392-117 WAC, Timely reporting, apply to allocations made pursuant to this chapter. Failure of a school district or charter school to report in the form or by the deadline required by the superintendent of public instruction may result in the reduction or delay of apportionment payments.

AMENDATORY SECTION (Amending WSR 99-20-021, filed 9/28/99, effective 9/29/99)

**WAC 392-121-031 Definition—School year.** As used in this chapter, "school year" means the annual period commencing on the first day of September of one calendar year and ending the last day of August of the ensuing calendar year: Provided, That for those school districts or charter schools commencing basic education program prior to September 1, the following activities shall be considered to be within the school year that commences September 1.

(1) School days scheduled prior to September 1; and

(2) Staff days and activities in preparation for the school year included in employee contracts for the school year, but occurring before September 1.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-033 Definition—School day.** As used in this chapter, "school day" means a calendar day except school holidays on which students enrolled in the school district or charter school are afforded the opportunity to be engaged in educational activity which is planned, supervised, and conducted by or under the supervision of the school district or charter school certificated staff, and on which day all or any portion of the students enrolled in the program actually participate in such educational activity.

AMENDATORY SECTION (Amending WSR 09-21-019, filed 10/9/09, effective 11/9/09)

**WAC 392-121-106 Definition—Enrolled student.** As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250); ((~~or~~))

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.-260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-107 Definition—Course of study.** As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4)(a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - Training provided pursuant to WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.-400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.-010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-188.5;

(h) Enrollment in the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-108 Definition—Enrollment exclusions.** A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - Except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days, or a part-time student that has not attended school at least once within a time period consisting of twenty consecutive school days, shall not be counted as an enrolled student until attendance is resumed. School days are defined as the regularly scheduled instructional days for the general population of the school or district the student is enrolled in, regardless of the student's individualized schedule.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172A-02100 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - A student for whom the school district or charter school has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - A student who has transferred to another public or private school and for whom the school district or charter school has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district or charter school.

(4) Suspensions - A student who has been suspended from school pursuant to WAC 392-400-260 or in accordance with a charter school's student discipline policy, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - A student who has been expelled from all school subjects or classes by the school district pursuant to WAC 392-400-275 or 392-400-295 or in accordance with a charter school's student discipline policy shall not be counted as an enrolled student until such time as enrollment in a district program has resumed; a student who has been partially expelled, such as from a single school subject or class, by the school district or charter school pursuant to WAC 392-400-275 or 392-400-295 or in accordance with a charter school's student discipline policy may be considered a part-time enrolled student.

(6) Graduates - A student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

(7) Tuition - A student paying tuition including, but not limited to, students on an F-1 visa or students enrolled in a tuition-based summer school program.

(8) An institution student who is claimed as a 1.0 FTE by any institution as an enrolled student eligible for state institutional education support pursuant to chapter 392-122 WAC where the institution's count date occurs prior to the school district count date for the month. Where the count dates occur on the same date, the institution shall have priority for counting the student.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-119 Definition—Enrollment count dates.** As used in this chapter, "enrollment count dates" means the fourth school day of September and the first school day of each of the nine subsequent months of the school year for all school districts and charter schools including districts and charter schools which commence basic education programs prior to September 1st. Exceptions are limited to the following:

(1) In school districts where not every school or grade follows the same calendar of school days, the calendar of an individual school or an entire grade level within a school may determine the monthly enrollment count date for that school or grade level within the school.

(2) The nine count dates for running start enrollment shall be the first school day of each month of October through June.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-122 Definition—Full-time equivalent student.** As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1) The minimum hours for each grade are as follows:

(a) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

(b) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

(c) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

(d) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student equal to the student's hours of enrollment divided by the minimum hours for the student's grade level set forth in subsection (1) of this section.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-123 Nonstandard school year programs.** A student participating in a program of education occurring during the nonstandard school year on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school or a running start program is not eligible for nonstandard school year funding.

(2) A district or charter school shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district or charter school shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district or charter school may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-124 Full-time equivalent enrollment for work based learning.** For work based learning provided pursuant to WAC 392-410-315 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative work experience equals two tenths of a full-time equivalent ( $40 \div 200 = 0.20$ ). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent ( $20 \div 100 = 0.20$ ). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district or charter school for audit purposes.

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

(5) Funding may be claimed only for work based learning hours that occur after the work based learning plan, work based agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-136 Limitation on enrollment counts.** Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session. Each district or char-

ter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum 1.8 FTE.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student. A student enrolled in running start during the regular school year may be claimed for up to a combined 1.2 full-time equivalent student. A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a 0.2 running start FTE.

Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a 1.0 full-time equivalent for running start and a maximum of a 1.0 full-time equivalent for the student's high school enrollment subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-137 Full-time equivalent enrollment of students with a disability.** In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student only if the student is enrolled full time (twenty hours or more per week), or is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

**AMENDATORY SECTION** (Amending WSR 15-03-056, filed 1/14/15, effective 2/14/15)

**WAC 392-121-182 Alternative learning experience requirements.** (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public charter school have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work;

(c) "Certificated teacher" means an employee of a school district ~~(-or-)~~ or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher.

At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session or when a charter school is in session;

(j) "School-based support staff" means an employee of a school district ~~(-or)~~ or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

**(4) Alternative learning experience program requirements:**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the writ-

ten student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

- (i) Direct personal contact; or
- (ii) In-person instructional contact; or
- (iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory

progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

**(5) Required school district or charter school board policies for alternative learning experiences:** The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors or charter school board on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

**(6) Alternative learning experience implementation requirements:**

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are

identified in the alternative learning experience written student learning plan.

(d) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be consistent in quality with those available to the district's or charter school's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide

substantially similar experiences and services under this subsection.

(j)(i) A school district or charter school that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district or charter school does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district ~~((or the))~~, school district contractor, charter school, or charter school contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district or charter school.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a

high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts and charter schools offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's or charter school's alternative learning experience courses by the office of the state auditor.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district or charter school must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district or charter school in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the require-

ments of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

**(8) Assessment requirements:**

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to

participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

**(9) Reporting requirements:**

(a) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences ~~((as well as))~~. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's or charter school's regular instructional program.

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. ~~((Beginning with the 2013-14 school year,))~~ School districts and charter schools must designate alternative learning experience courses as such when

reporting course information to the *Comprehensive Education Data and Research System*.

**(10) Documentation and record retention requirements:** School districts and charter schools claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts and charter schools must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors or charter school board as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

**AMENDATORY SECTION** (Amending WSR 13-21-024, filed 10/7/13, effective 11/7/13)

**WAC 392-121-188 Instruction provided under contract.** School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it

is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not required for online courses purchased by the school district from an online provider approved by the superintendent of public instruction under RCW 28A.250.020;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control;

(5) The contractor charges the student no tuition for enrollment;

(6) Enrollment is voluntary;

(7) No student or person is unlawfully excluded from participation on the grounds of (~~race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap~~) sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal, or marital status;

(8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;

(10) The curriculum is approved by the district. District approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250.020;

(11) The contractor provides enrollment reports to the school district that comply with this chapter;

(12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(13) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given school district, the school district must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase online courses through the online course

catalog provided by the office of superintendent of public instruction are exempt from this provision;

(15) The school district and contractor establish a process for periodic monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

(17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

(19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.

#### NEW SECTION

**WAC 392-121-1885 Instruction provided under contract by charter schools.** Charter schools are authorized to enter into contracts with any school district, educational service district, or other public or private entity for the provision of educational instructional services to the same extent as other noncharter public schools, as long as the charter school board maintains oversight authority over the charter school. When a charter school contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the charter school for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The charter school retains full responsibility for compliance with all state and federal laws;

(2) The charter school complies with all relevant state and federal laws that are applicable to charter schools;

(3) The contractor provides instruction free of sectarian or religious influence or control;

(4) The contractor charges the student no tuition for enrollment;

(5) No student or person is unlawfully excluded from participation on the grounds of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal, or marital status;

(6) Each student is enrolled in the charter school reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(7) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;

(8) The curriculum is approved by the charter school. Approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250-.020;

(9) The contractor provides enrollment reports to the charter school that comply with this chapter;

(10) The contractor maintains and has available for audit or review by the charter school, charter school authorizer, and state or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the charter school;

(11) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given charter school, the charter school must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(12) The charter school and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the charter school. Charter schools that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(13) The charter school and contractor establish a process for periodic monitoring by the charter school and charter school authorizer for compliance with this section and other terms of the contract between the charter school and contractor. Charter schools that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(14) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

(15) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC; and

(16) The charter school requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the charter school under contract.

**AMENDATORY SECTION** (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

**WAC 392-121-200 Definition—Certificated employee.** As used in this chapter, "certificated employee" means:

(1) A person who holds a professional education certificate issued by the superintendent of public instruction and who is employed by a school district or charter school in a position for which such certificate is required by statute, rule of the professional educator standards board, or written policy or practice of the employing school district; or

(2) A superintendent or a person hired to fill a position designated as, or which is, in fact, deputy superintendent or assistant superintendent; or

(3) A charter school's lead administrator or a person hired to fill a position as the lead administrator's deputy administrator or assistant administrator.

**AMENDATORY SECTION** (Amending WSR 99-08-008, filed 3/25/99, effective 4/25/99)

**WAC 392-121-201 Definition—Contractor certificated employee.** As used in this chapter, "contractor certificated employee" means a person who holds a professional education certificate issued by the superintendent of public instruction and who is employed by a contractor as defined in WAC 392-121-188 or 392-121-1885 in a position for which such certificate is required.

**AMENDATORY SECTION** (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-205 Definition—District certificated instructional employee.** As used in this chapter, "district certificated instructional employee" means any school district or charter school certificated employee who is employed in whole or part as one or more of the following:

(1) An elementary, secondary or other teacher who instructs pupils in classes or courses;

(2) An educational staff associate who assists, evaluates, counsels, or instructs students in a manner consistent with the employee's educational staff associate certificate; or

(3) Other certificated staff assigned to the 300 or 400 series duty codes as defined in the S-275 personnel reporting instructions.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-206 Definition—Contractor certificated instructional employee.** As used in this chapter, "contractor certificated instructional employee" means a contractor certificated employee who:

- (1) Is employed by a contractor, pursuant to WAC 392-121-188 or 392-121-1885, to serve students claimed for basic education funding by a school district or charter school; and
- (2) Is employed as one or both of the following:
  - (a) An elementary, secondary or other teacher who instructs pupils in classes or courses; or
  - (b) An educational staff associate who assists, evaluates, counsels, or instructs students in a manner consistent with the employee's educational staff associate certificate.

AMENDATORY SECTION (Amending WSR 11-21-065, filed 10/17/11, effective 11/17/11)

**WAC 392-121-210 Definition—Basic education certificated instructional employee.** As used in this chapter, "basic education certificated instructional employee" means a district or charter school certificated instructional employee or a contractor certificated instructional employee assigned in whole or in part to the following programs as defined in the accounting manual for public school districts in the state of Washington:

- (1) 01 Basic Education;
- (2) 02 Basic Education-Alternative Learning Experience;
- (3) 31 Vocational, Basic, State;
- (4) 34 Middle School Career and Technical Education-State;
- (5) 45 Skills Center, Basic, State; and
- (6) 97 (~~Districtwide~~) District-wide Support.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-212 Definition—Full-time equivalent (FTE) certificated instructional staff.** As used in this chapter, "full-time equivalent (FTE) certificated instructional staff" means the number of staff units determined as follows:

- (1) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services as a certificated instructional employee for not less than 180 full work days shall be counted as one FTE.
- (2) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for 180 partial days as a certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing that part of the day worked by the full day as determined by the district or charter school.
- (3) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 full work days as a certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the number of work days contracted for

by 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used as the divisor.

(4) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 partial days as a certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the part of the day worked by the full day as determined by the district or charter school and then multiplying the result by the ratio of work days contracted for by 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used in place of 180 in the ratio.

(5) No employee shall be counted as more than one full-time equivalent certificated staff unit.

(6) The length of a full work day as used in this section shall be determined by the district or charter school.

(7) As used in this section, contracts to provide services as a certificated instructional employee shall exclude supplemental contract services as defined under RCW 28A.400.200 (4).

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-215 Definition—Full-time equivalent (FTE) basic education certificated instructional staff.** As used in this chapter, "full-time equivalent (FTE) basic education certificated instructional staff" means the number of staff units determined as follows:

(1) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services as a basic education certificated instructional employee for not less than 180 full work days shall be counted as one FTE.

(2) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for 180 partial days as a basic education certificated instructional employee shall be counted as a partial FTE, such part to be the quotient to three decimal places obtained by dividing that part of the day worked by the full day as determined by the district or charter school.

(3) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 full work days as a basic education certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the number of work days contracted for by 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used as the divisor.

(4) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 partial days as a basic education certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the part of the day worked

by the full day as determined by the district or charter school and then multiplying the result by the ratio of work days contracted for to 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used in place of 180 in the ratio.

(5) No employee shall be counted as more than one full-time equivalent basic education certificated staff unit.

(6) The length of a full work day as used in this section shall be determined by the district or charter school.

(7) As used in this section, contracts to provide services as a basic education certificated instructional employee shall exclude supplemental contract services as defined under RCW 28A.400.200(4).

**AMENDATORY SECTION** (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-220 Definition—S-275 reporting process.** As used in this chapter, "S-275 reporting process" means the electronic personnel reporting process which is defined annually by the superintendent of public instruction.

This reporting process shall include individuals who are known as of October 1 to be:

(1) District or charter school employees with a contract for certificated employment to provide services during the period September 1 through August 31;

(2) Classified employees, employed by the district or charter school to provide services during the period September 1 through August 31; and

(3) Contractor certificated instructional employees, contracted to provide services during the period September 1 through August 31.

**AMENDATORY SECTION** (Amending WSR 95-21-096, filed 10/18/95, effective 11/18/95)

**WAC 392-121-225 Definition—Report S-275.** As used in this chapter, "Report S-275" means the alphabetic listing of certificated personnel employed by a school district or charter school on October 1 as prepared by the superintendent of public instruction from data submitted by the district or charter school through the S-275 reporting process for the school year.

**AMENDATORY SECTION** (Amending WSR 14-20-061, filed 9/25/14, effective 10/26/14)

**WAC 392-121-257 Definition—In-service credits.** As used in this chapter, "in-service credits" means credits determined as follows:

(1) Credits are earned:

(a) After August 31, 1987; and

(b) After the awarding or conferring of the employee's first bachelor's degree.

(2) Credits are earned on or before October 1 of the year for which allocations are being calculated pursuant to this chapter.

(3) Credits are earned in either:

(a) A locally approved in-service training program which means a program approved by a school district board

of directors or charter school board, and meeting standards adopted by the professional educator standards board pursuant to the standards in WAC 181-85-200 and the development of which has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040; or

(b) A state approved continuing education program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the professional educator standards board pursuant to chapter 181-85 WAC.

(4) Credits are not earned for the purpose of satisfying the requirements of the employee's next highest degree.

(5) Credits earned after September 1, 1995, must satisfy the additional requirements of WAC 392-121-262.

(6) Credits are not counted as academic credits pursuant to WAC 392-121-255 or nondegree credits pursuant to WAC 392-121-259.

(7) Ten locally approved in-service or state approved continuing education credit hours defined in WAC 181-85-030 equal one in-service credit.

(8) Each forty hours of participation in an approved internship with a business, industry, or government agency pursuant to chapter 181-83 WAC equals one in-service credit.

(a) No more than two in-service credits may be earned as a result of an internship during any calendar-year period.

(b) Each individual is limited to a maximum of fifteen in-service credits earned from internships.

(9) Accumulate credits rounded to one decimal place.

**AMENDATORY SECTION** (Amending WSR 13-05-072, filed 2/19/13, effective 3/22/13)

**WAC 392-121-262 Definition—Additional criteria for all credits.** Credits earned after September 1, 1995, must satisfy the following criteria in addition to those found in WAC 392-121-255, 392-121-257, and 392-121-259:

(1) At the time credits are recognized by the school district or charter school, the content of the course must meet at least one of the following:

(a) It is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) It pertains to the individual's current assignment or expected assignment for the following school year;

(c) It is necessary for obtaining endorsement as prescribed by the Washington professional educator standards board;

(d) It is specifically required for obtaining advanced levels of certification;

(e) It is included in a college or university degree program that pertains to the individual's current assignment or potential future assignment as a certificated instructional staff;

(f) It addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one

under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff; or

(g) Beginning in the 2011-12 school year, it pertains to the revised teacher evaluation system under RCW 28A.405.-100, including the professional development training provided in RCW 28A.405.106.

(2) Credits which have been determined to meet one or more of the criteria in subsection (1) of this section shall continue to be recognized in subsequent school years and by subsequent school district and charter school employers; and

(3) Credits not recognized in a school year may be recognized in a subsequent school year if there is a change in the qualifying criteria such as a change in professional educator standards board rules, a change in the district's or charter school's strategic plan, a change in the school-based plan for the school in which the individual is assigned, a change in the individual's assignment, or a change in the individual's employer.

AMENDATORY SECTION (Amending WSR 10-07-141, filed 3/23/10, effective 4/23/10)

**WAC 392-121-264 Definition—Certificated years of experience.** Regardless of the experience factors used by a school district or charter school for the purposes of its salary schedule(s), as used in this chapter, the term "certificated years of experience" means the number of years of accumulated full-time and part-time professional education employment prior to the current reporting school year in the state of Washington, out-of-state, and a foreign country. School districts and charter schools shall report all certificated years of experience including those beyond the experience limit of the school district's or charter school's salary schedule.

(1) Professional education employment shall be limited to the following:

(a) Employment in public or private preschools or elementary and secondary schools in positions which require certification where:

(i) Schools include the Centrum education program, the Pacific Science Center education program, educational centers authorized under chapter 28A.205 RCW, and Seattle Children's Hospital education program;

(ii) Certification means the concurrent public professional education licensing requirements established in the state, province, country, or other governmental unit in which employment occurred and which, for the state of Washington, refers to the certificates authorized by WAC 181-79A-140 and temporary permits authorized by WAC 181-79A-128;

(b) Employment in public or private vocational-technical schools, technical colleges, community/junior colleges, colleges, and universities in positions comparable to those which require certification in Washington school districts;

(c) Employment in a governmental educational agency with regional administrative responsibilities for preschool, elementary, and/or secondary education including but not limited to an educational service district, office of superintendent of public instruction, or United States department of education in any professional position including but not limited to C.P.A., architect, business manager, or physician;

(d) Experience in the following areas:

(i) Military, Peace Corps, or Vista service which interrupted professional education employment included in (a), (b), or (c) of this subsection; and

(ii) Sabbatical leave.

(e) For nondegreed vocational/career and technical education instructors, up to a maximum of six years of management experience as defined in WAC 181-77-003(6) acquired after the instructor meets the minimum vocational/career and technical education certification requirements of three years (six thousand hours) established in WAC 181-77-041 (1)(a) (i), regardless of when the initial certificate is issued and regardless of type of vocational/career and technical education certificate held. If a degree is obtained while employed in the state of Washington as a nondegreed vocational/career and technical education instructor, the eligible years of management experience pursuant to this subsection reported on Report S-275 prior to the awarding of the degree shall continue to be reported but shall not increase.

(f) Beginning in the 2007-08 school year, for occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers regulated under Title 18 RCW, years of experience may include employment as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, that does not otherwise meet the requirements of (a) through (e) of this subsection, subject to the following conditions and limitations:

(i) Experience included under this subsection shall be limited to a maximum of two years.

(ii) The calculation of years of experience shall be that one year of experience in a school or other nonschool position counts as one year of experience for the purposes of this subsection, per subsection (2)(a) of this section.

(iii) Employment as occupational therapists shall be limited to the following:

(A) In positions requiring licensure as an occupational therapist under Title 18 RCW, or comparable out-of-state employment; and

(B) While holding a valid occupational therapist license, or other comparable occupational therapist credential.

(iv) Employment as physical therapists shall be limited to the following:

(A) In positions requiring licensure as a physical therapist under Title 18 RCW, or comparable out-of-state employment; and

(B) While holding a valid physical therapist license, or other comparable physical therapist credential.

(v) Employment as nurses shall be limited to the following:

(A) In positions requiring licensure as a registered nurse under Title 18 RCW, or comparable out-of-state employment; and

(B) While holding a valid registered nurse license, or other comparable registered nurse credential.

(vi) Employment as speech-language pathologists or audiologists shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by speech-language pathologists or audiologists regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for conditional certification as a school speech-language pathologist or audiologist established in WAC 181-79A-231(1)(c)(iv).

(vii) Employment as counselors shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by counselors regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for emergency certification as a school counselor established in WAC 181-79A-231(3).

(viii) Employment as psychologists shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by psychologists regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for emergency certification as a school psychologist established in WAC 181-79A-231(3).

(ix) Employment as social workers shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by social workers regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for emergency certification as a school social worker established in WAC 181-79A-231(3).

(x) Certificated years of experience as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, determined pursuant to this subsection and reported on Report S-275, by teachers and other certificated staff who are no longer employed as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, shall continue to be reported but shall not increase.

(2) Years of full-time and part-time professional education employment prior to the current reporting school year are accumulated as follows:

(a) For each professional education employment which is not employment as a casual substitute pursuant to subsection (1)(a) of this section;

(i) Determine the total number of hours, or other unit of measure, per year for an employee working full-time with each employer;

(ii) Determine the number of hours, or other unit of measure, per year with each employer, including paid leave and excluding unpaid leave;

(iii) Calculate the quotient of the hours, or other unit of measure, determined in (a)(ii) of this subsection divided by the hours, or other unit of measure, in (a)(i) of this subsection rounded to two decimal places for each year.

(b) For professional education employment as a casual substitute pursuant to subsection (1)(a) of this section:

(i) Determine the total number of full-time equivalent substitute days per year;

(ii) Calculate the quotient of full-time equivalent days determined in (b)(i) of this subsection divided by 180 rounded to two decimal places for each year.

(c) No more than 1.0 year may be accumulated in any traditional nine-month academic year or any twelve-month period.

(i) Accumulate, for each year, professional education employment calculated in (a)(iii) and (b)(ii) of this subsection.

(ii) Determine the smaller of the result in (c)(i) of this subsection or 1.00 for each year.

(d) Determine certificated years of experience as the accumulation of all years of professional education employment calculated in (c)(ii) of this subsection and report such years rounded to one decimal place.

AMENDATORY SECTION (Amending WSR 92-23-044, filed 11/16/92, effective 12/17/92)

**WAC 392-121-266 Definition—LEAP salary allocation documents.** As used in this chapter, "LEAP salary allocation documents" means the computerized tabulations prepared by the legislative evaluation and accountability program (LEAP) and identified in the state Operating Appropriations Act as part of the formula for determining average salaries for the purpose of allocating state moneys to school districts or charter schools.

AMENDATORY SECTION (Amending WSR 14-07-006, filed 3/6/14, effective 4/6/14)

**WAC 392-121-280 Placement on LEAP salary allocation documents—Documentation required.** School districts and charter schools shall have documentation on file and available for review which substantiates each certificated instructional employee's placement on LEAP salary allocation documents. The minimum requirements are as follows:

(1) Districts and charter schools shall document the date of awarding or conferring of the highest degree including the date upon which the degree was awarded or conferred as recorded on the diploma or transcript from the registrar of the accredited institution of higher education.

(a) If the highest degree is a master's degree, the district or charter school shall also document the date of awarding or conferring of the first bachelor's degree.

(b) If the degree was awarded by an institution which does not confer degrees after each term, and all degree requirements were completed at a time other than the date recorded on the diploma or transcript, a written statement from the registrar of the institution verifying a prior completion date shall be adequate documentation.

(c) If the degree program was completed in a country other than the United States, documentation must include documentation in English of degree equivalency for the appropriate degree as allowed by WAC 181-79A-260: Provided, That documentation of degree equivalency is not required if that institution of higher education is already regionally accredited or accredited by the distance education and training council, pursuant to WAC 181-78A-010(7).

(2) Districts and charter schools shall document academic credits by having on file a transcript from the registrar

of the accredited institution of higher education granting the credits. For purposes of this subsection:

(a) An academic credit is deemed "earned" at the end of the term for which it appears on the transcript: Provided, That a written statement from the registrar of the institution verifying a prior earned date may establish the date a credit was earned;

(b) Washington state community college credits numbered one hundred and above are deemed transferable for purposes of WAC 392-121-255(4) subject to the limitations of that same subsection;

(c) Credits are not deemed "earned" at an institution of higher education which transfers-in credits. Such credits must be documented using a transcript from the initial granting institution and are subject to all the limitations of WAC 392-121-255;

(d) If the credits were completed in a country other than the United States, documentation must include a written statement of credit equivalency for the appropriate credits from a foreign credentials' evaluation agency approved by the office of superintendent of public instruction: Provided, That documentation of degree equivalency is not required if that institution of higher education is already regionally accredited or accredited by the distance education and training council, pursuant to WAC 181-78A-010(7); and

(e) For credits earned after September 1, 1995, districts and charter schools shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district or charter school representative and must be available to the employee's future employers.

(3) Districts and charter schools shall document in-service credits:

(a) By having on file a document meeting standards established in WAC 181-85-107; and

(b) For credits earned after September 1, 1995, districts and charter schools shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district or charter school representative and must be available to the employee's future employers.

(4) Districts and charter schools shall document nondegree credits.

(a) For vocational/career and technical education educator training credits pursuant to WAC 392-121-259(3) districts and charter schools shall have on file a document meeting standards established in WAC 181-85-107 and evidence that the training was authorized pursuant to WAC 181-77-003 (2), (9), or (12).

(b) For credits calculated from converted occupational experience pursuant to WAC 392-121-259(3) districts and charter schools shall have on file documents which provide:

(i) Evidence that the occupational experience meets the requirements of WAC 181-77-003(7);

(ii) Evidence of the individual's actual number of hours of employment for each year including dates of employment; and

(iii) The district or charter school calculation of converted credits pursuant to WAC 392-121-259(3).

(c) For credits earned after September 1, 1995, districts shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district representative and must be available to the employee's future employers.

(5) Districts and charter schools shall document certificated years of experience as follows:

(a) For certificated years of experience obtained and reported on Report S-275 prior to the 1994-95 school year districts and charter schools shall have on file documents that provide evidence of employment including dates of employment.

(b) For certificated years of experience reported on Report S-275 for the first time after the 1993-94 school year districts and charter schools shall have on file:

(i) The total number of hours, or other unit of measure, per year for an employee working full-time with each employer;

(ii) The number of hours, or other unit of measure (worked by the employee), per year and dates of employment with each employer, including paid leave and excluding unpaid leave: Provided, That documentation of hours in excess of one full-time certificated year of experience in any twelve-month period is not required;

(iii) The quotient of the hours, or other unit of measure, determined in (b)(ii) of this subsection divided by the hours, or other unit of measure, in (b)(i) of this subsection rounded to two decimal places for each year;

(iv) The name and address of the employer;

(v) For those counting (~~out of district~~) experience outside of the school district or charter school pursuant to WAC 392-121-264 (1)(a), evidence whether or not the position required professional education certification pursuant to WAC 392-121-264 (1)(a)(ii);

(vi) For those counting experience pursuant to WAC 392-121-264 (1)(b), a brief description of the previous employment which documents the school district's or charter school's decision that the position was comparable to one requiring certification in the Washington school districts;

(vii) For those counting management experience pursuant to WAC 392-121-264 (1)(e), evidence that the experience meets the requirements of WAC 181-77-003(6);

(viii) For those counting experience (for educational staff associates) pursuant to WAC 392-121-264 (1)(f), evidence that the previous employment meets the requirements in the applicable subsections of WAC 392-121-264 (1)(f).

(6) Any documentation required by this section may be original or copies of the original: Provided, That each copy is subject to school district or charter school acceptance or rejection.

(7) The falsification or deliberate misrepresentation, including omission of a material fact concerning degrees, credits, or experience by an education practitioner as defined in WAC 181-87-035 shall be deemed an act of unprofessional conduct pursuant to WAC 181-87-050. In such an

event the provisions of chapters 181-86 and 181-87 WAC shall apply.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-299 Determination of district average certificated instructional staff salary for the purpose of apportionment.** Each school district's or charter school's average certificated instructional staff salary for the purpose of apportioning state general fund moneys to school districts pursuant to RCW 28A.150.250 and 28A.150.260 shall be determined by the superintendent of public instruction as provided in the biennial Operating Appropriations Act using definitions and procedures provided in this chapter.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-400 Apportionment of basic education moneys.** From the basic education moneys appropriated to the superintendent of public instruction, the superintendent shall allocate moneys as follows:

(1) Allocations shall be made pursuant to chapter 28A.150 RCW, the state Operating Appropriations Act, and this chapter.

(2) Allocations to school districts shall be made in twelve monthly payments during the school year pursuant to RCW 28A.510.250 to each school district operating a program approved by the state board of education.

(a) Initial monthly payments shall be based on estimates of such data as the superintendent of public instruction deems necessary to commence payment for the school year, such estimates to be submitted by school districts to the educational service districts or superintendent of public instruction on forms provided by the superintendent of public instruction. The latest date on which a school district may make changes in these data shall be the date on which the school district files its budget with the educational service district.

(b) As the school year progresses, monthly payments to school districts shall be adjusted to reflect actual full-time equivalent students enrolled, district average certificated instructional staff salary for purpose of apportionment, other school district characteristics, deductible revenues and such other data as are deemed necessary by the superintendent and reported by school districts and other governmental agencies on forms provided or approved by the superintendent of public instruction.

(3) Allocations to public charter schools shall be made pursuant to RCW 28A.710.220.

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-415 Basic education allocation—Deductible revenues.** In addition to those funds appropriated by the legislature for basic education allocation purposes, the following locally available general fund revenues shall be included in the computation of the total annual basic education allocation of each school district or charter school pursuant to RCW 28A.150.250 and 28A.150.260 and shall be

deducted from payments made pursuant to WAC 392-121-400:

(1) Proceeds from the sale, rental or lease of stone, minerals, timber, forest products, other crops and matter, and improvements from or on tax title real property managed by a county pursuant to chapter 36.35 RCW;

(2) Proceeds from state forests pursuant to RCW 79.22.-040 and 79.22.050;

(3) Federal in lieu of tax payments made pursuant to RCW 84.72.020; and

(4) Proceeds from the sale of lumber, timber, and timber products on military reservations or facilities in accordance with U.S.C. §2665, Title 10, and P.L. 97-99.

(5) Local in lieu of tax payments including but not limited to payments made pursuant to RCW 35.82.210, 35.83.-040, and 79.19.110.

Otherwise deductible revenues from any of the foregoing sources received by a school district due solely to the district's levy of a capital projects fund or debt service fund excess tax levy shall constitute nongeneral fund revenues and shall not be deducted in the computation of the district's annual basic education allocation for that school year.

AMENDATORY SECTION (Amending WSR 12-03-068, filed 1/12/12, effective 2/12/12)

**WAC 392-121-421 Definition—Resident student—Basic education allocation—Federal forest funds.** As used in RCW 28A.520.020, resident full-time equivalent students means full-time equivalent students as defined in WAC 392-121-122, excluding:

(1) Students enrolled in school district alternative learning experience programs who reside outside the county of the school district boundaries; and

(2) Students enrolled in charter school alternative learning experience programs who do not reside in the county in which the charter school is located.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-425 Basic education allocation during strike.** Unless a school district's or charter school's program is disapproved in accordance with WAC 180-16-162 through 180-16-164, basic education allocations shall continue for the period of a strike.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-430 Kindergarten and grade one through twelve programs considered collectively—Failure to operate an approved program—Denial of apportionment.** For the purpose of this chapter, a school district's or charter school's scheduled kindergarten and grade one through twelve programs shall be considered collectively. The total program of a district or charter school may not be subdivided for the purpose of applying program approval standards. Those school days which are conducted during the period of a strike following transmittal of a notice of disapproval shall be discounted for state basic education entitle-

ment purposes at the rate of one hundred-eightieth of the district's or charter school's basic education entitlement for the school year per school day: Provided, That kindergarten and grade one through twelve programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of basic education entitlement.

**AMENDATORY SECTION** (Amending WSR 96-03-001, filed 1/3/96, effective 2/3/96)

**WAC 392-121-435 Transfer of basic education allocation.** The board of directors of a school district or a charter school board may request the superintendent of public instruction to pay a portion of the district's or charter school's basic education allocation to another school district, a charter school, or an educational service district. The request must be submitted on Form 1324 and must state the dollar amount of the transfer. The board can modify the dollar amount of the transfer by submitting another Form 1324 to the superintendent of public instruction. Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

**AMENDATORY SECTION** (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-436 Emergency advance payments—School district application.** The board of directors of a school district or a charter school board may apply for any emergency advance on the school district's or charter school's basic education allocation. The application shall take the form of a resolution adopted by the board (~~(of directors)~~) setting forth the following:

- (1) The nature of the unforeseen condition requiring the advance;
- (2) The amount requested to be advanced;
- (3) The net cash and investment balance of the general fund as of the date of the resolution;
- (4) A forecast of the general fund receipts, disbursements, and net cash and investment balance for each month remaining in the fiscal year; and
- (5) A disclosure of any existing or planned general fund revenue anticipation notes.
- (6) A disclosure of any existing or planned general fund loan to or from another fund of the school district or charter school.

**AMENDATORY SECTION** (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-438 Emergency advance payments—Approval criteria.** The superintendent of public instruction shall approve requests for an emergency advance if the following conditions are met:

- (1) The unforeseen condition causing the need for the emergency advance could not have been anticipated by a reasonably prudent person.
- (2) It is probable that if the emergency advance is not made that the school district or charter school will be on:

(a) An interest-bearing, warrant-issuing basis within two months following the receipt of the resolution; and

(b) Warrant interest for at least three months from September through June.

(3) The school district or charter school shall not have:

(a) Cash investments of the general fund during the months it estimates that it would pay warrant interest except for the emergency advance; or

(b) Inter-fund loans from the general fund to any other funds during the months it estimates that it would pay warrant interest; or

(c) Any existing or anticipated general fund revenue anticipated notes.

**AMENDATORY SECTION** (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-440 Emergency advance payments—Determination of amount.** The superintendent of public instruction shall calculate the emergency advance on the school district's or charter school's basic education allocation as the lesser of:

(1) The amount set forth in the school district's or charter school's resolution;

(2) An amount not to exceed ten percent of the total amount to become due and apportionable to the district or charter school from September 1 through August 31 of the school year.

(3) The highest negative monthly cash and investment balance of the general fund between the date of the resolution and May 31st of the school year less any redirection of a school district's or charter school's basic education allocation to the capital projects fund, debt service fund, or both.

**AMENDATORY SECTION** (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-442 Emergency advance payments—Forfeiture of earnings on emergency advance.** The superintendent of public instruction shall deduct from a school district's or charter school's basic education allocation apportionment entitlement the amount of any earnings by the school district or charter school on the investment of a temporary cash surplus due to a previously obtained emergency advance.

**AMENDATORY SECTION** (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-443 Emergency advance payments—Repayment of advances.** Repayments of advances will be accomplished by a reduction in the school district's or charter school's apportionment payments on or before June in the current school year.

**AMENDATORY SECTION** (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-460 Fire district allocation.** In addition to those moneys distributed for basic education purposes, school districts are entitled per RCW 52.30.020 to be reim-

bursed for moneys expended for the purchase of fire protection services from fire protection districts. Only school district's school plants located in a fire protection district established pursuant to Title 52 RCW shall be eligible for such moneys.

Payment to districts shall be made each July as a part of the monthly apportionment allocation.

The headcount enrollment used to compute each district's reimbursement will be as of October 1 of the school year for which the allocation is being made. The count shall be entered on forms provided to school districts by the superintendent of public instruction.

Any moneys allocated to school districts for the purpose stated in this rule and not used for this purpose shall be recovered by the superintendent of public instruction from a district's monthly apportionment allocation.

**AMENDATORY SECTION** (Amending WSR 06-17-141, filed 8/22/06, effective 9/22/06)

**WAC 392-121-465 Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program.** The purpose of this section is to establish policies and procedures for the calculation and distribution of state incentive moneys to school districts and, if appropriate, public charter schools increasing their enrollments in vocational skills centers.

(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term is defined in WAC 392-121-133(1).

(2) Enrollment used in this calculation shall be the AAFTE reported in the form and by the deadline required by the superintendent of public instruction.

(3) A district's or, if appropriate, charter school's state incentive grants for increased enrollment in vocational skills centers shall be calculated as follows:

(a) Determine the increase in the vocational skill center AAFTE of the resident district from the base year of 2004-05 to the current year;

(b) Multiply the number of students obtained in (a) of this subsection by the per pupil allocation established and subject to the limitations in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(c) The product is the district's or charter school's annual incentive payment.

(4) As provided in the State Operating Appropriations Act in effect at the time apportionment is due, money appropriated but not spent in subsection (3) of this section shall be distributed to skills centers for increased capacity of summer vocational programs. The allocation methodology shall be based upon the skills center full-time equivalent reported enrollment from the prior October 1.

(5) The superintendent of public instruction shall apportion to districts and, if appropriate, charter schools for the state incentive grants for increased enrollment in vocational skills centers the amount calculated per district or charter school in this section in June of each year commencing June 2006.

**AMENDATORY SECTION** (Amending WSR 91-14-038, filed 6/26/91, effective 7/27/91)

**WAC 392-121-500 Withholding for repayment of federal moneys—Applicable provisions.** The provisions of WAC 392-121-500 through 392-121-545 apply to the withholding of basic education allocations pursuant to chapter 103, Laws of 1990 to facilitate repayment of school district and charter school expenditures to the federal government pursuant to WAC 392-115-090 or a federal audit resolution process.

**AMENDATORY SECTION** (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-520 Withholding for repayment of federal moneys—Definition—Substantial impairment.** As used in WAC 392-121-500 through 392-121-545, "substantial impairment" means that after reducing the school district's or charter school's current school year basic education allocation by the amount of disallowed costs plus accrued interest the school district or charter school is likely to incur a negative unreserved general fund balance as of August 31 of the current school year and is unlikely to be able to balance the school district or charter school general fund budget for the ensuing school year without requesting the superintendent of public instruction for permission to budget receivables pursuant to WAC 392-123-060.

**AMENDATORY SECTION** (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-525 Withholding for repayment of federal moneys—Determination of substantial impairment.** If any school district or charter school does not repay disallowed costs plus accrued interest or commit to an acceptable repayment plan within thirty calendar days of issuance of the management decision letter, the superintendent of public instruction shall determine if substantial impairment exists.

**AMENDATORY SECTION** (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-530 Withholding for repayment of federal moneys—Notice of substantial impairment.** If the superintendent of public instruction determines pursuant to WAC 392-121-525 that substantial impairment exists, the superintendent of public instruction shall notify the school district or charter school in writing that:

(1) No withholding shall occur until such time as substantial impairment no longer exists;

(2) Unless the school district or charter school repays disallowed costs plus accrued interest or agrees to an acceptable repayment plan, the superintendent of public instruction, at least once every twelve months, or sooner at the request of the school district or charter school, shall determine if substantial impairment exists pursuant to WAC 391-121-525; and

(3) Interest will continue to accrue until the amount of disallowed costs plus accrued interest are repaid to the federal government.

**AMENDATORY SECTION** (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-535 Withholding for repayment of federal moneys—Notice of intent to withhold basic education allocations.** If the superintendent of public instruction determines pursuant to WAC 392-121-525 that substantial impairment does not exist, the superintendent of public instruction shall notify the school district or charter school in writing of intent to withhold basic education allocations.

**AMENDATORY SECTION** (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-540 Withholding for repayment of federal moneys—Withholding of basic education allocations.** If the school district or charter school does not repay disallowed costs plus accrued interest or commit to an acceptable repayment plan within thirty calendar days of the notice provided pursuant to WAC 392-121-535, the superintendent of public instruction shall withhold from the school district's or charter school's next basic education apportionment payment an amount equal to the disallowed costs plus accrued interest. After the initial withholding the superintendent of public instruction shall withhold amounts for additional interest accruing on disallowed costs.

**AMENDATORY SECTION** (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-545 Withholding for repayment of federal moneys—Payment of withheld basic education allocations.** Moneys withheld pursuant to WAC 392-121-540 shall be restored to the school district or charter school or paid to the federal government as provided in this section.

(1) If the school district or charter school repays disallowed costs plus accrued interest to the federal government or commits to an acceptable repayment plan before the close of the state biennium in which withholding occurred the superintendent of public instruction shall restore withheld moneys to the school district's or charter school's basic education allocation.

(2) If the school district or charter school does not repay or commit to repay pursuant to subsection (1) of this section, the superintendent of public instruction shall request the legislature for reappropriation of basic education moneys for the purpose of repaying the federal government. The requested reappropriation shall include amounts for interest accruing on disallowed costs up to the anticipated date of repayment to the federal government.

(3) Upon reappropriation of moneys pursuant to subsection (2) of this section, the superintendent of public instruction shall pay an amount equal to the disallowed costs plus accrued interest to the federal government.

**AMENDATORY SECTION** (Amending WSR 13-05-049, filed 2/13/13, effective 3/16/13)

**WAC 392-121-570 Vocational indirect cost limit—Applicable code provisions—Purpose—Effective date.** (1) WAC 392-121-570 through 392-121-578 define the fifteen percent limit on indirect cost charges to school district state-funded vocational-secondary programs as required by the Biennial Operating Appropriations Act. These rules do not apply to federal vocational funding which is governed by federal policies.

(2) The purpose of these sections is to assure that state allocations for vocational education are expended by school districts and charter schools to support state vocational programs. The minimum levels defined here are not to be construed as recommended expenditure levels.

(3) These sections are effective for the 2002-03 school year and thereafter.

(4) WAC 392-121-570 through 392-121-578 also apply to program 34, with program 34 substituted wherever program 31 appears. Running start does not apply to program 34.

**AMENDATORY SECTION** (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-571 Vocational indirect cost limit—Definitions.** As used in WAC 392-121-570 through 392-121-578:

(1) "Program 31" means the vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(2) "Basic allocation for vocational students" means the amount of money generated by a school district's or charter school's vocational full-time equivalent enrollment in the general apportionment formula using the state funding formula factors including the grade 4-12 staffing ratios without enhancement, and using the district's or charter school's average certificated instructional staff mix factor for program 31 staff from the district's S-275 personnel report.

(3) "Enhancement allocation for vocational students" means the additional money above the basic allocation for vocational students generated by a school district's or charter school's vocational full-time equivalent enrollment as a result of the enhanced state vocational staffing ratio and enhanced nonemployee related cost allocation for vocational students. This enhancement shall be calculated using the district's or charter school's average certificated instructional staff mix factor for program 31.

(4) "Vocational running start allocation" means the amount generated in the general apportionment formula by a school district's or charter school's running start students enrolled in vocational courses in a community or technical college pursuant to chapter 392-169 WAC.

**AMENDATORY SECTION** (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-573 Vocational indirect cost limit—Calculation of minimum program 31 expenditures.** Each school district's or charter school's minimum program 31 expenditures equal the sum of the following amounts:

- (1) Eighty-five percent of the total basic and vocational enhancement allocations for vocational students;
- (2) Ninety-three percent of the vocational running start allocation; plus
- (3) Any carryover from the prior school year allowed under WAC 392-121-578.

AMENDATORY SECTION (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-574 Vocational indirect cost limit—Preliminary notice to school districts and charter schools below the minimum expenditure level.** (1) After the close of the school year, and before December 31, the superintendent of public instruction shall compare each school district's and charter school's program 31 expenditures for the school year as reported on the district's Report F-196 annual year end financial statements to the district's or charter school's minimum program 31 expenditures.

(2) If a district's or charter school's program 31 expenditures are less than the minimum, then the superintendent shall notify the district or charter school of the results of the calculation including any potential recovery of state funding.

AMENDATORY SECTION (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-576 Vocational indirect cost limit—School district requests for review and adjustment.** (1) After receiving notice of the preliminary notice pursuant to WAC 392-121-574, and before the ensuing January 15, a school district or charter school may request review and adjustment to the superintendent's calculations. The request shall be in a form prescribed by the superintendent of public instruction and shall be signed by the school district superintendent or the superintendent's designee, or the charter school lead administrator or lead administrator's designee.

(2) Grounds for review and adjustment include:

- (a) Errors in the calculation; or
- (b) Inaccurate school district or charter school data used in the calculation.

(3) A district or charter school requesting review and adjustment due to inaccurate school district or charter school data shall submit corrected data pursuant to the superintendent's instructions.

(4) The superintendent of public instruction shall correct any errors in the calculations or revise the school district or charter school data used in the calculations as appropriate.

AMENDATORY SECTION (Amending WSR 13-05-049, filed 2/13/13, effective 3/16/13)

**WAC 392-121-578 Vocational indirect cost limit—Recovery of state allocations.** (1) At the time of the January apportionment calculations after the close of the school year, the superintendent of public instruction shall recalculate each school district's or charter school's minimum direct expenditures.

(2) If the district's or charter school's program 31 expenditures are below the minimum program 31 expenditure amount, the district or charter school shall be allowed to carry

over into the ensuing school year an amount equal to up to ten percent of the minimum expenditure amount excluding any carryover from the prior school year. The actual amount carried over to the ensuing year shall be no more than the vocational enhancement less the recovery.

(3) The superintendent of public instruction shall recover from the district's or charter school's general apportionment allocation as a prior year adjustment an amount equal to the lesser of the district's or charter school's enhancement allocation for vocational students or the following amount:

(a) The district's or charter school's minimum program 31 expenditures; minus

(b) The district's or charter school's program 31 expenditures plus any allowable carryover.

(4) Recoveries made pursuant to this section shall be adjusted after the January apportionment calculation if revised enrollment, staff mix, or expenditure data submitted by the district or charter school and accepted by the superintendent of public instruction materially affects the district's or charter school's recovery amount.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-122-005 Authority.** The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the implementation of chapter 28A.150 RCW. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 91-03-118, filed 1/23/91, effective 2/23/91)

**WAC 392-122-010 Purpose.** The purpose of this chapter is to establish policies and procedures for the distribution of state moneys to school districts and charter schools for programs authorized by RCW 28A.150.370 other than basic education apportionment, special allocations pursuant to chapter 392-140 WAC, and transportation allocations.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-106 Definition—Form P-223H.** "Form P-223H" means the report of school district and charter school special education headcount enrollment for eligible special education students as defined in WAC 392-122-135 submitted monthly by the school districts and charter schools to the superintendent of public instruction for the school year for the purpose of calculating the special education program allocations.

(1) The count dates for special education student enrollments shall be the same as specified in WAC 392-121-122.

(2) This report shall indicate the special education enrollment by resident school district and serving school district.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-107 Definition—Report 1220.** "Report 1220" means the school district's and charter school's special education allocation report calculated and prepared by the superintendent of public instruction using the district's or charter school's eight-month average annual headcount enrollment as submitted on Form P-223H for the school year and for the 1994-95 school year the ratios and percentages established in the LEAP document for state special education program allocation as defined in WAC 392-122-105. For the purpose of special education allocations, the district's or charter school's eight-month average annual headcount enrollment shall be the average of the enrollments for the first school day of the second reporting month and the subsequent seven months.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-120 State special education program—Determination of district average state special education program certificated instructional staff salary for the purpose of apportionment.** For the 1994-95 school year the determination of district average special education program certificated instructional staff salary used in the special education allocation formula for the purposes of apportionment to schools and charter schools shall be the same as specified in WAC 392-121-299: Provided, That the words "state special education program" shall be substituted for "basic education" throughout that section.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-140 State special education program—Home and/or hospital care.** State special education program moneys shall be allocated to school districts and charter schools for students eligible under WAC 392-172A-02100 temporarily requiring home and/or hospital care at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing home and/or hospital care allocations.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-150 State special education program—Hospital educational program.** State special education program moneys shall be allocated by the superintendent of public instruction to school districts and charter schools operating a hospital educational program for the exclusive purpose of maintaining and operating the hospital educational program. School districts and charter schools shall be allocated funds for hospital educational programs at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing hospital educational program allocations.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-155 State special education program—Board and room cost.** State special education program moneys shall be allocated to school districts and charter schools for the cost of approved board and room for eligible handicapped students served and requiring board and room, who are not eligible under programs of the department of social and health services, but deemed in need of the board and room by the superintendent of public instruction. These moneys are in lieu of transportation costs. School districts and charter schools shall be allocated moneys for board and room of eligible special education students at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing board and room allocations.

AMENDATORY SECTION (Amending WSR 14-10-009, filed 4/24/14, effective 5/25/14)

**WAC 392-122-160 State special education program—Reporting.** (1) At such times as are designated by the superintendent of public instruction, each school district and charter school shall report the number of eligible special education students receiving special education according to instructions provided by the superintendent of public instruction. The disability condition shall be one of such conditions in WAC 392-122-135. The age for the purpose of determining the special education program allocation calculated in WAC 392-122-105 shall be the age of the student on the monthly enrollment count date as defined by WAC 392-121-119. The age reported by the school district or charter school shall be for apportionment purposes only and not for determination of a child's eligibility for access to a special education program.

(2) Each school district and charter school shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and substantiate the school district's or charter school's allocation of state special education moneys.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-165 State special education program—Apportionment of state special education program moneys.** From moneys appropriated by the legislature, the superintendent of public instruction shall apportion state special education program moneys to each school district and charter school based on the criteria cited in the State Operating Appropriations Act for the respective school year for state special education program allocation and on the provisions of WAC 392-122-100 through 392-122-166. The superintendent of public instruction shall make payments in the same manner as provided in WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-166 State special education program allocation.** The board of directors of a school district or charter school may request the superintendent of public instruction to pay a portion of the district's or charter school's special education allocation to another school district, charter school, or an educational service district. The request must be submitted on Form 1295 and must state the dollar amount of the transfer. The board can modify the dollar amount of the transfer by submitting another Form 1295 to the superintendent of public instruction. Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

**WAC 392-122-208 Definition—State institutional education program—Other education provider.** "Other education provider" means:

(1) An educational service district, institution of higher education, private contractor (including public charter school) or any combination thereof providing an institutional education program in an adult correctional facility operated by the department of corrections under contract with the superintendent of public instruction and the department of corrections; or

(2) An educational service district providing an institutional education program pursuant to a contract with a school district in a state-operated group home, institution for juvenile delinquents, or residential habilitation center, or county-operated juvenile detention center.

AMENDATORY SECTION (Amending WSR 08-24-029, filed 11/24/08, effective 12/25/08)

**WAC 392-122-221 Definition—State institutional education program—Enrollment exclusions.** The following may not be counted as an enrolled institutional education program student:

- (1) A person whose educational activity has terminated.
- (2) A person who has transferred to another institution ~~((ø#))~~, school district, or charter school.
- (3) An institution student who:
  - (a) Has not engaged in educational activity in the past five school days, excluding days of excused absence;
  - (b) Has not engaged in educational activity in the past ten school days including days of excused absence; or
  - (c) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support pursuant to chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month.

When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.

AMENDATORY SECTION (Amending WSR 13-12-008, filed 5/23/13, effective 6/23/13)

**WAC 392-122-424 Full-day kindergarten program—Letter of acceptance and approvals.** (1) School districts with eligible schools or charter schools that intend to provide a FDK program shall submit a letter of acceptance to the superintendent of public instruction in accordance with a timeline established by the superintendent of public instruction. This letter of acceptance must include the following:

(a) Assurances that the school shall comply with all program requirements outlined in RCW 28A.150.315(1);

(b) Assurances that the district or charter school can provide the full-day kindergarten program for all children of parents who request it in each eligible school; and

(c) Any other requirements as established by the office of superintendent of public instruction.

(2) The superintendent shall approve the letters of acceptance that have met the requirements in subsection (1) of this section. If, after approving all of the letters of acceptance that were received that met the requirements in subsection (1) of this section, the superintendent determines that additional funding will be available, the superintendent shall notify charter schools and school districts with schools that have the next highest levels of free and reduced price lunch eligibility that they are eligible.

(3) The eligibility for FDK is determined based upon an individual building's student poverty and may not transfer to other buildings or students within ~~((the))~~ a school district.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-705 Formula for the distribution of state moneys for the state transitional bilingual program.**

(1) As used in this section the term "eligible student" shall mean those students defined under WAC 392-160-005(3) and 392-150-015.

(2) A district's or charter school's entitlement for state moneys for the state transitional bilingual program shall be calculated as follows:

(a) Multiplying the number of eligible students by the per pupil allocation established in the State Appropriation Act for the state transitional bilingual program.

(b) The result of the calculation provided in (a) of this subsection is the district's or charter school's entitlement subject to WAC 392-122-710 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-710 Distribution of state moneys for the transitional bilingual program.** The superintendent of public instruction shall apportion to districts or charter schools for the state transitional bilingual program the amount calculated per district in WAC 392-122-705 according to the apportionment schedule provided in RCW 28A.510.250. Monthly payments to districts and charter schools shall be adjusted during the year to reflect changes in the district's or charter school's reported eligible students as

reported on the P223, monthly report of school district enrollment form. For the purpose of transitional bilingual allocations, the district's or charter school's eight-month average annual headcount enrollment of eligible students as defined in WAC 392-160-005(3) and 392-160-015 shall be the average of such enrollment for the first school day of the second reporting month and the subsequent seven months.

**AMENDATORY SECTION** (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program.** (1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term defined in WAC 392-121-133.

(2) A district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(a) Multiplying the AAFTE of the reporting district or charter school by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(b) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

**AMENDATORY SECTION** (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-122-810 Distribution of state moneys for the state highly capable students education program.** The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's AAFTE students as reported on the P223, monthly report of school district enrollment form.

**AMENDATORY SECTION** (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries.** Categorical apportionment moneys shall be expended for allowable categorical program costs. Indirect cost charges to categorical programs are limited as provided in this section. Categorical moneys may be carried over from one school district or charter school fiscal year to another only as provided in this section.

(1) The superintendent of public instruction shall recover categorical program allocations made pursuant to this chapter if not expended by the school district or charter school during the school year for allowable program costs.

(2) For the 2000-01 school year and thereafter, "allowable program costs" means direct program expenditures plus allowable indirect program charges.

(a) Direct program expenditures are expenditures directly traceable to the program for the school year reported consistent with the *Accounting Manual for Public School Districts in the State of Washington* and instructions provided by the superintendent of public instruction including the *Administrative Budgeting, and Financial Reporting Handbook*.

(b) For the purposes of this section, special education program expenditures shall be reduced (abated) by revenues to account 7121 special education revenues from other districts or charter schools.

(c) For special education, highly capable, and transitional bilingual, allowable indirect program charges equal direct program expenditures times the percentage calculated from the school district's or charter school's annual financial statements (Report F-196) for two school years prior as follows:

(i) Divide direct expenditures for program 97 district-wide support by;

(ii) Total general fund direct expenditures for all programs minus direct expenditures for program 97 districtwide support; and

(iii) Round to three decimal places.

(d) For the learning assistance program, allowable indirect program charges equal the direct program expenditures times the federal restricted indirect rate calculated by the superintendent of public instruction.

(e) For the institutional education program, allowable indirect program charges equal the state institutional education program allocation times the percentage allocated for indirect costs pursuant to the biennial operating appropriations act and the state funding formula.

(3) Commencing with the 1994-95 school year allocation, a school district or charter school may carry over from one school district fiscal year to the next up to ten percent of the state learning assistance program allocation. Carryover moneys shall be expended solely for allowable learning assistance program costs.

(4) Commencing with the 1997-98 school year allocation, a district or charter school may carry over from one school fiscal year to the next up to ten percent of state special education program allocation. Carryover moneys shall be expended solely for allowable state special education program costs.

(5) Commencing with the 1998-99 school year allocation, a school district may carry over from one school district fiscal year to the next up to ten percent of the state institutional education program allocation. Carryover moneys shall be expended solely for allowable state institutional education program costs.

(6) The amount recovered pursuant to this section for special education, highly capable, bilingual, and learning assistance programs shall be determined as follows:

(a) Sum the state allocation for the categorical program for the school year and any carryover from the prior school year if applicable;

(b) Determine the district's or charter school's allowable program costs for the school year pursuant to this section;

(c) If the result of (a) of this subsection exceeds the result of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(7) The amount recovered pursuant to this section for the institutional education program shall be determined as follows:

(a) Sum the state allocation for the institutional education program for the school year excluding any amount provided for indirect costs, and any carryover from the prior school year if applicable;

(b) Determine the school district's direct expenditures for the institutional education program as reported on Report F-196 or such other document filed pursuant to instructions provided by the superintendent of public instruction;

(c) If the amount of (a) of this subsection exceeds the amount of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(8) This section applies to categorical program allocations to school districts, educational service districts and, in the case of institutional education programs, entities contracting to provide an institutional education program funded under this chapter.

AMENDATORY SECTION (Amending WSR 86-01-021, filed 12/9/85)

**WAC 392-122-905 General provision—Maximum control factor—Proration.** The maximum rate of allocation specified in this chapter shall be allocated by the superintendent of public instruction to school districts and charter schools unless the state appropriations for these programs are insufficient and it is necessary for the superintendent of public instruction to prorate all or a portion of these funds appropriated for allocation to school districts or charter schools for such programs. All such prorations shall be announced to school districts and charter schools through official agency bulletins or reports.

AMENDATORY SECTION (Amending WSR 91-03-118, filed 1/23/91, effective 2/23/91)

**WAC 392-122-910 General provisions—Recovery for failure to meet program requirements.** (1) Categorical apportionment moneys affected by this chapter shall be recovered in the event that a school district or charter school fails to meet one or more conditions that are established in state law, including the state Operating Appropriations Act, or state rules, or regulations.

(2) Such recovery shall occur if:

(a) The school district's or charter school's failure to meet one or more established conditions is documented either on a school district or charter school report that has been submitted to the superintendent of public instruction or by review of the school district's or charter school's program by the superintendent of public instruction; and

(b) The school district or charter school has been given notice by the superintendent of public instruction of such failure at least thirty calendar days prior to the date of recovery.

(3) The amount of such recovery shall be proportional to the degree to which the school district or charter school fails to meet the established condition.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-003 Authority.** The authority for this chapter is RCW 28A.505.140 which authorizes the superintendent of public instruction to promulgate rules and regulations regarding budgetary procedures and practices by school districts. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-005 Purposes.** The purposes of this chapter are to implement chapter 28A.505 RCW and insure proper budgetary procedures and practices on the part of school districts and charter schools.

AMENDATORY SECTION (Amending WSR 81-20-007, filed 9/24/81)

**WAC 392-123-010 The accounting manual.** The superintendent of public instruction and the office of the state auditor shall publish and distribute to each school district and charter school an accounting manual which shall be referred to as *The Accounting Manual for Public School Districts of the State of Washington*. Such accounting manual, as now or hereafter amended, shall govern the accounting procedures of each school district and charter school and is hereby incorporated into this chapter by this reference. Prior to any revision thereof, the superintendent of public instruction shall publish notice of such proposed action and shall hold at least one public hearing.

AMENDATORY SECTION (Amending WSR 80-06-043, filed 5/13/80)

**WAC 392-123-011 School district and charter school fiscal year.** The fiscal year for school districts (~~fiscal year~~) and charter schools shall begin on September 1 and end on August 31.

AMENDATORY SECTION (Amending WSR 99-20-021, filed 9/28/99, effective 9/29/99)

**WAC 392-123-047 Definitions—Revenue, accrual basis expenditures, cash basis expenditures, appropriations, and disbursements.** As used in this chapter, the term:

(1) "Revenue" shall mean an addition to assets of a fund of a school district or charter school during a fiscal period that is available to finance the funds' expenditures during the fiscal period. Revenue does not accompany the increase of liabilities or represent refunds of previous disbursements. Revenue may be in the form of cash, or in the form of non-cash assets such as donated commodities. Revenue for accrual basis expenditure funds is limited to amounts received in cash or noncash donations, plus or minus adjustments for revenue accruals.

(2) "Cash basis revenue" shall mean the actual receipt of revenue not adjusted for revenue accruals.

(3) "Revenue accruals" shall mean those revenues which are (a) anticipated to be received in cash after the close of the fiscal period and (b) represent reimbursement for expenditures incurred by the end of the fiscal period. In order for revenue to be included in revenue accruals, it must meet the above tests.

Revenue accruals, if they meet both tests include: Reimbursements on categorical grants for which expenditures have been made but payment has not been received; payments from other school districts that are due, but are not collected by the end of the fiscal period; deferrals of apportionment payments by the state when a deferral occurs because of district request or state mandate, and the revenue is due to the district; and rental or lease payments that are currently due, and there is reasonable assurance of payment.

Revenue that cannot be accrued because it does not meet the above tests includes: Collection of excess levies not expected to be received until after the end of the fiscal period and PL 874 funds that are to be received in cash in the following fiscal period, i.e. the twenty-five percent payment that is received after the end of the fiscal period.

(4) "Expenditures" shall mean the decrease in assets with no corresponding decrease in liabilities, or the increase in liabilities with no corresponding increase in assets. Expenditures for activities prior to September 1, but within the school year as defined in WAC 392-121-031, are considered expenditures of the school year commencing September 1.

(5) "Expenditure refunds" shall mean the increase in assets with a corresponding decrease in expenditures.

(6) "Revenue refunds" shall mean the increase in liabilities with a corresponding decrease in revenues.

(7) "Liabilities" shall mean debt or other legal obligations arising out of transactions in the past which are payable but not necessarily due.

(8) "Accrual basis expenditures" shall mean expenditures incurred during a given fiscal period, whether paid or unpaid.

(9) "Cash basis expenditures" shall mean the disbursement of cash for expenditures during a given fiscal period regardless of when liabilities are incurred, and the disbursement of inventory.

(10) "Appropriation" shall mean the maximum authorization during a given fiscal period to incur expenditures.

(11) "Disbursements" shall mean payments in cash, including the issuance of warrants, and the disbursement of inventory.

**AMENDATORY SECTION** (Amending WSR 99-20-021, filed 9/28/99, effective 9/29/99)

**WAC 392-123-049 Basis of budgeting and accounting.** All school districts and charter schools must utilize the following methods of revenue and expenditure recognition in budgeting, accounting, and financial reporting:

(1) Recognize revenue as defined in WAC 392-123-047: Provided, That school districts that elect the cash basis of expenditure recognition as defined below shall recognize revenue on the cash basis.

(2) Recognition of expenditures for all funds shall be on the accrual basis: Provided, That school districts with under one thousand full time equivalent students for the preceding fiscal year may make a uniform election for all funds, except debt service funds, to be on the cash basis of expenditure recognition. Notification of such election shall be given to the state superintendent of public instruction in the budget of the school district and shall remain in effect for one full fiscal year: Provided further, That charter schools may not elect to make a uniform election for any funds to be on the cash basis of expenditure recognition.

(3) Expenditures for activities prior to September 1, but within the school year as defined in WAC 392-121-031, are considered expenditures of the school year commencing September 1.

**AMENDATORY SECTION** (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-053 Budget contents.** Each school district or charter school that anticipates being an operating district or charter school in the common school system of the state during the following fiscal year shall prepare a budget. For districts anticipating consolidation or annexation, separate budgets shall be prepared pending official consolidation or annexation proceedings.

Every school district and charter school budget shall be prepared, submitted and adopted in the format prescribed by the superintendent of public instruction. The budget classifications contained in said format shall be in accordance with the accounting manual for public school districts, published by the superintendent of public instruction and the state auditor. Budgets prepared and adopted in a format other than that prescribed by the superintendent of public instruction shall not be official and will have no legal effect.

All items on the budget form shall be completed correctly in accordance with instructions provided by the superintendent of public instruction before the budget is presented for hearing review and approval. Information pertaining to budget development which is not available at the time of budget preparation shall be estimated using the most current and reliable information available.

The budget shall set forth the estimated revenues for the budgeted fiscal year, the estimated revenues for the fiscal year current at the time of budget preparation, the actual revenues for the last completed fiscal year, and the reserved and unreserved fund balances for each year. The estimated revenues from all sources for the ensuing fiscal year shall not include any revenue not anticipated to be available during that fiscal year: Provided, That school districts and charter schools, pursuant to WAC 392-123-060 can be granted permission by the superintendent of public instruction to include as revenues in their budgets, receivables collectible in future fiscal years.

Any budget or appropriation adopted by the school district board of directors or charter school board that contains estimated expenditures in excess of the total of estimated revenue for the budgeted fiscal year plus estimated fund balance at the beginning of the budgeted fiscal year less ending reserve fund balance for the budgeted year without written

permission from the superintendent of public instruction shall be null and void and shall not be considered an appropriation.

The school district or charter school budget shall set forth by detailed items or classes the estimated expenditures for the budgeted fiscal year, the estimated expenditures for the fiscal year current at the time of budget preparation, and the actual expenditures for the last completed fiscal year. Total salary amounts, full-time equivalents and the high, low and average annual salaries shall be displayed by each job classification within each activity within each program. If individual salaries within each position title are not dis-

played, districts shall provide individual salaries together with the position title of the recipient and the total salary amounts budgeted for each program upon request. Salary schedules shall be displayed. In districts or, when applicable, charter schools where negotiations have not been completed, the district or charter school may budget the salaries at the current year's rate and restrict fund balance for the amount of anticipated increase in salaries, so long as an explanation shall be attached to the budget on such restriction of fund balance.

AMENDATORY SECTION (Amending WSR 96-08-058, filed 4/2/96, effective 5/3/96)

**WAC 392-123-054 Time schedule for budget.** The time schedule for preparation, adoption and filing of the annual budget is as follows:

Final Date For Action	First-Class Districts	Second-Class Districts	<u>Public Charter Schools</u>
July 10	Final date for district to prepare annual budget. Upon completion of their budgets, every school district shall publish a notice stating that the district has completed the budget, placed it on file in the school district administration office, that a copy thereof will be furnished to any person who calls upon the district for it, and that the board of directors will meet for the purpose of fixing and adopting the budget of the district for the ensuing fiscal year. Such notice shall designate the date, time, and place of said meeting. The notice shall also state that any person may appear thereat and be heard for or against any part of such budget. Said notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the district, or, if there be none, in a newspaper of general circulation in the county or counties in which such district is a part. The last notice shall be published no later than seven days immediately prior to the hearing.	Same as first-class.	<u>Final date for charter school to prepare its proposed annual budget. Upon completion of their proposed budgets, every charter school shall publish a notice stating that the charter school has completed the budget, placed it on file in the charter school administration office, that a copy thereof will be furnished to any person who calls upon the school for it, and that the school board will meet for the purpose of fixing and adopting the budget of the charter school for the ensuing fiscal year. Such notice shall designate the date, time, and place of said meeting. The notice shall also state that any person may appear thereat and be heard for or against any part of such budget. Said notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which such school is a part. The last notice shall be published no later than seven days immediately prior to the hearing. Every charter school shall submit the proposed budget to the office of superintendent of public instruction and the charter school's authorizer, as defined in RCW 28A.710.010.</u>
	Final date to have sufficient copies of budget to meet reasonable demands of public. Also, final date to submit the budget to the educational service district for review and comment. The July 10 <sup>th</sup> date may be delayed by the	Same as first-class	<u>Final date to have sufficient copies of budget to meet reasonable demands of public. The July 10<sup>th</sup> date may be delayed by the superintendent of public instruction if the state's operating budget is not finally approved by the legislature until after June 1st.</u>

Final Date For Action	First-Class Districts	Second-Class Districts	<u>Public Charter Schools</u>
August 1	superintendent of public instruction if the state's operating budget is not finally approved by the legislature until after June 1st.	<p>Final date for board directors to meet in public hearing and fix and adopt said budget.</p> <p>Such hearing may be continued not to exceed a total of two days: Provided, That the budget must be adopted no later than August 1st.</p> <p>Upon conclusion of the hearing the board of directors shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board.</p>	
August 3		<p>Last date to forward the adopted budget to educational service district for review, alteration and approval.</p>	
August 31	<p>Final date for board of directors to meet in public hearing and fix and adopt said budget. Such hearing may be continued not to exceed a total of two days: Provided, That the budget must be adopted no later than August 31st. Upon conclusion of board of directors shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board.</p>	<p>Final date for the budget review committee to fix and approve the amount of the appropriation from each fund of the budget. One copy of the approved budget will be retained by the educational service district and one copy will be retained by the superintendent of public instruction. No budget review committee shall knowingly approve any budget or appropriation that is in violation of state law or rules and regulations adopted by the superintendent of public instruction. Members of the budget review committee as referred to in this section shall consist of the educational service district superintendent or a representative thereof, a member of the local board of directors or a representative thereof and a representative of the superintendent of public instruction.</p>	<p><u>Final date for the charter school board to meet in public hearing and fix and adopt said budget. Such hearing may be continued not to exceed a total of two days: Provided, That the budget must be adopted no later than August 31st. The charter school board shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board.</u></p>

Final Date For Action	First-Class Districts	Second-Class Districts	Public Charter Schools
September 3	Final date for district to file the adopted budget with their educational service district.		<u>Final date for the charter school to submit the adopted annual budget to the office of superintendent of public instruction and the charter school's authorizer, as defined in RCW 28A.710.010.</u>
September 10	Final date for educational service district to file the adopted budgets with the superintendent of public instruction.	Final date for the superintendent of public instruction to return a copy of the approved budget to the local school district.	

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-055 Identification of revenues to be included in the budget.** Only revenues which can be reasonably anticipated to be available, as defined in WAC 392-123-047 in the fiscal period for which the budget is being prepared may be budgeted by a school district or charter school, except under the following condition: Receipt of written permission from the superintendent of public instruction to budget as revenue in a district's budget receivables collectible in future fiscal periods.

All available current information including current instructions contained in bulletins now or hereafter published by the superintendent of public instruction shall be used to determine the amount of budget revenues that can reasonably be expected to be available in the fiscal period. Proposed levies which have not been certified as approved by the voters shall not be included in the budget as adopted for operation of the district or charter school.

For charter schools authorized by a school district board of directors, allocations to a charter school that are included in RCW 84.52.0531 (3)(a) through (c) shall be included in the school district's budget in the same manner as other public schools in the district.

For levies submitted to voters after a charter school's start-up date, the charter school must be included in the school district's budget in the same manner as other public schools in the district.

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-060 Petition to budget receivables collectible in future fiscal periods.** When a school district or charter school is unable to prepare a budget or a budget extension in which the estimated revenues for the budgeted fiscal period plus the estimated fund balance or actual fund balance in case of a budget extension, at the beginning of the budgeted fiscal period less the ending reserved fund balance for the budgeted fiscal year do not at least equal the estimated expenditures for the budgeted fiscal period, the school district board of directors or charter school board may deliver a petition in writing at least twenty days before the budget or budget extension is scheduled for adoption to the superintendent of public instruction requesting permission to include receiv-

ables collectible in future periods beyond the fiscal period being budgeted in order to balance the budget or budget extension for the fiscal period being budgeted. Said petition shall include a resolution of the school board requesting permission to budget receivables collectible in future fiscal periods and other such information as the superintendent of public instruction shall deem as necessary.

If such permission is granted, it shall be in writing, and it shall contain conditions, binding on the district or charter school, designed to improve the district's or charter school's financial condition.

AMENDATORY SECTION (Amending WSR 80-06-043, filed 5/13/80)

**WAC 392-123-065 Noncompliance with binding restrictions.** If a school district fails to comply with any binding restrictions issued by the superintendent of public instruction pursuant to WAC 392-123-060, or if a public charter school's authorizer deems the charter school has failed to comply with the superintendent's binding restrictions, the allocation of state funds for support of the school district may be withheld, pending an investigation of the reason for such noncompliance by the superintendent of public instruction. Written notice of the intent to withhold state funds, with reasons stated for this action, shall be made to the school district by the superintendent of public instruction before any portion of the state allocation is withheld.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-070 Overexpending and exceeding the budget.** Total budgeted expenditures for each fund as adopted in the budget of a school district or charter school shall constitute the appropriations of the district or charter school for the budgeted fiscal year and the board of directors or charter school board shall be limited in the incurring of expenditures to the amount of each such appropriation. The board of directors shall incur no expenditures for any purpose in excess of the appropriation for each fund: Provided, That no board of directors or charter school board shall be prohibited from incurring expenditures for the payment of regular employees, for the necessary repairs and upkeep of the school plant, for the purchase of books and supplies, and for their

participation in joint purchasing agencies authorized in RCW 28A.320.080 during the interim while the budget is being settled under WAC 392-123-080: Provided further, That transfers between budget classes may be made by the school district's chief administrative officer or finance officer, subject to such restrictions as may be imposed by the school district board of directors.

Directors, officers or employees of school districts who knowingly or negligently violate or participate in a violation of this section by the incurring of expenditures in excess of any appropriation(s) shall be held civilly liable, jointly and severally, for such expenditures in excess of such appropriation(s), including consequential damages following therefrom, for each such violation. If as a result of any civil or criminal action the violation is found to have been done knowingly, such director, officer, or employee who is found to have participated in such breach shall immediately forfeit his office or employment, and the judgment in any such action shall so provide.

Nothing in this section shall be construed to limit the duty of the attorney general to carry out the provisions of RCW 43.09.260, as now or hereafter amended.

**NEW SECTION**

**WAC 392-123-073 Budget extensions—Public charter schools.** If in a public charter school it becomes necessary to increase the amount of the appropriation, the charter school board, before incurring expenditures in excess of

expenditures therefor, shall adopt a resolution stating the facts and the estimated amount of appropriation to meet it.

Such resolution shall be voted on at a public meeting, notice to be given in the manner provided in WAC 392-123-054. Its introduction and passage shall require the vote of a majority of all members of the charter school board.

Any person may appear at the meeting at which the appropriation resolution is to be voted on and be heard for or against the adoption thereof.

One copy of all adopted appropriation resolutions shall be filed with the superintendent of public instruction. Another copy shall be filed with the charter school's authorizer, as defined in RCW 28A.710.010. The final date for adopting appropriation resolutions extending budgets shall be the close of business on August 31st or the last business day prior to August 31st if August 31st occurs on a nonbusiness day. Each copy of all appropriation resolutions filed shall have attached a copy of the charter school's latest budget status report. The revised budget shall be in the format prescribed by the superintendent of public instruction and shall be prepared in accordance with instructions provided by the superintendent of public instruction. Any appropriation resolution adopted after the date specified in this section shall be null and void. Any appropriation resolution adopted after the current appropriation level has been exceeded shall be null and void to the extent that the current appropriation level has been exceeded.

**AMENDATORY SECTION** (Amending WSR 92-03-024, filed 1/7/92, effective 2/7/92)

**WAC 392-123-074 Effective date of appropriation resolutions.** The effective date of appropriation resolutions are as follows:

	First-Class Districts	Second-Class Districts	Public Charter Schools
Resolutions adopted pursuant to WAC 392-123-054.	12:00 a.m. September 1.	12:00 a.m. September 1 or when approved by the budget review committee, whichever is later.	<u>12:00 a.m. September 1.</u>
Resolutions adopted pursuant to WAC 392-123-071 ( <del>and</del> ), 392-123-072 <u>and</u> 392-123-073.	When adopted by the school district board of directors.	When approved by the superintendent of public instruction.	<u>When adopted by the charter school board.</u>

**AMENDATORY SECTION** (Amending WSR 85-15-110, filed 7/24/85)

**WAC 392-123-076 Identification of balanced budget.** For each fund contained in the school district or charter school budget the estimated expenditures for the budgeted fiscal period must not be greater than the total of the estimated revenues for the budgeted fiscal period, plus the estimated fund balance at the beginning of the budgeted fiscal period, less the estimated reserved fund balance at the end of the budgeted fiscal period and, where appropriate, the projected revenue from receivables collectible in future periods as approved by the superintendent of public instruction for inclusion in the budget.

The proceeds of any loan must not be used to balance the budget of the borrowing fund.

**AMENDATORY SECTION** (Amending WSR 80-06-043, filed 5/13/80)

**WAC 392-123-077 Termination of appropriations.** All appropriations shall lapse at the end of the school district or charter school fiscal year. At the expiration of said period all appropriations of said period shall become null and void and any claim presented thereafter against any such appropriation for the fiscal period just closed shall be provided for in the appropriations for the ensuing fiscal period.

**NEW SECTION**

**WAC 392-123-0795 Review of public charter school budgets and budget extensions.** Annual budgets of public charter schools shall be reviewed by the superintendent of

public instruction prior to adoption by the charter school board.

The superintendent shall notify the charter school of any problems noted during the review prior to adoption of the budget by the school board.

Said reviews shall include, but not be limited to, completion of data entry and edit, review of revenues and reserved and unreserved fund balances for accuracy, appropriateness of expenditures and determination of whether or not the budget is in compliance with this chapter, state statutory law, and budget instructions issued by the superintendent of public instruction.

The superintendent of public instruction will notify the charter school of all problems noted during the review. The superintendent shall attempt to have the problems corrected prior to the final submission of the budget to the superintendent.

The superintendent of public instruction shall conduct meetings with representatives of the charter school and the charter school's authorizer as deemed necessary to correct problems and to fix and approve the amount of appropriation from each fund of the budget as prescribed in WAC 392-123-054.

Review of budget extensions shall consist of data entry and edit, review of revenues and reserved and unreserved fund balances for accuracy, appropriateness of expenditures, and determination of whether or not the budget extension is in compliance with this chapter, state statutory law, and budget instructions issued by the superintendent of public instruction. Approval of budget extensions shall be in accordance with WAC 392-123-073.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

**WAC 392-123-080 Budget determined to be unsound after superintendent's review.** If the superintendent of public instruction determines that the budget of any school district or charter school does not comply with this chapter and/or the provisions of state statutory law applicable to school district((s)) or charter school budgets, written notice of such determination shall be provided to the board of directors of the district or charter school board.

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-095 Budget as noncompliant and unsound.** A school district or charter school shall submit a revised budget within thirty days following the date the superintendent of public instruction issues a written notice requiring the district or charter school to do so. The revised budget shall comply with state statutory law and this chapter.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

**WAC 392-123-100 Revised budget as not submitted or noncompliant.** If a school district fails or refuses to submit a revised budget at the direction of the superintendent of public instruction which complies with state statutory law

and this chapter, the matter shall be submitted to the state board of education. Written notification of the superintendent's intention to submit the matter to the state board shall be made to the board of directors and administration of the school district and to the educational service district superintendent.

If a charter school fails or refuses to submit a revised budget at the direction of the superintendent of public instruction which complies with state statutory law and this chapter, the superintendent will provide written notice of the charter school's failure or refusal to the charter school's authorizer.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

**WAC 392-123-110 Monthly financial statements and reports prepared by school district administration.** Monthly financial statements and reports shall be prepared by the administration of each school district or charter school on a monthly basis as required by this chapter. The reports shall contain the most current information available at the time of preparation. The purpose of these financial reports shall be to provide the board of directors of the district or charter school board with certain financial information necessary for the proper financial management of the district or charter school. All monthly reports shall be made available by the administration of a district or charter school to each member of the board of directors of the district or charter school board and to any person or organization upon request pursuant to the policies of the board of directors. A district or charter school shall provide the superintendent of public instruction with any of the required reports upon request.

AMENDATORY SECTION (Amending WSR 92-03-024, filed 1/7/92, effective 2/7/92)

**WAC 392-123-115 Monthly budget status reports.** A monthly budget status report for each fund shall be prepared by the administration of each school district and charter school; and a copy of the most current budget status reports shall be provided to each member of the board of directors of the district or charter school board at the board's regular monthly meeting. The report shall contain the most current approved budget amounts by summary level accounts and the fund balance at the beginning and end of the period being analyzed. State Form F-198, which is entitled "budget status report," is an example of the type and level of information necessary for this report. Also, as a part of the budget status report, the administration shall provide each member of the board of directors or charter school board with a brief written explanation of any significant deviations in revenue and/or expenditure projections that may affect the financial status of the district or charter school. If deemed necessary by the superintendent of public instruction, and upon written notice to the district or charter school by the superintendent of public instruction, (1) a school district shall file a monthly budget status report for one or more funds along with other financial information shall be filed with either the educational service district superintendent or the superintendent of public instruction or both for the period of time set forth in such

notice, or (2) a charter school shall file a monthly budget status report for one or more funds along with other financial information with the superintendent of public instruction for the period of time set forth in such notice.

AMENDATORY SECTION (Amending WSR 92-03-024, filed 1/7/92, effective 2/7/92)

**WAC 392-123-120 Statement of financial condition—Financial position of the school district.** The administration of each school district and charter school shall be required to provide the board of directors of the district or charter school board with a statement of financial condition monthly. The "statement of revenues, expenditures and changes in fund balance" in state Form F-196, is an example of the type of format and level of information necessary for this report.

AMENDATORY SECTION (Amending WSR 85-15-110, filed 7/24/85)

**WAC 392-123-125 Personnel budget status report.** Each school district and charter school shall maintain the capability to prepare a monthly personnel status report according to the schedule set forth for monthly budget status reports in WAC 392-123-115. This report shall display the combined responsibilities of the district's or charter school's administrative staff for personnel management and budget control and shall indicate the status of expenditures and commitments for salaries and wages. The report shall also indicate the number of certificated and classified positions planned in the budget and the amount of funds budgeted for those positions, summarized by program and/or responsibility area. The number of positions actually filled and the amount of funds actually expended and encumbered in support of these positions shall also be displayed in a manner that can be compared with budget. Any significant variance between budgeted positions and actual should be explained. The personnel budget status report shall be provided to the superintendent of public instruction or the board of directors of the district or charter school board within ten days from the date of such request from either the superintendent or board. A district's board of directors or a charter school board may use the personnel status report in conjunction with a monthly budget status report and the statement of financial condition to manage the financial position of the district.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-135 Interfund loans—Definition.** An interfund loan is considered to be a temporary loan of moneys between one school district fund and another. An interfund loan is not considered to be an investment pursuant to the provisions of RCW 28A.320.320.

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-140 Interfund loans allowable.** Loans are allowable to the general fund, the transportation vehicle

fund, the capital projects fund and the debt service fund of school districts. Loans are allowable from the general fund and the capital projects fund. Loans shall not be made to the detriment of any function or project for which the fund was established.

AMENDATORY SECTION (Amending WSR 91-23-043, filed 11/14/91, effective 12/15/91)

**WAC 392-123-180 Bond proceeds.** Money derived from the sale of bonds, including interest earnings thereof, shall be deposited in the capital projects fund, the transportation vehicle fund, the general fund, or the debt service fund, as applicable, and may only be used by school districts for the purposes as enumerated in RCW 28A.530.010.

Accrued interest paid for bonds sold shall be deposited in the debt service fund.

AMENDATORY SECTION (Amending WSR 91-16-011, filed 7/26/91, effective 8/26/91)

**WAC 392-127-004 Authority.** The authority for this chapter is RCW 28A.150.290(1) which empowers the superintendent of public instruction to make such rules and regulations as are necessary for the administration of chapter 28A.150 RCW, including RCW 28A.150.100(2) which sets forth for each school district as a minimum, a ratio in the basic education program of forty-six certificated instructional staff per one thousand annual average full-time equivalent students. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 91-16-011, filed 7/26/91, effective 8/26/91)

**WAC 392-127-006 Purpose.** The purpose of this chapter is to set forth the policies and procedures used by the superintendent of public instruction to determine the following:

- (1) Compliance of school districts and charter schools with the statutory ratio of certificated instructional staff per one thousand full-time equivalent students in kindergarten through twelfth grade set forth in RCW 28A.150.100(2).
- (2) The monetary penalty associated with not maintaining this ratio.

AMENDATORY SECTION (Amending WSR 12-15-028, filed 7/11/12, effective 8/11/12)

**WAC 392-127-015 FTE enrollment—Definition.** As used in this chapter, "full-time equivalent enrollment" means for the period selected by a school district or charter school, the total full-time equivalent students reported by a school district pursuant to WAC 392-121-122 excluding:

- (1) Running start and University of Washington transition school students reported under WAC 392-121-122 (3) and (4); and
- (2) Students that are being served pursuant to a contract under WAC 392-121-188 with a higher education institution

when the staff serving the students are not reported on the school district's or charter school's S-275 report for the time of instruction.

(3) Students enrolled in alternative learning experience programs reported under RCW 28A.150.325.

**AMENDATORY SECTION** (Amending WSR 08-04-027, filed 1/29/08, effective 2/29/08)

**WAC 392-127-045 FTE basic education certificated instructional employee—Definition.** As used in this chapter, "full-time equivalent basic education certificated instructional employee" means the full-time equivalent calculated pursuant to WAC 392-121-215 for:

(1) A basic education certificated instructional employee as defined in WAC 392-121-210; and

(2) A special education certificated instructional employee, in program 21, as determined by the following:

(a) The total special education, program 21, certificated instructional staff assigned to grades kindergarten through twelve;

(b) Times the annual percentage used in determination of a district's or charter school's 3121 revenue((—)) - The special education cost accounting method required pursuant to section 507 (2)(b) of the 2007 supplemental operating budget.

**AMENDATORY SECTION** (Amending WSR 08-04-027, filed 1/29/08, effective 2/29/08)

**WAC 392-127-065 Supplemental FTE staff—Definition.** As used in this chapter, "supplemental full-time equivalent staff" means the net change in full-time equivalents for basic education certificated instructional employees, as determined in WAC 392-127-045, after October 1 of the school year and not reflected in Report S-275. Supplemental full-time equivalent staff are determined as follows:

(1) Determine the basic education certificated instructional FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the basic education certificated instructional FTE as of October 1 actually reported for the employee on the school district's or charter school's most current Report S-275.

(2) Include decreases as well as increases in staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

**AMENDATORY SECTION** (Amending WSR 12-15-028, filed 7/11/12, effective 8/11/12)

**WAC 392-127-070 Basic education certificated instructional staff ratio—Definition.** As used in this chapter, "basic education certificated instructional staff ratio" means the following calculation:

(1) Add the full-time equivalent basic education certificated instructional employees, as determined in WAC 392-127-045, as reported on the S-275 and any supplemental full-time equivalent staff reported to the superintendent of public

instruction, excluding staff assigned to alternative learning experience programs under RCW 28A.150.325;

(2) Divide the result obtained in subsection (1) of this section by the full-time equivalent enrollment for October or that period selected by the school district or charter school; and

(3) Multiply the result obtained in subsection (2) of this section by one thousand.

**AMENDATORY SECTION** (Amending WSR 90-12-078, filed 6/1/90, effective 7/2/90)

**WAC 392-127-075 General provisions.** The following general provisions apply to this chapter:

(1) All calculations made by the superintendent of public instruction shall use the most current school district or charter school information for the school year on file with the superintendent of public instruction at the time of the calculation.

(2) Full-time equivalent staff shall be rounded to the nearest three decimal places.

(3) Full-time equivalent enrollment shall be rounded to the nearest two decimal places.

(4) Ratios of full-time equivalent staff to students shall be expressed as a ratio of staff to one thousand students and shall be rounded to two decimal places (e.g., 51.21/1000).

(5) School districts and charter schools shall have available upon request by the superintendent of public instruction and for audit purposes, such documentation as necessary to support all data reported to the superintendent of public instruction pursuant to this chapter.

(6) The superintendent of public instruction will develop and make available such forms, reports, and other documents necessary to implement this chapter.

**AMENDATORY SECTION** (Amending WSR 96-05-022, filed 2/13/96, effective 3/15/96)

**WAC 392-127-080 ((School district)) Reporting—Required reports.** On or before the Wednesday prior to Thanksgiving of each school year, each school district and charter school shall submit to the superintendent of public instruction on the S-275 the school district's or charter school's full-time equivalent basic education certificated instructional staff for the current school year.

**AMENDATORY SECTION** (Amending WSR 10-13-048, filed 6/9/10, effective 7/10/10)

**WAC 392-127-085 ((School district)) Reporting—Optional report—Staff changes.** At any time prior to completion of audit of data by the state auditor, school districts may report to the superintendent of public instruction supplemental full-time equivalent staff for the school year pursuant to WAC 392-127-065 and instructions provided by the superintendent.

**AMENDATORY SECTION** (Amending WSR 12-15-028, filed 7/11/12, effective 8/11/12)

**WAC 392-127-090 School district reporting—Optional report—Enrollment changes.** A school district or

charter school may request that the superintendent of public instruction use a different full-time equivalent enrollment to compute staffing ratios than that reported for October. The school district or charter school shall request the use of a different enrollment period prior to completion of audit of data by the state auditor. The school district or charter school may select the full-time equivalent enrollment for any one month during the current school year when all basic education instructional programs are operating.

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

**WAC 392-127-111 Calculation of penalty for failure to maintain staffing ratio.** For those school districts or charter schools with a basic education certificated instructional staff ratio of less than forty-six, the superintendent shall reduce the district's or charter school's basic education general apportionment entitlement for the school year by the amount determined as follows:

(1) Subtract the current school year final basic education certificated instructional staff ratio as reported to the school district or charter school from forty-six;

(2) Multiply the result obtained in subsection (1) of this section by the current school year full-time equivalent enrollment and further divide by one thousand; and

(3) Multiply the result obtained in subsection (2) of this section by the school district's or charter school's average salary, average mandatory fringe benefits, and health insurance benefits per certificated instructional staff unit used for the purpose of calculating the school district's or charter school's general apportionment entitlement for the current school year.

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

**WAC 392-127-112 Reporting by the superintendent of public instruction.** With each monthly apportionment payment for the school year beginning in January, the superintendent of public instruction shall show calculations of the school district's or charter school's basic education certificated instructional staff ratio and any penalty calculated pursuant to WAC 392-127-111. Calculations shall be based on the most current data from the district's or charter school's Report S-275 and any optional reports received by the superintendent of public instruction by the 15th of the month.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-129-003 Authority.** The authority for this chapter is RCW 28A.150.290(2) which authorizes the superintendent of public instruction to establish the terms and conditions for allowing a school district to receive an allocation of state moneys when the school district is unable, due to an unforeseen emergency, to fulfill the following statutory requirements:

(1) One hundred eighty days of operation; or

(2) The total program hour offerings, teacher contact hours, or course mix and percentage requirements imposed by law.

This chapter is further authorized under RCW 28A.710-.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-129-005 Purpose.** This chapter shall govern a school district's or charter school's entitlement to allocations of state moneys pursuant to RCW 28A.150.290(2) for any school year during which it is unable to conduct the kindergarten program, first through twelfth grade program, or both due to one or more unforeseen emergencies such that the following statutory requirements cannot be met:

(1) The minimum number of school days; and/or

(2) Program hour offerings, teacher contact hours, and course mix and percentages.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-129-015 Definition—Vacation day.** As used in this chapter, "vacation day" means a day other than:

(1) A school day;

(2) A school holiday defined in RCW 28A.150.050;

(3) Saturday unless actually used for a school day; or

(4) An inservice day for employees of the school district or charter school that:

(a) Was scheduled prior to the unforeseen school closure; and

(b) Was actually used for that purpose.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-050 Definition—Mechanical failure.** As used in this chapter, "mechanical failure" means a discontinuation or disruption of utilities such as heating, lighting, or water beyond the control of a school district board of directors, a charter school board, and ~~((its))~~ their respective employees.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-060 Definition—Action or inaction by one or more persons.** As used in this chapter, "action or inaction by one or more persons" means, but is not limited to, arson, vandalism, riots, insurrections, bomb threats, bombing, or delays in the scheduled completion of construction projects beyond the control of a school district board of directors, a charter school board, and ~~((its))~~ their respective employees. It shall not mean any labor dispute between a school district board of directors or charter school board and any employee.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-080 Definition—Foreseeable school closure days.** As used in this chapter, "foreseeable school closure days" means those days that are foreseeable in order to provide the school district or charter school with the ability to make up lost school days due to foreseeable natural events, mechanical failure, or action or inaction by one or more persons that would lead to all schools being unsafe, unhealthy, inaccessible, or inoperable.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-090 Definition—District-wide emergency closure.** As used in this chapter, "district-wide emergency closure" means that all school buildings in the school district or charter school are unsafe, unhealthy, inaccessible, or inoperable due to one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-100 Definition—School emergency closure.** As used in this chapter, "school emergency closure" means a school in the school district, or a charter school, comprised of more than one school that is unsafe, unhealthy, inaccessible, or inoperable due to one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons.

AMENDATORY SECTION (Amending WSR 07-13-090, filed 6/19/07, effective 7/20/07)

**WAC 392-129-105 Definition—Reasonable effort.** As used in this chapter, "reasonable effort" means the:

(1) Extension of the school year to and through June 14th; and

(2) Use of scheduled vacation days and foreseeable school closure days, to attain the minimum number of school days and district-wide annual average total instruction hour offerings required by law. In no case, except as provided in subsection (3) of this section, shall a school district or charter school be considered to have made a reasonable effort unless at least three school days, per incident, and district-wide annual average total instruction hour offerings which have been lost have in fact been made up.

(3) Where a school district or charter school resides in a county which was declared a state of emergency proclamation by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the emergency impacted district-wide facilities or operations, the superintendent may consider school district or charter school applications to have met the "reasonable effort" test by providing at least the district-wide annual average total instruction hour offerings.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-125 District-wide emergency closure—School district application to the superintendent of public instruction.** A school district or charter school applying for continuation of state support during a district-wide emergency closure will submit the following information:

(1) The name of the school district or charter school;

(2) The name of the superintendent of the school district or lead administrator of the charter school;

(3) A statement signed by the superintendent or charter school's lead administrator that:

(a) The school district board of directors or charter school board has reviewed the application and supports its submittal; and

(b) Any foreseeable school closure days are not included in the request;

(4) The unforeseen natural events, mechanical failures, or actions or inactions by one or more persons which caused the district-wide emergency closure;

(5) The specific dates of the district-wide emergency closure; and

(6) The specific dates that the school district has scheduled to make up the lost days.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-135 District-wide emergency closure—Implementation of superintendent of public instruction's determination of eligibility.** If the superintendent of public instruction determines that the school district has made a reasonable effort to make up all school days and program hour offerings, teacher contact hours, and course mix percentages required by law, the school district or charter school shall receive its full annual allocation of state moneys. If the superintendent of public instruction determines that the school district or charter school has not made a reasonable effort, the school district's or charter school's annual allocation of state moneys shall be reduced by the number of days lost due to the district-wide emergency closure divided by one hundred eighty.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-140 School emergency closure—School district application to the superintendent of public instruction.** A school district or charter school applying for continuation of state support during a school emergency closure will submit the following information:

(1) The name of the school district or charter school;

(2) The name of the superintendent of the school district or lead administrator of the charter school;

(3) A statement signed by the superintendent or charter school's lead administrator that the school district board of directors or the charter school board has reviewed the application and supports its submittal;

(4) The name(s) of the individual schools which did not operate;

(5) The unforeseen natural events, mechanical failures, or actions or inactions by one or more persons which caused the school emergency closure;

(6) The specific dates of the school emergency closure; and

(7) The specific dates that the school district or charter school has scheduled to make up the lost days.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-145 School emergency closure— Superintendent of public instruction's determination of eligibility.** The superintendent of public instruction shall review each application submitted for a school closure to determine if the application provides a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district or charter school from operating the school. Whenever a school district or charter school provides a school day, it shall be considered as meeting all hours, as originally scheduled for that day, toward meeting its program hour offerings, teacher contact hours, and course mix percentage requirements.

AMENDATORY SECTION (Amending WSR 08-13-049, filed 6/12/08, effective 7/13/08)

**WAC 392-129-150 School emergency closure— Implementation of superintendent of public instruction's determination of eligibility.** If the superintendent of public instruction determines that the school district or charter school has provided a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district or charter school from operating the school, the school district or charter school shall receive its full annual allocation of state moneys. However, the superintendent of public instruction may only excuse the school district or charter school for up to two scheduled school days per incident and not for more than three scheduled school days per school year. Provided, the superintendent may excuse more than two scheduled school days per incident or three scheduled school days per year where the school is located in a county which was subject to a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

(1) If the school district did not conclusively demonstrate that it was prevented from operating the school(s), its allocation of state moneys shall be reduced by:

~~((+))~~ (a) Dividing the number of days lost by one hundred eighty;

~~((2))~~ (b) Multiplying the result obtained in subsection (1) of this section by the annual average full-time equivalent enrollment in the school; and

~~((3))~~ (c) Dividing the result obtained in subsection (2) of this section by the annual average full-time equivalent enrollment in the school district.

~~(2) If the charter school did not conclusively demonstrate that it was prevented from operating the school, its allocation of state moneys shall be reduced by:~~

~~(a) Dividing the number of days lost by one hundred eighty; and~~

~~(b) Multiplying the result obtained in (a) of this subsection by the annual average full-time equivalent enrollment in the school.~~

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-134-002 Authority.** The authority for this chapter is RCW 28A.150.350 which authorizes the superintendent of public instruction to adopt rules and regulations regarding part-time public school attendance. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-134-005 Definitions.** As used in this chapter the term:

(1) "Ancillary service" shall mean any cocurricular service or activity, any health care service or activity, and any other services or activities, except "courses," for or in which preschool through twelfth grade students are enrolled by a public school. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, tutorial services such as home or hospital instruction for the physically disabled, and sports activities;

(2) "Course" shall mean any instructional curricular service or activity in which preschool through twelfth grade students are enrolled by a public school;

(3) "Part-time public school student" shall mean a student who is enrolled in a public school for less time than a "full-time equivalent student" as defined in chapter 392-121 WAC, as now or hereafter amended, and shall include:

(a) Private school students to the extent they are also enrolled in a public school as a student thereof for the purpose of taking any course or receiving any ancillary service, or any combination of courses and ancillary services which is not available in the student's private school of attendance;

(b) Any student who is enrolled exclusively in a public school for the purpose of taking courses or receiving ancillary services and/or participating in a work training program approved by the board of directors of the district or charter school board; and

(c) Any student who is participating in home-based instruction to the extent that the student is also enrolled in a public school for the purpose of taking any course or receiving any ancillary service, or any combination of courses and ancillary services.

(4) "Private school" shall mean any nonpublic vocational school and any nonpublic school which provides instruction in any of the grades kindergarten through twelve inclusive of nonpublic sectarian (religious) schools;

(5) "Private school student" shall mean a student who is enrolled in a private school "full time" as defined by the private school of attendance; and

(6) "Home-based instruction" shall mean an instructional program established pursuant to RCW 28A.225.010(4).

AMENDATORY SECTION (Amending WSR 80-05-035, filed 4/15/80)

**WAC 392-134-010 Attendance rights of part-time public school students.** An eligible part-time public school student who qualifies as a resident of a public school district pursuant to the definition of a "resident student" set forth in chapter 392-137 WAC, as now or hereafter amended, shall be entitled to attend the schools of the district within his or her attendance area tuition free on a part-time basis. Eligible part-time public school students who meet the admission policies of a public charter school shall be entitled to attend the school tuition free on a part-time basis.

An eligible part-time public school student shall be entitled to take any course, receive any ancillary service, and take or receive any combination of courses and ancillary services which is made available by a public school to full-time students. Eligible nonresident part-time public school students may be enrolled at the discretion of a public school district pursuant to the terms and procedures established for nonresident student attendance in chapter 392-137 WAC, as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 86-01-020, filed 12/9/85)

**WAC 392-134-020 Provision of educational program to part-time public school students—Reports—Sites.** (1) Courses, ancillary services, and any combination of courses and ancillary services shall be provided to part-time public school students at the same level and quality as provided by the public school to full-time students;

(2) Courses, ancillary services, and any combination of courses and ancillary services shall be provided to part-time public school students upon public school grounds or on sites which are controlled by a public school district or charter school and at the home or hospital where the student may be confined by reason of a ((physician [physical])) disability or sickness. Courses and ancillary services shall not be provided upon or within any private sectarian (religious) school site or facility: Provided, That field trips and special events incident to the public school program which include participation by both full-time and part-time public school students may be conducted by a public school upon or within private sectarian school facilities;

(3) No test result, grade, or other evaluation of a part-time public school student's abilities, needs, and/or performance which is generated by a public school in connection with the student's attendance may be transmitted or communicated by a public school to a private school except upon the written request of a minor student's parent(s) or guardian(s) or upon the written request of the student if the student is eighteen years of age or older; and,

(4) Transportation between a part-time public school student's private school and a public school in which he/she is

enrolled may not be provided to the student at the expense of a public school district or charter school in whole or part: Provided, That the following interschool transportation may be provided at the expense of a public school district or charter school:

(a) Transportation which is provided in connection with a part-time student's participation in field trips and special events permitted by subsection (2) of this section; and

(b) The transportation of part-time public school students which:

(i) Is necessary to comply with a condition to the receipt of federal funds; and

(ii) Is paid or reimbursed for with the federal funds to which the condition is attached, not state or local tax funds or revenues.

AMENDATORY SECTION (Amending WSR 80-05-035, filed 4/15/80)

**WAC 392-134-025 State funding procedures.** (1) Public school districts and charter schools shall maintain a record of the number of hours each part-time public school student is enrolled.

(2) Each district and charter school shall report to the superintendent of public instruction as required the number of hours that courses and/or ancillary services, or any combination of courses and ancillary services, are provided to part-time students in the basic enrollment data for state funding purposes.

(3) The information required by subsections (1) and (2) above shall be provided to the superintendent of public instruction on forms provided by and at such times as are designated by the superintendent.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-134-030 Compliance with rules as a condition of state funding.** Each public school district and charter school shall certify compliance with this chapter as a condition to the reimbursement of costs pursuant to RCW 28A.150.250, 28A.150.260 and 28A.150.350, as now or hereafter amended. State and federal funds shall be withheld in whole or part or recovered in whole or part through reduction in future entitlements of a district or charter school as necessary to enforce the provisions and intent of this chapter.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-003 Authority.** The authority for this chapter is RCW 28A.325.020 which authorizes the superintendent of public instruction to adopt rules and regulations regarding the administration and control of associated student body moneys. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-005 Purposes.** The purposes of this chapter are to:

- (1) Implement RCW 28A.325.020;
- (2) Designate the powers and responsibilities of the board of directors of each school district and charter school board regarding the efficient administration, management, and control of moneys, records, and reports of associated student body funds;
- (3) Encourage the supervised self-government of associated student bodies; and
- (4) Permit fund-raising activities by students in their private capacities for the purpose of generating nonassociated student body private moneys.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-010 Definitions.** (1) "Associated student body organization" means a formal organization of students, including subcomponents or affiliated student groups such as student clubs, which is formed with the approval, and operated subject to the control, of the board of directors of a school district or a charter school board in compliance with this chapter.

(2) "Associated student body program" means any activity which (a) is conducted in whole or part by or in behalf of an associated student body during or outside regular school hours and within or outside school grounds and facilities, and (b) is conducted with the approval, and at the direction or under the supervision, of the school district and charter school.

(3) "Central district office" means the board of directors, the charter school board, and/or their respective official designee to whom authority has been delegated to act in their behalf.

(4) "Associated student body public moneys" means fees collected from students and nonstudents as a condition to their attendance at any optional noncredit extracurricular event of the school district or charter school which is of a cultural, social, recreational or athletic nature, revenues derived from "associated student body programs" as defined in subsection (2) of this section, and any other moneys received by an associated student body, not specified in subsection (5) of this section and WAC 392-138-100, for the support of an associated student body program.

(5) "Nonassociated student body private moneys" means moneys generated by fund-raising activities or solicitation of donations by student groups in their private capacities for private purposes and/or private gifts and contributions.

(6) "Associated student body governing body" means the student council, student activities board, or other officially recognized group of students appointed or elected to represent the entire associated student body within a school in accordance with procedures established by the board of directors of the school district or a charter school board.

(7) "Trust fund" means a fund used to account for assets held by the district or charter school in a trustee capacity for the specific purpose designated by the fund-raising group and

described in the notice provided to donors prior to the fund-raising event. Such moneys must be accounted for separately from associated student body public moneys.

(8) "Held in trust" means held as private moneys either within a separate account within the associated student body fund or in a trust fund to be disbursed exclusively for an intended purpose.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-011 Formation of associated student bodies required.** The formation of an associated student body shall be mandatory and a prerequisite whenever one or more students of a school district or charter school engages in money-raising activities with the approval and at the direction or under the supervision of the district: Provided, (1) that the board of directors of a school district may act, or delegate the authority to an employee(s) of the district to act, as the associated student body governing body for any school facility within the district containing no grade higher than the sixth grade; and (2) that the charter school board may act, or delegate the authority to an employee(s) of the school to act, as the associated student body governing body for any charter school containing no grade higher than the sixth grade.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-013 Powers—Authority and policy of school boards ~~((of directors))~~.** (1) The board of directors of each school district shall:

(a) Retain and exercise the general powers, authority, and duties expressed and implied in law with respect to the administration of a school district and regulation of actions and activities of the associated student bodies of the district including, but not limited to RCW 28A.320.010 (Corporate powers), RCW 28A.150.070 (General public school system administration), RCW 28A.320.030 (Gifts, conveyances, etc., for scholarship and student aid purposes, receipts and administration), RCW 28A.600.010 (Government of schools, pupils, and employees), RCW 28A.320.040 (Bylaws of board and school government), RCW 28A.400.030 (2) and (3) (Superintendent's duties), RCW 28A.600.040 (Pupils to comply with rules and regulations), RCW 43.09.200 (Local government accounting—Uniform system of accounting), RCW 36.22.090 (Warrants of political subdivisions), and chapter 28A.505 RCW (School district budgets);

(b) Approve the constitution and bylaws of each district associated student body and establish policies and guidelines relative to:

(i) The identification of those activities which shall constitute the associated student body program;

(ii) The establishment of an official governing body representing the associated student body;

(iii) The methods and means by which students shall be permitted to raise and otherwise acquire associated student body moneys; and

(iv) The designation of the primary advisor to each associated student body and the authority of the primary advisor

to designate advisors to the various student subgroup organizations affiliated with an associated student body;

(c) Assign accounting functions, or portions thereof, to the school building level to be performed by a designated representative of an associated student body or centralize the accounting functions at the district central administrative office level;

(d) Provide for the participation of the associated student body or bodies of the school district in the determination of the purposes for which associated student body public moneys and nonassociated student body private moneys if held as private moneys within the associated student body fund shall be budgeted and disbursed(~~(-and)~~).

(2) Public charter school boards shall:

(a) Approve the constitution and bylaws of the charter school's associated student body and establish policies and guidelines relative to:

(i) The identification of those activities which shall constitute the associated student body program;

(ii) The establishment of an official governing body representing the associated student body;

(iii) The methods and means by which students shall be permitted to raise and otherwise acquire associated student body moneys; and

(iv) The designation of the primary advisor to each associated student body and the authority of the primary advisor to designate advisors to the various student subgroup organizations affiliated with an associated student body;

(b) Assign accounting functions, or portions thereof, to the school building level to be performed by a designated representative of an associated student body;

(c) Provide for the participation of the associated student body in the determination of the purposes for which associated student body public moneys and nonassociated student body private moneys if held as private moneys within the associated student body fund shall be budgeted and disbursed.

(3) If the district or charter school permits students to conduct fund-raising activities and solicitation of donations in ~~((their))~~ its private capacities, ~~((they))~~ it shall establish policies to permit such activities and the allowable uses of such moneys. The board policy and/or procedures must include the approval process for such activities as well as provisions to ensure appropriate accountability for these funds, which are required to be held in trust.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-014 Accounting procedures and records.** Associated student body public and nonassociated student body private moneys shall be accounted for as follows:

(1) Accounting methods and procedures shall comply with such rules and regulations and/or guidelines as are developed by the state auditor and the superintendent of public instruction and published in the *Accounting Manual for Public Schools in the State of Washington* and/or other publications;

(2) Whenever two or more associated student bodies exist within a school district or charter school, the accounting records shall be maintained in such a manner as to provide a separate accounting for the transactions of each associated student body in the associated student body program fund;

(3) The fiscal and accounting records of associated student body program moneys shall constitute public records of the school district or charter school, shall be available for examination by the state auditor, and shall be preserved in accordance with statutory provisions governing the retention of public records; and

(4) Nonassociated student body private moneys shall be held in trust by the school within the associated student body fund or within a trust fund and be disbursed exclusively for such purposes as the student group conducting the fund-raising activity shall determine, subject to applicable school board or charter school policies. The district or charter school shall either withhold or otherwise be compensated an amount from such moneys to pay its direct costs in providing the service. Such funds are private moneys, not public moneys under section 7, Article VIII of the state Constitution.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-017 Segregation of public and private moneys.** When a school district or a charter school board has associated student body organizations that receive both public and private moneys as defined in WAC 392-138-010 (4) and (5), two separate sets of accounts shall be maintained. In addition, separate accounting records should be maintained by organization or purpose including clubs, classes, athletic activities, private purpose fund-raising events and general associated student body.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-018 Petty cash funds.** The board of directors of a school district or a charter school board may authorize the establishment and maintenance of associated student body petty cash funds for use in instances when it is impractical to make disbursement by warrant or check, subject to the following conditions:

(1) A petty cash fund shall be initiated by warrant or check;

(2) Paid-out receipts shall constitute invoices for the purpose of vouchering; and

(3) An upper limit of the amount of the petty cash fund shall be established by the board of directors or charter school board.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-019 Compliance with bid law required.** The statutory provisions of RCW 28A.335.190(~~(-the so-called "bid law" governing school district purchasing procedures;-))~~) shall govern purchases payable from the associated student body funds.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-021 Title to property—Dissolution of associated student body or affiliated group.** Title to all such property acquired through the expenditure of associated student body public moneys shall be vested in the school district or charter school.

In the event a member organization affiliated with an associated student body elects to disband or ceases to exist for any reason, then:

(1) The school district, charter school, and parent associated student body shall cease carrying any money or account on behalf of or to the credit of the organization; and

(2) The records of the organization shall be retained and disposed of in accordance with applicable state law regarding the retention and destruction of public records.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-110 Associated student body public moneys—Associated student body program budget.** (1) Each associated student body of a school district, with the guidance of the primary advisor, and at such time as is designated by the central district office, annually shall prepare and submit a financial plan (budget) for support of the associated student body program to the district superintendent or his/her designee for consolidation into a district associated student body program fund budget and then present such budget to the board of directors of the district for its review, revision, and approval: Provided, That revisions of the budget submitted by an associated student body and revisions of the budget approved by the board of directors shall first be reviewed by the associated student body and, in the case of an approved budget, shall be subject to the requirements of chapter 28A.505 RCW regarding emergency expenditures or budget extensions. The budget as approved shall constitute an appropriation and authorization for the disbursement of funds for the purposes established in the budget.

(2) Each associated student body of a charter school, with the guidance of the primary advisor, and at such time as is designated by the charter school's lead administrator, annually shall prepare and submit a financial plan (budget) for support of the associated student body program to the lead administrator or his/her designee for consolidation into a charter school associated student body program fund budget and then present such budget to the charter school board for its review, revision, and approval: Provided, That revisions of the budget submitted by an associated student body and revisions of the budget approved by the charter school board shall first be reviewed by the associated student body and, in the case of an approved budget, shall be subject to the requirements of chapter 392-123 WAC regarding emergency expenditures or budget extensions. The budget as approved shall constitute an appropriation and authorization for the disbursement of funds for the purposes established in the budget.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-115 Associated student body public moneys—Deposit and investment.** All associated student body public moneys, upon receipt, shall be transmitted intact to the district or charter school depository bank and then to the county treasurer or directly to the county treasurer for deposit to the credit of the "associated student body program fund" of the school district or charter school and shall be accounted for, expended, and invested subject to the practices and procedures governing other moneys of the district or charter school except as such practices and procedures are modified by or pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-120 Associated student body public moneys—Imprest bank checking account.** The board of directors of a school district or charter school board may authorize the establishment and maintenance of an associated student body imprest bank checking account for convenience and efficiency in expediting disbursements, subject to the following conditions:

(1) The maximum amount of such an account shall be no more than is necessary to provide for disbursements at the level of the month of highest estimated demand for disbursements;

(2) An imprest bank checking account shall be initiated by deposit of, and replenished by, a warrant drawn on the associated student body program fund;

(3) Disbursements from an imprest bank checking account shall be by check and shall be restricted to payments of invoices bearing evidence of student approval in accordance with associated student body bylaws;

(4) An imprest bank checking account shall be replenished at least once each month by a warrant drawn on the associated student body program fund in payment of an approved voucher in an amount equal to the sum total of the disbursements made by check from the imprest bank checking account during the preceding interval; and

(5) The replenishment voucher shall reflect such information as the central district office shall prescribe relative to identification of invoices, invoice approvals, codification of expenditures, cancelled checks, and other information deemed pertinent.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-125 Associated student body public moneys—Disbursement approval—Total disbursements.** Associated student body public moneys shall be disbursed subject to the following conditions:

(1) No disbursements shall be made except as provided for in the budget approved pursuant to WAC 392-138-040;

(2) Disbursements shall occur only upon presentation of properly prepared vouchers in such format and design as the central district office or charter school lead administrator shall prescribe;

(3) All disbursements from the associated student body program fund or any imprest bank account established thereunder shall have the prior approval of the appropriate governing body representing the associated student body. Supporting documentation of the vouchers shall bear evidence of approval by the associated student body governing body in accordance with associated student body bylaws;

(4) When an account within the fund balance of an associated student body organization does not contain a sufficient balance to meet a proposed disbursement, such disbursement shall be limited to the fund balance. Provided, That a transfer of fund balance between associated student body organizations may be made pursuant to the associated student body bylaws and as approved by the associated student body governing body;

(5) Warrants shall not be issued in excess of the moneys on deposit with the county treasurer in the associated student body program fund; and

(6) All disbursements shall be made by warrant except for disbursements from imprest bank accounts and petty cash funds provided for in this chapter.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-130 Associated student body public moneys—League and other joint activities.** Athletic league and other forms of joint inter and intra school district or charter school associated student body programs are not precluded by this chapter. In the case of such joint programs, a single school district or charter school, or associated student body or a board representing the participating associated student bodies shall manage associated student body moneys made available to it for the support of the joint program and received as a result of the conduct of such program, in compliance with this chapter and a written cooperative agreement authorized by the board(s) of directors of the district(s) or charter school board(s).

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-200 Nonassociated student body private moneys.** The board of directors of a school district or a charter school board may permit student groups to raise moneys through fund-raising or solicitation in their private capacities when the following conditions are met:

(1) Prior to solicitation of such funds, the school board approves policies defining the scope and nature of fund-raising permitted. School board policy includes provisions to ensure appropriate accountability, including prompt deposit, holding the moneys in trust, and disbursement only for the intended purpose of the fund-raiser;

(2) Such funds are used for scholarship, student exchange, and/or charitable purposes. Charitable purposes do not include any activity related to assisting a campaign for election of a person to an office or promotion or opposition to a ballot proposition;

(3) Prior to solicitation of such funds notice is given. Such notice identifies the intended purpose of the fund-raiser, further it states the proceeds are nonassociated student body

funds to be held in trust by the school district exclusively for the intended purposes;

(4) The school district or charter school withholds or otherwise is compensated an amount adequate to reimburse the district for its direct costs in handling these private moneys; and

(5) WAC 392-138-205 applies to moneys received, deposited, invested, and accounted for under this section.

Nonassociated student body private moneys shall not be deemed public moneys under section 7, Article VIII of the state Constitution.

WAC 392-138-035 shall apply to moneys received, deposited, invested, expended, and accounted for under this section.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-205 Nonassociated student body private moneys—Deposit and investment.** All nonassociated student body private moneys, upon receipt, shall be transmitted intact to the district or charter school depository bank and then to the county treasurer or directly to the county treasurer for deposit to the credit of the school district's or charter school's trust fund or the associated student body fund, if held in trust within that fund within accounts as defined in WAC 392-138-010 and shall be accounted for, expended, and invested subject to applicable school board policy and/or procedures pursuant to WAC 392-138-200.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-210 Nonassociated student body private moneys—Disbursement approval—Total disbursements.** Nonassociated student body private moneys shall be disbursed subject to the following conditions:

(1) If such funds are held in trust within the associated student body fund, they shall be budgeted pursuant to WAC 392-138-013 (1)(d). No disbursements shall be made except as provided for in the budget approved pursuant to WAC 392-138-110. All disbursements shall have the prior written approval of the associated student body or such other authority designated in school district or charter school policy or procedures;

(2) If such funds are held in a trust fund, they are not budgeted. Disbursements shall occur only upon presentation of properly prepared vouchers in such format and design as the central district office shall prescribe, and as provided for in subsection (3) of this section;

(3) Vouchers authorizing disbursements shall be accompanied by written evidence of approval of disbursement by the associated student body or other authority designated in the school district's or charter school's policies and procedures;

(4) Disbursements shall be made only for the intended purposes pursuant to WAC 392-138-200.

AMENDATORY SECTION (Amending WSR 92-03-023, filed 1/7/92, effective 2/7/92)

**WAC 392-140-067 General provisions.** The following general provisions apply to this chapter:

(1) All calculations made by the superintendent of public instruction shall use the most current school district or charter school information for the school year on file with the superintendent of public instruction at the time of the calculation.

(2) Full-time equivalent (FTE) staff shall be rounded to the nearest three decimal places.

(3) FTE enrollment shall be rounded to the nearest two decimal places.

(4) Ratios of FTE staff to students shall be expressed as a ratio of staff to one thousand students and shall be rounded to the nearest two decimal places (e.g., 51.21/1000).

(5) Unless otherwise stated, report forms, staff, salary, and enrollment data referenced in these rules are school district or charter school report forms, staff, salary, or enrollment data for the school year for which calculations pursuant to this chapter are being made.

(6) Employee assignments and account codes for program, duty, and activity shall mean the same as defined in the accounting manual for public school districts in the state of Washington and in instructions for personnel reporting provided by the superintendent of public instruction.

(7) School districts and charter schools shall have available upon request by the superintendent of public instruction and for audit purposes, such documentation as necessary to support all data reported to the superintendent of public instruction pursuant to this chapter.

(8) Full-time equivalent is abbreviated as FTE.

(9) Kindergarten through third grade is abbreviated as K-3.

AMENDATORY SECTION (Amending WSR 92-03-023, filed 1/7/92, effective 2/7/92)

**WAC 392-140-068 Timely reporting.** Provisions of chapter 392-117 WAC, Timely reporting, apply to allocations made pursuant to this chapter. Failure of a school district or charter school to report as required may reduce or delay state apportionment payments.

#### NEW SECTION

**WAC 392-140-0695 Definition—Charter school.** As used in this chapter, "charter school" means a public school governed by a charter school board and operated according to the terms of a charter contract executed under chapter 28A.710 RCW and includes a new charter school and a conversion charter school.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

**WAC 392-140-60110 Definition—Community impact.** For the purpose of state special education safety net funding, community impact refers to school district or charter school identified and quantifiable factor(s) beyond the control of the district or charter school which justify disproportion-

and extraordinary costs associated with the provision of special education services in the district or charter school (i.e., demographic, environmental, sociological, or other facts that can be described and calculated in an application consistent with WAC 392-140-617).

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-602 Special education safety net—Eligible applicants.** (1) An individual school district of the state of Washington is eligible to apply for special education safety net awards on behalf of its resident students. Resident students include those students as defined by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member districts are provided by the cooperative or educational agency is eligible to apply for special education safety net awards. Member districts shall be treated as a single school district for the purposes of this chapter and are not eligible to apply for safety net awards individually.

(3) The Washington state center for childhood deafness and hearing loss and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

(4) Individual charter schools are eligible to apply for special education safety net awards.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-605 Special education safety net—Application types, certification, worksheets.** Application for safety net awards shall be made on Form SPI 1381 - Certification published by the office of the superintendent of public instruction. Applications will be considered and awards made according to the schedule published in the annual *Safety Net Bulletin*.

(1) School districts and charter schools may make application for safety net awards in two categories - High need student(s) and/or community impact factors. The applicant for either or both categories of safety net awards shall certify that:

(a) Differences in costs attributable to district or charter school philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards;

(b) The application complies with the respective safety net application standards of WAC 392-140-616 and 392-140-617;

(c) The application provides true, accurate, and complete information;

(d) The applicant acknowledges that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the award letter, and certifies that federal medicaid has been billed for all ser-

vices to eligible students consistent with RCW 28A.150.392 (1)(e);

(e) The applicant is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding;

(f) The applicant's special education program is operated in a reasonably efficient manner;

(g) Indirect costs included for purposes of determining safety net awards do not exceed the allowable federally restricted indirect rate plus one percent;

(h) Any available state and federal funding is insufficient to address the request for additional funds;

(i) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP; and

(j) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by a properly formulated IEP.

(2) Worksheet A shall be included with the application and must demonstrate the applicant's capacity for safety net awards. Worksheet A is used to determine a maximum amount of safety net award eligibility. Award amounts may be less than the maximum potential amount of safety net award eligibility determined on worksheet A.

(3) All high need student applications shall include worksheets "A" and "C" and Summary of Applications for High Need Individual Students published in the safety net application, and certification of standards and criteria pursuant to WAC 392-140-616.

(4) All community impact applications shall include worksheet A, the community impact application, all supporting documentation, and certification of standards and criteria pursuant to WAC 392-140-617.

**AMENDATORY SECTION** (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-617 Special education safety net—Standards—Community impact applications.** For applicants requesting state safety net awards to meet the extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, the applicant must meet the standards of WAC 392-140-605 (1)(a) through (j) and convincingly demonstrate that:

(1) Demographic, environmental, sociological or other factor(s) cause the district's or charter school's special education enrollment to be disproportional by category of disability or the overall number of students identified as eligible for special education; and

(2) The unique factor(s) identified by the applicant is not the result of district or charter school philosophy, service delivery choice, or accounting practice; and

(3) The identified factor(s) creates an adverse documentable fiscal impact upon the applicant's special education program; and

(4) The applicant summarizes the steps the applicant has taken or plans to take in response to the factors identified in the application.

**AMENDATORY SECTION** (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-650 Special education safety net—Withdrawal of application.** If at any time an applicant wishes to withdraw an application submitted prior to the committee vote, the superintendent or designee of the applicant district, or lead administrator or designee of the applicant charter school, must submit a letter requesting withdrawal to the state oversight committee manager.

**AMENDATORY SECTION** (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-675 Special education safety net—Adjustments to special education safety net awards.** Final safety net awards shall be adjusted based on:

(1) The percent of potential medicaid eligible students billed. Potential medicaid revenue will be estimated by the office of the superintendent of public instruction based on the applicant's percent of medicaid eligible students billed and the statewide average payment per student as determined in July of the school year for which the applicant is requesting safety net awards. The office of the superintendent of public instruction shall provide Form SPI 1679 for district and charter school reporting of medicaid eligible students and shall update the district's or charter school's special education medicaid eligibility count and finalize the count for the year based upon the applicant's most recent submission of Form SPI 1679; and

(2) Changes in factors for which additional or revised information becomes available after the awarding of the initial safety net award.

(a) High need awards and/or community impact awards will be reduced or nullified when the applicant's available revenues and legitimate expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(b) An applicant's safety net award may be recovered or adjusted based on the results of the review conducted by the state auditor's office pursuant to WAC 392-140-630.

**AMENDATORY SECTION** (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-685 Special education safety net—Recovery of state and/or federal awards.** High need student state and/or federal special education safety net awards and state community impact safety net awards shall be recovered or awards reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The award is unexpended for the purpose allocated including but not limited to situations where the student leaves ~~(the)~~ a school district, ceases attending a charter school, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district or charter school transfers the equipment to the other school district or charter school.

(3) The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(4) The applicant's available revenues are significantly higher than estimated revenues on which the award was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the award was based.

(5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

**AMENDATORY SECTION** (Amending WSR 14-06-014, filed 2/20/14, effective 3/23/14)

**WAC 392-140-915 High poverty funding—Process and definition of eligible schools.** For the purposes of this section, an eligible school is one in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building, and, if the school is administered by a school district, the school is not part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

CEDARS data as of October of the previous school year will be used to determine school eligibility. A CEDARS extract of October 1st data will be pulled on March 31st to be used as the basis for K-3 high poverty funding eligibility for the subsequent school year. The list of eligible schools will be published by mid April. No changes to CEDARS data made after March 31st will be considered, and appeals will not be allowed.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's or charter school's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August. Districts and charter schools must meet the legislative compliance requirements of the K-1 high poverty funding in order to retain the full allotment.

**AMENDATORY SECTION** (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

**WAC 392-140-921 K-1 high poverty class size compliance.** The superintendent of public instruction shall determine which high poverty schools are eligible for enhanced

funding for class size reduction per WAC 392-140-915. High poverty class size compliance in schools administered by school districts will be measured at each eligible school independent of other eligible schools within ~~((a))~~ the district. A demonstrated class size will be measured at each eligible school. That demonstrated class size will be converted to a funded class size, and a weighted average funded class size by district or charter school will be calculated and used for funding purposes.

Compliance calculations will be performed in January, March, and June of each school year. The most recent weighted average funded class size will be used for funding purposes. Districts and charter schools will be funded based on their budgeted high poverty class size from September through December. Only districts with at least one high poverty eligible school may budget an enhanced class size.

**AMENDATORY SECTION** (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

**WAC 392-140-932 K-1 high poverty class size—Teachers.** The superintendent of public instruction shall include in the calculation of high poverty class size compliance those teachers reported on the S-275 at the eligible schools that are coded in programs 01 and 79 to grade group K or 1, and are reported in one of the following duty roots:

- Duty Root 31 - Elementary teacher
- Duty Root 33 - Other teacher
- Duty Root 52 - Substitute teacher
- Duty Root 63 - Contractor teacher

S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

Program 21 special education teachers coded to grade K or 1 at the eligible schools multiplied by the annual percentage of students in special education instruction used in determination of a district's or charter school's 3121 revenue will be included.

Teachers coded to program 02 alternative learning experience shall be excluded.

**AMENDATORY SECTION** (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

**WAC 392-140-933 K-1 demonstrated class size.** Demonstrated class size at each school will be calculated by dividing the total teachers for that school as described in WAC 392-140-932 into the calculated total of K-1 student FTE for that school. Funded class size will equal the demonstrated class size to a maximum of 24.1 and a minimum of 20.3 students per teacher.

A weighted average of funded class sizes across all high poverty eligible schools will be calculated by multiplying eligible enrollment as defined in WAC 392-140-923 at each school by the funded class size at each school. For school districts, the results of that calculation for each school will be summed and divided by the total K-1 calculate enrollment at all eligible schools to arrive at a district wide weighted aver-

age funded class size. This weighted average funded class size will be used for funding purposes.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-955 Learning improvement days—**  
**Definition—Learning improvement day.** As used in this chapter "learning improvement day" means a scheduled work day during the school year for certificated instructional staff funded by the state for the purpose of improving student learning and implementing education reform.

(1) A learning improvement day is a scheduled work day on a district or school calendar.

(2) The length of a learning improvement day shall not be less than the length of a full work day for certificated instructional staff on a school day during the school year: Provided, That two half days may be scheduled in lieu of one full learning improvement day if the combined work hours equal or exceed hours in a full learning improvement day.

(3) No learning improvement day, or half day, shall be scheduled on a school day as defined in WAC 392-121-033.

(4) A school district or charter school may schedule learning improvement days for different school buildings or groups of employees on different calendar days.

(5) Learning improvement days shall be compensated as part of the employee's base contract.

**AMENDATORY SECTION** (Amending WSR 10-19-028, filed 9/9/10, effective 10/10/10)

**WAC 392-140-956 Learning improvement days—**  
**Other definitions.** As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district or charter school certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district and charter school. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- 01 Basic Education
- 02 Basic Education-Alternative Learning Experience
- 21 Special Education-Supplemental-State
- 31 Vocational-Basic-State
- 34 Middle School Career and Technical Education-State
- 45 Skills Center-Basic-State
- 55 Learning Assistance Program-State
- 65 Transitional Bilingual-State

74 Highly Capable

97 District-wide Support

(5) "State institutional education programs" means the following programs:

26 Special Education-Institutions-State

56 State Institutions, Centers, and Homes-Delinquent

59 Institutions-Juveniles in Adult Jails

**AMENDATORY SECTION** (Amending WSR 10-19-028, filed 9/9/10, effective 10/10/10)

**WAC 392-140-961 Learning improvement days—**  
**Determination of the number of funded learning improvement days.** The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district or charter school for each school year as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district or charter school and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the selected state-funded programs.

(b) For each employee, subtract one hundred eighty days from the number of days reported in the base contract.

(c) For each school year, take the lesser of the number of learning improvement days funded in the state Biennial Operating Appropriations Act or the result of (b) of this subsection, but not less than zero.

(d) Sum the number of days determined for all employees pursuant to (b) and (c) of this subsection.

(e) Divide the result of (d) of this subsection by the number of employees and round to two decimal places.

(f) The result is the number of funded learning improvement days for the district or charter school.

(3) After the close of the school year, the superintendent shall fund the lesser of:

(a) The number of days determined pursuant to subsection (2) of this section; or

(b) The number of days reported by the district or charter school pursuant to WAC 392-140-967.

**AMENDATORY SECTION** (Amending WSR 10-19-028, filed 9/9/10, effective 10/10/10)

**WAC 392-140-962 Learning improvement days—**  
**Salary allocations for learning improvement days.** Using the number of learning improvement days determined pursuant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts and charter schools as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document 2, or successor salary allocation schedules, shall be reduced pro rata for any district or charter school with less than the number of learning improvement days funded in the

state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allocation per pupil for learning improvement days shall be reduced pro rata for any district or charter school with less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(4) For state institutional education programs the salary allocation for learning improvement days shall be reduced pro rata for any district or charter school with less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961. Educational service districts or contractors operating state-funded institutional education programs shall be eligible for learning improvement day funding in the same manner as school districts and charter schools.

(5) Allocations for learning improvement days are subject to adjustment or recovery based on findings of the Washington state auditor and chapters 392-115 and 392-117 WAC.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-965 Learning improvement days—((School district)) Requests for review and adjustment.** A school district or charter school may at any time request that the superintendent of public instruction review and adjust data and calculations used to determine funding for learning improvement days pursuant to this chapter.

Requests for adjustment to the number of learning improvement days provided in the 1999-2000 school year and thereafter shall be considered if the district or charter school shows that the data or calculations are in error, or other bona fide adjustments are necessary.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-967 Learning improvement days—((School district)) Reporting requirements.** After the close of the school year, school districts and charter schools receiving funding for learning improvement days shall report the number of learning improvement days provided by the district or charter school meeting the requirements of WAC 392-140-950 through 392-140-965.

**AMENDATORY SECTION** (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

**WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility.** Staff that are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards during the entire school year, unless otherwise specified in the state Biennial Operating Appropriations Act; and

(2) Who are:

(a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Teachers and other certificated instructional staff employed full time or part time by a charter school.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) Challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(i) 70 percent for elementary schools;

(ii) 60 percent for middle schools; or

(iii) 50 percent for high schools; as determined by the

October 1 count of the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on May 1st of that prior year.

(b) For purposes of the national board challenging, high poverty schools bonus, a school shall be categorized based upon the highest grade served as follows:

(i) A school whose highest grade served is 6th grade or lower shall be considered an elementary school;

(ii) A school whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school;

(iii) A school whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school.

(c) A school shall be considered only if it serves thirty or more students, or is the largest school in the district serving its designated category.

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

(f) Teachers and other certificated instructional staff that meet the qualifications for the challenging, high poverty schools bonus under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the challenging, high poverty schools

bonus in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of June 15th of the school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

**AMENDATORY SECTION** (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

**WAC 392-140-974 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Administrative procedures.** (1) School districts and charter schools that employ teachers and other certificated instructional staff eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting for each employee the required data as determined by the superintendent of public instruction.

(2) Districts and charter schools shall document each employee's eligibility by maintaining on file for audit a copy of the employee's national board certification notice and evidence of employment and duties assigned. For employees eligible for the challenging, high poverty schools bonus pursuant to WAC 392-140-973(3), districts and charter schools shall also document the employee's instructional assignments in challenging, high poverty schools.

(3) All requests must be submitted to the superintendent of public instruction by June 15th of the school year and shall be paid in the July apportionment and displayed on Report 1197, in revenue account 4158. Bonuses shall be reduced by a factor of 40 percent for first year National Board for Professional Teaching Standards (NBPTS) certified teachers, to reflect the portion of the instructional school year they are certified.

(4) For each candidate, the superintendent of public instruction shall send the district or charter school the amount of the salary bonus set in the operating appropriations act plus an amount for the district's or charter school's (employer) portion of mandatory fringe benefits. The amount of the annual bonus in WAC 392-140-973(2) shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. The amount of the challenging, high poverty schools bonus in WAC 392-140-973(3) shall be five thousand dollars in the 2007-08 school year. Thereafter, the challenging, high poverty schools bonus shall not increase by inflation.

(5) The district or charter school shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200 no later than August 31st of the school year.

(6) The salary bonus is included in the definition of "earnable compensation" under RCW 41.32.010(10).

**AMENDATORY SECTION** (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

**WAC 392-140-975 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Requests for review and adjustment.** A school district or charter school may request that the superintendent of public instruction review and adjust data and calculations used to determine funding for the salary bonus for teachers and other certificated instructional staff who hold current certification by the national board for professional teaching standards pursuant to this chapter and instructions issued by the superintendent of public instruction. Requests to review and adjust data shall be considered only for those districts or charter schools wishing to appeal a school's eligibility designation for the challenging, high poverty schools bonus pursuant to WAC 392-140-973(3).

Requests to review and adjust data shall be considered only if the district shows that the data or calculations are in error, or other bona fide adjustments are necessary.

**WSR 15-09-141**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed April 22, 2015, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-24-020.

Title of Rule and Other Identifying Information: WAC 246-490-080, 246-490-081 and 246-490-082, adding new sections for delayed registration and certificate of birth.

Hearing Location(s): Department of Health, Town Center Two, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on May 28, 2015, at 10:00 a.m.

Date of Intended Adoption: June 15, 2015.

Submit Written Comments to: Kris Reichl, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504-7814, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 753-4135, by May 28, 2015.

Assistance for Persons with Disabilities: Contact Kris Reichl by May 22, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to strengthen requirements for registration of delayed birth certificates. The rules define who can apply and forms required, establish the type and number of documentary evidence accepted, allow for a broad combination of documents if needed, define the facts the document must establish, clarify how long the documents must have been established for, identify timelines for registering, allow for validation of authenticity, and align requirements for establishing a second parent with the Uniform Parentage Act (chapter 26.26 RCW).

Reasons Supporting Proposal: To establish a standard process and requirements for persons requesting a delayed birth certificate and to reduce the risk of registering a fraudulent certificate. A person may need to request a delayed birth

certificate when he or she was born at home without medical assistance and his or her parent(s) never registered the birth, or when registration of the birth cannot be found on file with the department or with the county of birth.

Statutory Authority for Adoption: RCW 43.70.150 and 70.58.082.

Statute Being Implemented: RCW 70.58.082.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kris Reichl, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4311; Implementation: Joni Sanchez, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4365; and Enforcement: Jean Remsbecker, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4330.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernment party. A preliminary cost-benefit analysis may be obtained by contacting Kris Reichl, P.O. Box 47814, Olympia, WA 98504-7814, phone (360) 236-4311, fax (360) 753-4135, e-mail kristin.reichl@doh.wa.gov.

April 21, 2015

John Wiesman, DrPH, MPH  
Secretary

### Delayed Registration of Births

#### NEW SECTION

**WAC 246-490-080 Delayed birth certificate—Requesting registration.** (1) An interested person may request registration of a live birth that occurred in Washington state when no birth record is found on file with the department.

(2) Interested person means:

(a) A person registering his or her own birth if age eighteen or older; or

(b) The parent(s) or guardian(s) if the person who is the subject of the delayed birth certificate is under age eighteen.

(3) An interested person shall obtain a letter from the department stating no record was found on file before requesting a delayed birth certificate.

(4) By requesting a delayed birth certificate, the requestor is attesting to the fact that no birth record is on file with another jurisdiction and the person was born in Washington state.

(5) A request for registration of a delayed birth certificate must include:

(a) A completed delayed birth certificate form signed by the requestor;

(b) Documentary evidence required by WAC 246-490-081;

(c) A copy of the no record found letter required in subsection (3) of this section;

(d) Fee(s) as required by RCW 70.58.107 if requesting certified copies of the delayed birth certificate.

(6) A delayed registration of birth is not required for a child under the age of four if the attending physician or midwife is available and registers the birth with the department.

#### NEW SECTION

**WAC 246-490-081 Delayed birth certificate—Documentary evidence required.** (1) If the person is under age twelve, the facts concerning date of birth, place and parentage of birth must be established by at least two pieces of documentary evidence, only one of which may be a sworn statement; or

(2) If the person is age twelve and over, the facts concerning date of birth and place must be established by at least three pieces of documentary evidence, only one of which may be a sworn statement. One piece of documentary evidence must establish parentage.

(3) Documentary evidence for establishing parentage is required for both parents if more than one parent is to be listed on the request. If the parents were not married at the time of birth or during the pregnancy and the person is under age eighteen, a paternity acknowledgment or court order is required to include the second parent on the delayed birth certificate.

(4) The documentary evidence must be from independent sources and must have been established prior to the person's fourth birthday or be at least five years old, or based on records established at least five years prior to the date of the request.

(5) Documentary evidence may include, but is not limited to, the following:

(a) Military records;

(b) Numident report, which is a Social Security Administration report of information from the original application for Social Security card;

(c) Hospital or medical records;

(d) Federal census records;

(e) School enrollment records;

(f) Newspaper notice of birth with the date published and name of paper on the same page;

(g) Voter registration application that includes name, date, and place of birth;

(h) A sworn statement as defined in subsection (6) of this section;

(i) A combination of documents deemed adequate by the state registrar for establishing the facts concerning the birth.

(6) A sworn statement must be made by a person who has knowledge of the facts of birth. The statement must be on a form provided by the state registrar, notarized by an authorized notary public, and include:

(a) The full name of the person whose birth is being registered;

(b) The names of his or her parent(s);

(c) Marital status of parent(s) during the pregnancy or at the time of birth;

(d) The date and place of birth of the person whose birth is being registered;

(e) A detailed statement of how the person knows the facts to be true.

#### NEW SECTION

**WAC 246-490-082 Delayed birth certificate—Verification and registration.** (1) The state registrar may verify the authenticity and accuracy of documentary evidence provided by the requestor.

(2) If the request for registration is incomplete, the department will notify the requestor. An incomplete request for registration of a delayed birth certificate will be returned to the requestor if not completed within one year.

(3) The department will not register a delayed birth certificate for a deceased person.

(4) Any person born in this state who is unable to meet the requirements for a delayed registration of birth may petition the superior court of the county of residence or county of birth for an order establishing a record of the date and place of his or her birth, and his or her parentage as allowed by RCW 70.58.145.