

Chapter 181-86 WAC

PROFESSIONAL CERTIFICATION—POLICIES AND PROCEDURES FOR ADMINISTRATION OF CERTIFICATION PROCEEDINGS

WAC

181-86-003 Authority.
181-86-005 Purpose.
181-86-010 Public policy—Certification proceeding separate from other proceedings.

GENERAL PROVISIONS

181-86-011 Valid certificate required.
181-86-013 Good moral character and personal fitness—Definition.
181-86-014 Good moral character and personal fitness—Continuing requirement.

ORDERS

181-86-015 Denial of application for certification or endorsement order—Definition.
181-86-030 Reprimand order—Definition.
181-86-035 Suspension order—Definition.
181-86-040 Revocation order—Definition.

GROUND S FOR ORDERS

181-86-050 Grounds for issuance of denial of application for certification or endorsement order.
181-86-065 Grounds for issuance of a reprimand order.
181-86-070 Grounds for issuance of suspension order.
181-86-075 Grounds for issuance of a revocation order.
181-86-080 Factors to be considered prior to issuing orders.

ADVISORY COMMITTEE

181-86-085 Admissions and professional conduct advisory committee—Creation and composition.
181-86-090 Admissions and professional conduct advisory committee—Operational procedures.
181-86-095 Admissions and professional conduct advisory committee—Duties.

INVESTIGATIVE PROCEDURES

181-86-100 Reprimand or certificate suspension or revocation—Initiation of proceedings.
181-86-105 Duty of educational service district superintendent to investigate complaints.
181-86-110 Duty of ESD superintendent, district superintendent and private school administrator to file complaints.
181-86-116 Investigative priorities—Levels of acts or omissions of misconduct.

ISSUANCE OF ORDERS

181-86-120 Issuance of denial order by superintendent of public instruction.
181-86-130 Issuance of order for reprimand, suspension, or revocation by superintendent of public instruction.
181-86-135 Issuance of final order for lapsing, reprimand, suspension, or revocation by superintendent of public instruction.

APPEALS

181-86-140 Appeal—General.
181-86-145 Appeal procedure—Informal SPI review.
181-86-150 Appeal procedure—Formal SPI review process.
181-86-160 Agreement not to continue or accept educational employment.
181-86-165 Waiver of requirement for timely appeal.
181-86-170 Burden and standard of proof.

EMERGENCY SUSPENSION

181-86-175 Emergency suspension of certificate.

VOLUNTARY SURRENDER

181-86-180 Voluntary surrender of certificates.

PUBLIC NOTICE AND REPORT

181-86-185 Notification of denial, surrender, suspension, or revocation of certificates.
181-86-200 Annual report.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

181-86-155 Appeal procedure to PESB, [Statutory Authority: Chapter 28A.410 RCW. WSR 09-07-058, § 181-86-155, filed 3/12/09, effective 4/12/09. Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-155, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-155, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010 and 28A.410.100. WSR 92-24-069, § 180-86-155, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 28A.410.010. WSR 92-15-037, § 180-86-155, filed 7/9/92, effective 8/9/92. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-155, filed 1/2/90, effective 2/2/90.] Repealed by WSR 11-14-112, filed 7/6/11, effective 8/6/11. Statutory Authority: RCW 28A.410.210.

WAC 181-86-003 Authority. The authority for this chapter is RCW 28A.410.090 which authorizes the professional educator standards board to establish, publish, and enforce rules and regulations determining eligibility for certification of personnel employed in the common schools of this state. (Note: RCW 28A.02.201 (3)(a) requires most private school classroom teachers to hold appropriate Washington state certification with few exceptions.)

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-003, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-003, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-003, filed 1/2/90, effective 2/2/90.]

WAC 181-86-005 Purpose. The purpose of this chapter is to set forth policies and procedures for the administration of standards related to certification proceedings.

[WSR 06-02-051, recodified as § 181-86-005, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-005, filed 1/2/90, effective 2/2/90.]

WAC 181-86-010 Public policy—Certification proceeding separate from other proceedings. The public policy purpose of certification proceedings is to protect the health, safety, and general welfare of the citizens of the state of Washington. These proceedings are separate from civil and criminal proceedings, nonrenewal and discharge proceedings, or proceedings of any other administrative agency.

[WSR 06-02-051, recodified as § 181-86-010, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-010, filed 1/2/90, effective 2/2/90.]

GENERAL PROVISIONS

WAC 181-86-011 Valid certificate required. Persons serving as teachers in the public or private schools or as principals or educational staff associates in public schools and in vocational positions as established by chapter 181-77 WAC shall hold certificates authorized by the professional educator standards board for service in the respective roles as required by statute or rules of the professional educator standards board.

Any certificate issued pursuant to chapter 181-77 or 181-79A WAC or previous standards of the professional educator standards board shall entitle the holder thereof to be employed by a public or nonpublic school for the performance of duties encompassed by the type of certificate as specified in WAC 181-79A-140 if such certification is required by statute or rules of the professional educator standards board, unless such certificate is under suspension or until such certificate expires, lapses, or is revoked or surrendered.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-011, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-011, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.-290(1). WSR 02-19-050, § 180-86-011, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 97-04-082, § 180-86-011, filed 2/5/97, effective 3/8/97.]

WAC 181-86-013 Good moral character and personal fitness—Definition. As used in this chapter, the terms "good moral character and personal fitness" means character and personal fitness necessary to serve as a certificated employee in schools in the state of Washington, including character and personal fitness to have contact with, to teach, and to perform supervision of children. Good moral character and personal fitness includes, but is not limited to, the following:

- (1) No conviction of any felony crime involving:
 - (a) The physical neglect of a child under chapter 9A.42 RCW;
 - (b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;
 - (c) The sexual exploitation of a child under chapter 9.68A RCW;
 - (d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;
 - (e) The promotion of prostitution under chapter 9A.88 RCW;
 - (f) The sale or purchase of a child under RCW 9A.64.-030;
 - (g) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal and crimes in other states committed against a child;
 - (h) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;
 - (i) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.
- (2) No conviction of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and abil-

ity to serve as a professional within the public and private schools of the state. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to practice, the following and any other relevant considerations shall be weighed:

- (a) Age and maturity at the time the criminal act was committed;
- (b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;
- (c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;
- (d) Criminal history and the likelihood that criminal conduct will be repeated;
- (e) The permissibility of service as a professional educator within the terms of any parole or probation;
- (f) Proximity or remoteness in time of the criminal conviction;
- (g) Any evidence offered which would support good moral character and personal fitness;
- (h) If this subsection is applied to a person certified under the laws of the state of Washington in a suspension or revocation action, the effect on the education profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or certificate holder has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or certificate holder.

(3) No behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting.

(4) No practice within the state of Washington within the previous five school years with an expired, lapsed, suspended, surrendered, or revoked certificate in a professional position for which certification is required under the rules of the professional educator standards board.

[Statutory Authority: RCW 28A.410.210. WSR 15-11-069, § 181-86-013, filed 5/19/15, effective 6/19/15; WSR 06-14-010, § 181-86-013, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-013, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-013, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 97-04-082, recodified as § 180-86-013, filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 18A.410.010 [28A.410.010] and 28A.70.005. WSR 92-01-127, § 180-75-081, filed 12/19/91, effective 1/19/92. Statutory Authority: RCW 28A.70.005. WSR 90-02-073, § 180-75-081, filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 34.05.220(A) [34.05.220 (1)(a)] and 34.05.250. WSR 89-22-010, § 180-75-081, filed 10/20/89, effective 11/20/89. Statutory Authority: RCW 28A.70.005. WSR 87-09-010 (Order 2-87), § 180-75-081, filed 4/3/87.]

WAC 181-86-014 Good moral character and personal fitness—Continuing requirement. The good moral character and personal fitness requirement of applicants for certification under the laws of the state of Washington is a continuing requirement for holding a professional educational certificate under regulations of the professional educator standards board.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-014, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-014, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW

28A.410.010. WSR 97-04-082, recodified as § 180-86-014, filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 34.05.220(A) [34.05.220 (1)(a)] and 34.05.250. WSR 89-22-010, § 180-75-083, filed 10/20/89, effective 11/20/89. Statutory Authority: RCW 28A.70.005. WSR 87-09-010 (Order 2-87), § 180-75-083, filed 4/3/87.]

ORDERS

WAC 181-86-015 Denial of application for certification or endorsement order—Definition. As used in this chapter the term "denial of application for certification order" means an official document issued by the superintendent of public instruction which contains:

- (1) Findings of fact.
- (2) A conclusion of law that the applicant does not qualify for the certificate, including renewal and reinstatement, or endorsement request.

[WSR 06-02-051, recodified as § 181-86-015, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-015, filed 1/2/90, effective 2/2/90.]

WAC 181-86-030 Reprimand order—Definition. As used in this chapter, the term "reprimand order" means an official document issued by the superintendent of public instruction which contains:

- (1) Findings of fact.
- (2) One or more conclusions of law stating the commission of an act of unprofessional conduct.
- (3) An order to not continue or repeat the conduct or lack of good moral character or personal fitness.

[WSR 06-02-051, recodified as § 181-86-030, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-030, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-030, filed 1/2/90, effective 2/2/90.]

WAC 181-86-035 Suspension order—Definition. As used in this chapter, the term "suspension order" means an official document issued by the superintendent of public instruction which contains:

- (1) Findings of fact.
- (2) One or more conclusions of law stating one or more of the following:
 - (a) The commission of an act of unprofessional conduct.
 - (b) The lack of good moral character.
 - (c) The lack of personal fitness.
- (3) An order suspending the education practitioner from practicing for a stated period of time.
- (4) Such order may contain a requirement that the certificate holder fulfill certain conditions precedent to resuming professional practice and certain conditions subsequent to resuming professional practice.

[WSR 06-02-051, recodified as § 181-86-035, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-035, filed 1/2/90, effective 2/2/90.]

WAC 181-86-040 Revocation order—Definition. As used in this chapter, the term "revocation order" means an official document issued by the superintendent of public instruction which contains:

- (1) Findings of fact.
- (2) One or more conclusions of law stating one or more of the following:

(12/8/17)

- (a) The commission of an act of unprofessional conduct.
- (b) The lack of good moral character.
- (c) The lack of personal fitness.
- (3) An order revoking the certificate(s) of the education practitioner.

[WSR 06-02-051, recodified as § 181-86-040, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-040, filed 1/2/90, effective 2/2/90.]

GROUND FOR ORDERS

WAC 181-86-050 Grounds for issuance of denial of application for certification or endorsement order. The superintendent of public instruction shall issue a denial of application for certification or endorsement order if the applicant is not eligible for one or more of the following:

- (1) Certification.
- (2) Reissuance of a certificate.
- (3) Reinstatement of a certificate.
- (4) An endorsement.

[WSR 06-02-051, recodified as § 181-86-050, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-050, filed 1/2/90, effective 2/2/90.]

WAC 181-86-065 Grounds for issuance of a reprimand order. The superintendent of public instruction may issue a reprimand order whenever the superintendent of public instruction determines one or more of the following:

- (1) That the certificate holder has admitted the commission of an act of unprofessional conduct or lack of good moral character or personal fitness and has presented to the superintendent of public instruction an agreed order to not continue or repeat the conduct described in the findings of fact.
- (2) That the certificate holder has committed an act of unprofessional conduct but the evidence is probably insufficient to meet the clear and convincing proof standard for suspension or revocation.
- (3) That the certificate holder has committed an act of unprofessional conduct but the violation and the consequence were not serious and the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a reprimand.

(4) Provided, That the superintendent of public instruction, in the administration of this chapter, shall place a high priority on processing complaints that allege circumstances which appear to warrant a suspension or revocation and, in order to do so, may elect not to pursue, when necessary, any and all complaints which appear to only warrant a reprimand.

[WSR 06-02-051, recodified as § 181-86-065, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-065, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-065, filed 1/2/90, effective 2/2/90.]

WAC 181-86-070 Grounds for issuance of suspension order. The superintendent of public instruction may issue a suspension order under one of the following conditions:

- (1) The certificate holder has admitted the commission of an act of unprofessional conduct or lack of good moral

[Ch. 181-86 WAC p. 3]

character or personal fitness and has presented to the superintendent of public instruction an agreed order to not serve as an education practitioner for a stated period of time and the superintendent of public instruction has agreed that the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. Such order may contain a requirement that the certificate holder fulfill certain conditions precedent to resuming professional practice and certain conditions subsequent to resuming practice.

(2) The certificate holder has committed an act of unprofessional conduct or lacks good moral character but the superintendent of public instruction has determined that a suspension as applied to the particular certificate holder will probably deter subsequent unprofessional or other conduct which evidences lack of good moral character or personal fitness by such certificate holder, and believes the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. Such order may contain a requirement that the certificate holder fulfill certain conditions precedent to resuming professional practice and certain conditions subsequent to resuming practice.

(3) The certificate holder lacks personal fitness but the superintendent of public instruction has determined the deficiency is correctable through remedial action and believes the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension which states condition precedent to resuming professional practice and which also may state certain conditions subsequent to resuming practice.

(4) Provided, That suspension shall never be appropriate if the certificate holder has committed a felony crime under WAC 181-86-013(1).

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-070, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-070, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-070, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-070, filed 1/2/90, effective 2/2/90.]

WAC 181-86-075 Grounds for issuance of a revocation order. The superintendent of public instruction may issue a revocation order under one of the following conditions:

(1) The superintendent of public instruction has determined that the certificate holder has committed a felony crime under WAC 181-86-013(1), which bars the certificate holder from any future practice as an education practitioner.

(2) The certificate holder has not committed a felony crime under WAC 181-86-013(1) but the superintendent of public instruction has determined the certificate holder has committed an act of unprofessional conduct or lacks good moral character or personal fitness and revocation is appropriate.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-075, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-075, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-075, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-075, filed 1/2/90, effective 2/2/90.]

WAC 181-86-080 Factors to be considered prior to issuing orders. Prior to issuing any disciplinary order under this chapter the superintendent of public instruction or designee shall consider, at a minimum, the following factors to determine the appropriate level and range of discipline:

- (1) The seriousness of the act(s) and the actual or potential harm to persons or property;
- (2) The person's criminal history including the seriousness and amount of activity;
- (3) The age and maturity level of participant(s) at the time of the activity;
- (4) The proximity or remoteness of time in which the acts occurred;
- (5) Any activity that demonstrates a disregard for health, safety or welfare;
- (6) Any activity that demonstrates a behavioral problem;
- (7) Any activity that demonstrates a lack of fitness;
- (8) Any information submitted regarding discipline imposed by any governmental or private entity as a result of acts or omissions;
- (9) Any information submitted that demonstrates aggravating or mitigating circumstances;
- (10) Any information submitted to support character and fitness; and
- (11) Any other relevant information submitted.

[WSR 06-02-051, recodified as § 181-86-080, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 97-05-008, § 180-86-080, filed 2/7/97, effective 3/10/97.]

ADVISORY COMMITTEE

WAC 181-86-085 Admissions and professional conduct advisory committee—Creation and composition. The superintendent of public instruction shall appoint a nine-member admissions and professional conduct advisory committee. Prior to making appointments to such committee, the superintendent of public instruction shall consult with one or more officers within recognized professional associations regarding possible appointments. The advisory committee shall consist of three teachers, one of whom shall be a private school teacher, three educational staff associates, and three administrators. Advisory committee members must be practicing in such designated roles while serving on the advisory committee.

[WSR 06-02-051, recodified as § 181-86-085, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-085, filed 1/2/90, effective 2/2/90.]

WAC 181-86-090 Admissions and professional conduct advisory committee—Operational procedures. The following shall govern the operational procedures of the admissions and professional conduct advisory committee:

- (1) Meetings of the advisory committee shall be open to the public except when it is considering the admission or professional conduct of a particular certificate holder unless such affected certificate holder requests the meeting to be open to the public.
- (2) Each member of the advisory committee shall have one vote.

[WSR 06-02-051, recodified as § 181-86-090, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-090, filed 1/2/90, effective 2/2/90.]

WAC 181-86-095 Admissions and professional conduct advisory committee—Duties. The duties of the admissions and professional conduct advisory committee are as follows:

(1) To advise the superintendent of public instruction and the professional educator standards board on matters related to good moral character, personal fitness, and unprofessional conduct regarding education practitioners.

(2) To review informal appeals conducted pursuant to WAC 181-86-140 and provide recommendations to the review officer on the content of the written decision.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-095, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-095, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-095, filed 1/2/90, effective 2/2/90.]

INVESTIGATIVE PROCEDURES

WAC 181-86-100 Reprimand or certificate suspension or revocation—Initiation of proceedings. The initiation of reprimand, suspension, or revocation proceedings by the superintendent of public instruction shall commence as a result of the following:

(1) Whenever the superintendent of public instruction or the designated administrative officer of the superintendent of public instruction having responsibility for certification becomes aware from whatever source that a certificate holder has had a professional license revoked or suspended by a licensing agency, has voluntarily surrendered a license or has been arrested, charged, or convicted for any felony offense included within WAC 181-86-013(1), the superintendent of public instruction or the designated administrative officer shall cause an investigation.

(2) In all other cases, the initiation of investigative proceedings shall commence only upon receipt of a written complaint from a school district or educational service district superintendent or the chief administrative officer of an approved private school or the chief administrative officer of a charter school. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted. The superintendent of public instruction shall provide the affected certificate holder with a copy of such written complaint and a copy of WAC 181-86-180.

[Statutory Authority: RCW 28A.410.210. WSR 14-24-012, § 181-86-100, filed 11/20/14, effective 12/21/14; WSR 06-14-010, § 181-86-100, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-100, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-100, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 91-08-056, § 180-86-100, filed 4/2/91, effective 5/3/91. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-100, filed 1/2/90, effective 2/2/90.]

WAC 181-86-105 Duty of educational service district superintendent to investigate complaints. Each educational service district superintendent shall cause to be investigated all written and signed complaints, from whatever source, that allege that a certificated education professional

within his or her educational service district is not of good moral character or personal fitness or has committed an act of unprofessional conduct. If the educational service district superintendent investigates and determines the facts are reliable and further investigation by the superintendent of public instruction is warranted, the educational service district superintendent shall forward the written complaint and the results of his or her investigation to the superintendent of public instruction: Provided, That if the educational service district superintendent, after consultation with the assistant attorney general assigned to his or her educational service district, determines that the substance of the complaint would not constitute grounds for reprimand, suspension, or revocation if true, then such educational service district superintendent need not investigate the complaint: Provided further, That if the educational service district superintendent receives a written assurance from the superintendent of public instruction, a district superintendent, or a chief administrative officer of an approved private school that such official is investigating or will investigate the same or a substantially similar complaint, the educational service district superintendent shall be deemed to have caused an investigation in compliance with this section.

[WSR 06-02-051, recodified as § 181-86-105, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-105, filed 1/2/90, effective 2/2/90.]

WAC 181-86-110 Duty of ESD superintendent, district superintendent and private school administrator to file complaints. When an educational service district superintendent, a district superintendent, chief administrative officer of a charter school, or the chief administrative officer of an approved private school possesses sufficient reliable information to believe that a certificated employee within such district or approved private school is not of good moral character or personally fit or has committed an act of unprofessional conduct, such superintendent or chief administrative officer, within a reasonable period of time of making such determination, shall file a written complaint with the superintendent of public instruction: Provided, That if an educational service district, charter school, or school district is considering action to discharge an employee of such district, the educational service district, charter school, or school district superintendent need not file such complaint until ten calendar days after making the final decision to serve or not serve formal notice of discharge.

[Statutory Authority: RCW 28A.410.210. WSR 14-02-073, § 181-86-110, filed 12/30/13, effective 1/30/14. WSR 06-02-051, recodified as § 181-86-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-110, filed 1/2/90, effective 2/2/90.]

WAC 181-86-116 Investigative priorities—Levels of acts or omissions of misconduct. (1) The superintendent of public instruction or designee shall prioritize the investigation of alleged certificated individual misconduct, lack of fitness or unprofessional conduct in the following descending order:

(a) Level I. Level I actions shall have the highest investigative priority and are those allegations, if proven true, for which permanent mandatory revocation shall be the appropriate disciplinary action. They include the following conviction:

tions for which permanent revocation of a certificate is mandatory under RCW 28A.410.090:

- (i) Physical neglect of a child under chapter 9A.42 RCW;
- (ii) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW);

- (iii) Sexual exploitation of a child under chapter 9.68A RCW;

- (iv) Sexual offenses under chapter 9A.44 RCW where a minor is the victim;

- (v) Promoting prostitution of a minor under chapter 9A.88 RCW;

- (vi) The sale or purchase of a minor child under RCW 9A.64.030; or

- (vii) Violation of similar laws of another jurisdiction.

(b) Level II. Level II actions shall have the next investigative priority and are those allegations, if proven true, for which revocation may be the appropriate disciplinary action. They include, but are not limited to the following:

- (i) Sexual activity with children and/or students;
- (ii) Engaging in acts of violence leading to bodily injury;
- (iii) Selling and/or manufacturing illegal drugs; or
- (iv) Other activity that if convicted would result in a felony conviction.

(c) Level III. Level III actions shall have the next investigative priority and are those allegations, if proven true, for which suspension may be the appropriate disciplinary action. They include, but are not limited to the following:

- (i) Illegal drug possession and/or use;
- (ii) Threats related to persons or property;
- (iii) Alcohol abuse;
- (iv) Reckless conduct where no bodily injury results;
- (v) Engaging in unauthorized corporal punishment;
- (vi) Verbal or physical sexual harassment of students;
- (vii) Engaging in activity that demonstrates poor professional judgment; or

- (viii) Other activity that if convicted would result in a misdemeanor conviction.

(d) Level IV. Level IV actions shall have the next investigative priority and are those allegations, if proven true, for which a reprimand may be the appropriate disciplinary action. They include, but are not limited to the following:

- (i) Practicing with a lapsed or expired certificate, or a certificate not valid for the position;

- (ii) Isolated failure to timely evaluate certificated personnel; or

- (iii) Intentionally hiring a person for a certificated role who does not possess a valid certificate.

(2) All cases shall be monitored periodically to determine if their priority level should change as a result of information uncovered during the investigation.

(3) Notwithstanding any provision of this section to the contrary, the office of professional practices reserves the right to reprioritize the investigation of complaints based upon the efficient use of available resources and/or the relative urgency or lack of urgency in resolving various complaints in the public interest, and the right to recommend forms of discipline appropriate to the offenses committed.

[WSR 06-02-051, recodified as § 181-86-116, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-116, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW

[Ch. 181-86 WAC p. 6]

28A.410.010. WSR 97-05-008, § 180-86-116, filed 2/7/97, effective 3/10/97.]

ISSUANCE OF ORDERS

WAC 181-86-120 Issuance of denial order by superintendent of public instruction. Whenever the superintendent of public instruction takes action to deny an application, the superintendent of public instruction, in accordance with the provisions of this chapter, shall issue an order of denial of application for certification or endorsement to the applicant or affected certificate holder and shall provide such person a copy of applicable administrative appeal procedures provided in this chapter.

[WSR 06-02-051, recodified as § 181-86-120, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-120, filed 1/2/90, effective 2/2/90.]

WAC 181-86-130 Issuance of order for reprimand, suspension, or revocation by superintendent of public instruction. Whenever the superintendent of public instruction takes action to suspend or revoke a certificate or reprimand a certificate holder, the superintendent of public instruction, in accordance with the provisions of this chapter, shall issue an order of reprimand, suspension, or revocation to the affected certificate holder and shall provide such person a copy of applicable administrative appeal procedures provided in this chapter. If the order is to suspend or revoke a certificate and the superintendent of public instruction has knowledge that such certificate holder is employed within the common school system or by an approved private school, the superintendent of public instruction shall advise such employer that an order has been sent to the employee.

[Statutory Authority: RCW 28A.410.210. WSR 06-19-010, § 181-86-130, filed 9/8/06, effective 10/9/06. WSR 06-02-051, recodified as § 181-86-130, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-130, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-130, filed 1/2/90, effective 2/2/90.]

WAC 181-86-135 Issuance of final order for lapsing, reprimand, suspension, or revocation by superintendent of public instruction. Final orders for lapsing, reprimand, suspension, and revocation shall be issued by the superintendent of public instruction as follows:

(1) If the certificate holder fails to appeal a proposed order pursuant to this chapter within thirty calendar days following the date of mailing the proposed order, the superintendent of public instruction shall issue a final order of lapsing, reprimand, suspension, or revocation.

(2) If the certificate holder appeals a proposed order pursuant to this chapter, the superintendent of public instruction shall not issue a final order until completion of the informal review process by the superintendent of public instruction.

[WSR 06-02-051, recodified as § 181-86-135, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-135, filed 1/2/90, effective 2/2/90.]

APPEALS

WAC 181-86-140 Appeal—General. Any person who applies directly to the superintendent of public instruction for

(12/8/17)

a certificate, particular endorsement, certificate renewal, or certificate reinstatement whose application is denied or any person who is notified that his or her certificate is suspended or revoked or that a reprimand order has been issued shall be advised that he or she is entitled to appeal that decision to the superintendent of public instruction if he or she follows the procedures established in this chapter: Provided, That the appeal procedure may not be used to seek reinstatement of a certificate if that certificate has been revoked in the preceding twelve months by the superintendent of public instruction.

The appeal procedure to the superintendent of public instruction consists of two levels, one informal and one formal. The use of the informal level is a condition precedent to use of the formal level. In addition, RCW 34.05.570 provides for judicial review of such decisions.

[Statutory Authority: RCW 28A.410.210. WSR 11-14-112, § 181-86-140, filed 7/6/11, effective 8/6/11; WSR 06-14-010, § 181-86-140, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-140, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-140, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-140, filed 1/2/90, effective 2/2/90.]

WAC 181-86-145 Appeal procedure—Informal SPI review. Any person who appeals the decision or order to deny his or her application, the issuance of a reprimand, or the order to suspend or revoke his or her certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of notification from the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes his or her application should have been granted or why his or her certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, he or she shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or certificate holder and/or counsel for the applicant or certificate holder with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee: Provided, That notice of appeal must be received at least fifteen calendar days in advance of a scheduled meeting.

(12/8/17)

(3) Send by certified mail a written decision (i.e., findings of fact and conclusions of law) on the appeal within thirty calendar days from the date of post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may uphold, reverse, or modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) Provided, That in the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

[Statutory Authority: [RCW 28A.410.220]. WSR 18-01-022, § 181-86-145, filed 12/8/17, effective 1/8/18. Statutory Authority: RCW 28A.410.210. WSR 13-20-029, § 181-86-145, filed 9/23/13, effective 10/24/13; WSR 06-14-010, § 181-86-145, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-145, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-145, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-145, filed 1/2/90, effective 2/2/90.]

WAC 181-86-150 Appeal procedure—Formal SPI review process. Formal appeals to the superintendent of public instruction shall be provided as follows:

(1) Any person who has filed an appeal in accordance with WAC 181-86-140 and desires to have the decision of the review officer formally reviewed by the superintendent of public instruction may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of post-marked mailing of the review officer's written decision.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal. Decisions in cases formally appealed pursuant to this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority pursuant to RCW 28A.300.120.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the decision is to reprimand, suspend, or revoke, the appellant shall be notified that such order takes effect upon signing of the final order.

[Statutory Authority: RCW 28A.410.210. WSR 13-20-029, § 181-86-150, filed 9/23/13, effective 10/24/13; WSR 11-14-112, § 181-86-150, filed 7/6/11, effective 8/6/11; WSR 06-14-010, § 181-86-150, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-150, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 92-15-037,

§ 180-86-150, filed 7/9/92, effective 8/9/92. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-150, filed 1/2/90, effective 2/2/90.]

WAC 181-86-160 Agreement not to continue or accept educational employment. The agreement required for deferring suspension or revocation proceedings shall read as follows:

"I,, have received notice in the form of an order to suspend or revoke that the superintendent of public instruction believes sufficient cause exists for the suspension or revocation of the following certificate(s):

- (1) Cert. No.
- (2) Cert. No.

As a condition to a delay in the hearing date, I agree not to commence or continue employment in any Washington public or private school or agency in a position requiring such certificate until the superintendent of public instruction dismisses the case without a hearing or until a hearing has been held and the final decision is rendered by the superintendent of public instruction. I further agree to advise the review officer assigned to my suspension or revocation proceedings of all decisions rendered in any administrative or judicial tribunal and all appeals therefrom which the review officer and I have agreed are factually related to the action to suspend or revoke my certificate(s). I understand my failure to abide by this agreement is an act of unprofessional conduct and, therefore, may be sufficient cause for revocation of my certificate(s)."

[WSR 06-02-051, recodified as § 181-86-160, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-160, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-160, filed 1/2/90, effective 2/2/90.]

WAC 181-86-165 Waiver of requirement for timely appeal. The requirements in this chapter for timely notice of appeal shall be waived if justifiable cause is established by the appellant, including failure to receive such notice without fault of the appellant or a plausible reason by the appellant for failure to understand the nature of or the timelines within the received notice.

[WSR 06-02-051, recodified as § 181-86-165, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-165, filed 1/2/90, effective 2/2/90.]

WAC 181-86-170 Burden and standard of proof. The following burden and standard of proof shall be applicable:

(1) If an application for certification or reinstatement has been denied for lack of good moral character or personal fitness, the evidence submitted by the applicant must prove by clear and convincing evidence that he or she is of good moral character and personal fitness or the application will be denied.

(2) In a suspension or revocation proceeding, the superintendent of public instruction must prove by clear and convincing evidence that the certificate holder is not of good moral character or personal fitness or has committed an act of unprofessional conduct.

(3) In all other proceedings, including reprimand, the standard of proof shall be a preponderance of evidence.

[Ch. 181-86 WAC p. 8]

[WSR 06-02-051, recodified as § 181-86-170, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-170, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-170, filed 1/2/90, effective 2/2/90.]

EMERGENCY SUSPENSION

WAC 181-86-175 Emergency suspension of certificate. Notwithstanding any other provision of this chapter, the superintendent of public instruction, pursuant to RCW 34.05.479, may emergency suspend a certificate if the superintendent of public instruction finds that the public health, safety, or welfare of students, colleagues, or the general public imperatively requires emergency action. In such cases, the holder of the certificate who is subjected to emergency suspension of his or her certificate shall have the right to commence an informal review of such action within forty-eight hours of filing a notice of appeal with the superintendent of public instruction or, if applicable, to sign an agreement pursuant to WAC 181-86-180. If such an agreement is signed or, if not, unless the superintendent of public instruction sustains the emergency action within seven calendar days of the filing of the notice of appeal, the emergency suspension shall be void. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings, pursuant to RCW 28A.03.050, to hear the appeal and sustain the emergency action.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-175, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-175, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-175, filed 1/2/90, effective 2/2/90.]

VOLUNTARY SURRENDER

WAC 181-86-180 Voluntary surrender of certificates. A holder of a certificate who has not received a final order for revocation of his or her certificate may voluntarily surrender his or her certificate to the superintendent of public instruction if the certificate holder believes that he or she is or might be ineligible to hold a certificate for any reason which is or might constitute grounds for revocation of the certificate other than conviction of a felony crime stated within WAC 181-86-013(1).

A certificate holder voluntarily surrendering a certificate shall provide the superintendent of public instruction the following affidavit:

"I,, have reason to believe that I am or might be ineligible to hold a certificate(s) for reasons which do or might constitute grounds for revocation of the certificate(s). Accordingly, I hereby voluntarily surrender the following certificate(s):

- (1) Cert. No.
- (2) Cert. No.

I have not been to the best of my knowledge convicted of any felony crime listed within WAC 181-86-013(1).

I agree, if I request reinstatement of the certificate(s) I have voluntarily surrendered, to provide the superintendent of public instruction with an affidavit describing in full the reasons for my voluntary surrender of the certificate(s) listed

(12/8/17)

above. I further understand that the superintendent of public instruction will notify other states and public and private school officials within the state of Washington that I have voluntarily surrendered my certificate(s)."

Upon request for reinstatement of such certificate, the applicant must comply with chapter 181-77 or 181-79A WAC and, in addition, must disclose in full the reasons for the voluntary surrender of the certificate. In the event the surrendered certificate would have expired or lapsed but for the surrendering of the certificate, the applicant must meet all requirements for reinstating an expired or lapsed certificate.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-180, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-180, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-180, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-180, filed 1/2/90, effective 2/2/90.]

PUBLIC NOTICE AND REPORT

WAC 181-86-185 Notification of denial, surrender, suspension, or revocation of certificates. The superintendent of public instruction shall notify all other states whenever an applicant has been denied a certificate for failure to possess good moral character or personal fitness or whenever a certificate has been suspended, surrendered, or revoked and shall provide the full name and certificate number, if applicable, to the agency responsible for certification in each state. The superintendent of public instruction shall notify appropriate public or private school officials within the state the name and certification number of all certificate holders whose certificates have been suspended, surrendered, or revoked.

[Statutory Authority: RCW 28A.410.210. WSR 06-19-010, § 181-86-185, filed 9/8/06, effective 10/9/06. WSR 06-02-051, recodified as § 181-86-185, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-185, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-185, filed 1/2/90, effective 2/2/90.]

WAC 181-86-200 Annual report. The superintendent of public instruction, annually, shall transmit to the professional educator standards board a factual report describing the administration of this chapter. The report shall include:

- (1) Number of the following actions:
 - (a) Voluntary surrenders of certificates.
 - (b) Reprimands, suspensions, and revocations.
 - (c) Cases investigated.
- (2) Brief descriptions of the cases investigated but written so as to protect the privacy rights of persons involved.
- (3) Any other information the superintendent of public instruction deems important to the public and the professional educator standards board.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-200, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-200, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-200, filed 1/2/90, effective 2/2/90.]