

WSR 25-02-002

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 18, 2024, 12:47 p.m., effective December 28, 2024]

Effective Date of Rule: December 28, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The rule meets the requirement to be adopted early under RCW 34.05.380 (3) (a) which states such action is required by federal statute. The Centers for Medicare and Medicaid Services final rule CMS-3326-F requires the rule be effective by December 28, 2024.

Purpose: Medical test site (MTS) federal rule compliance updates. The department of health (department) is adopting amendments to sections WAC 246-338-022, 246-338-040, 246-338-050, 246-338-060, 246-338-070, 246-338-080, and 246-338-090 to incorporate existing minimum standards that are missing, make technical corrections to rules, and adopt new federal requirements.

The MTS program must have minimum standards in place that are at-least-as-stringent-as federal requirements that are established by Clinical Laboratory Improvement Amendments (CLIA). CLIA grants an exemption to Washington state to enforce the federal rules for MTSSs, and these federal requirements must be reflected in chapter 246-338 WAC. Amendments are necessary to make technical corrections, incorporate new federal requirements that went into effect in 2024, and existing federal requirements that are not currently included in chapter 246-338 WAC. The amendments will align chapter 246-338 WAC with the federal requirements.

Citation of Rules Affected by this Order: Amending WAC 246-338-022, 246-338-040, 246-338-050, 246-338-060, 246-338-070, 246-338-080, and 246-338-090.

Statutory Authority for Adoption: RCW 70.42.220.

Adopted under notice filed as WSR 24-20-089 on September 29, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 7, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: December 18, 2024.

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Chief of Policy
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Secretary of Health

OTS-5818.1

AMENDATORY SECTION (Amending WSR 06-15-132, filed 7/19/06, effective 8/19/06)

WAC 246-338-022 Initial application for medical test site license. (1) **Application procedure.**

Applicants requesting a medical test site license must:

(a) Submit a completed application on forms furnished by the department, signed by the owner or authorized representative;

(b) File a separate application for each test site **except** under the following conditions:

(i) If the test site is not at a fixed location and moves from testing site to testing site, or uses a temporary testing location such as a health fair, the medical test site may apply for a single license for the home base location;

(ii) If the medical test site is a not-for-profit or state or local government and performs a combination of (~~fifteen~~) 15 or less of either waived or moderate complexity test procedures at different locations, the owner may file an application for a single license;

(iii) If the medical test sites within a hospital are located at contiguous buildings on the same campus and are under common direction, the owner may file a single application or multiple applications for the sites within the same physical location or street address;

(c) Furnish full and complete information to the department in writing:

(i) Name, address, phone number, and federal tax ID number of the medical test site;

(ii) Name of owner;

(iii) Number and types of tests performed, planned, or projected;

(iv) Name and qualifications including educational background, training, and experience of the director;

(v) Names and qualifications including educational background, training, and experience of technical personnel, if requested by the department;

(vi) Name of proficiency testing program or programs used by the medical test site and a copy of the enrollment confirmation form, if applicable;

(vii) Methodologies for tests performed, if requested by the department; and

(viii) Other information as requested by the department;

(d) Submit the designated fee in the time period indicated, upon receipt of a fee statement from the department;

(e) If applying for an accredited license, submit proof of accreditation by an approved accreditation organization. If application has been made to an accreditation organization, submit a copy of the application, followed by proof of accreditation within (~~eleven~~) 11 months of issuance of the medical test site license.

(2) **Issuing an initial license.**

(a) An initial license will be issued for a medical test site when the applicant:

(i) Submits a completed application and any information requested by the department;

(ii) Pays the designated license fee; and

(iii) Meets the requirements of chapter 70.42 RCW and this chapter.

(b) License expiration dates will be based on a two-year licensure cycle, expiring on June 30th of odd-numbered years. The license

period for an initial license begins the day of the month that payment is received and expires on June 30th of odd-numbered years.

(c) For licenses issued for a period of less than two years, the license fee will be prorated for the remainder of the two-year cycle under WAC 246-338-990.

(d) The department may issue a provisional license valid for a period of up to two years when a medical test site applies for licensure for the first time.

(e) The department will terminate a provisional license at the time a two-year license for the medical test site is issued.

(f) License fees are listed under WAC 246-338-990.

AMENDATORY SECTION (Amending WSR 05-04-040, filed 1/27/05, effective 3/19/05)

WAC 246-338-040 Approval of accreditation organizations. (1)

The department will recognize the accreditation organizations granted deemed status by CMS.

(2) The CMS-approved accreditation organizations are:

(a) (~~(American Association of Blood Banks (AABB))~~) Accreditation Commission for Health Care (ACHC);

(b) (~~(American Osteopathic Association (AOA))~~) American Association for Laboratory Accreditation (A2LA);

(c) American Society of Histocompatibility and Immunogenetics (ASHI);

(d) (~~(College of American Pathologists (CAP))~~) Association for the Advancement of Blood and Biotherapies (AABB);

(e) COLA; ~~(and)~~

(f) (~~(Joint Commission on Accreditation of Healthcare Organizations (JCAHO))~~) College of American Pathologists (CAP); and

(g) Joint Commission.

(3) The accreditation organizations must:

(a) Allow the department to have jurisdiction to investigate complaints, do random on-site validation inspections, and take disciplinary action against a medical test site if indicated;

(b) Notify the department within (~~(fifteen))~~ 15 days of any medical test site that:

(i) Has had its accreditation withdrawn, revoked, or limited;

(ii) Is sanctioned as a result of a routine inspection or complaint investigation; or

(iii) When adverse action has been taken for unsuccessful proficiency testing performance;

(c) Notify the department within five days of any deficiency that jeopardizes the public health, safety, or welfare; and

(d) Provide the department with a list of inspection schedules, as requested, for the purpose of conducting on-site validation inspections.

(4) The department will:

(a) Revoke deemed status from any organization which has deemed authority removed by CMS; and

(b) Notify the medical test site if approval of an accreditation organization is withdrawn by the department.

AMENDATORY SECTION (Amending WSR 05-04-040, filed 1/27/05, effective 3/19/05)

- WAC 246-338-050 Proficiency testing.** (1) All licensed medical test sites, excluding those granted a certificate of waiver, must:
- (a) Comply with federal proficiency testing requirements listed in 42 C.F.R. Part 493 - Laboratory Requirements, Subparts H and I;
 - (b) Submit to the department a copy of proficiency testing enrollment confirmation form(s) for the tests the medical test site will perform during the following calendar year, by December 31st of each year; and
 - (c) Authorize the proficiency testing program to release to the department all data required to determine the medical test site's compliance with this section.
- (2) The department will:
- (a) Recognize only those proficiency testing programs approved by HHS; and
 - (b) Furnish, upon request:
 - (i) A copy of 42 C.F.R. Part 493 Subparts H and I;
 - (ii) A list of the proficiency testing programs approved by HHS; and
 - (iii) A list of tests that must be covered by proficiency testing.
- (3) The department will evaluate proficiency testing results by using the following criteria:
- (a) An evaluation of scores for the last three testing events of proficiency testing samples including:
 - (i) Tests;
 - (ii) Subspecialties; and
 - (iii) Specialties;
 - (b) Maintenance of a minimum acceptable score of (~~eighty~~) 80 percent for all tests, subspecialties, and specialties except (~~one hundred~~) 100 percent for:
 - (i) ABO grouping and Rh typing;
 - (ii) Compatibility testing; (~~and~~)
 - (iii) Antihuman immunodeficiency virus; and
 - (iv) Unexpected antibody detection;
 - (c) Unsatisfactory performance occurs when:
 - (i) Unsatisfactory scores are obtained in any specialty or subspecialty in a testing event; or
 - (ii) An unsatisfactory score is obtained on a single test in a testing event.
- (4) Unsatisfactory performance on two of any three successive testing events is considered unsuccessful participation, and will result in the following actions:
- (a) The department will mail a letter to the director stating that the medical test site may choose to:
 - (i) Discontinue patient testing for the identified test, specialty or subspecialty; or
 - (ii) Follow a directed plan of correction; and
 - (b) The medical test site must notify the department, within (~~fifteen~~) 15 days of receipt of the notice of the decision to:
 - (i) Discontinue testing patient specimens for the identified test, subspecialty or specialty; or
 - (ii) Agree to a directed plan of correction.
- (5) Continued unsatisfactory performance for a test, specialty or subspecialty in either of the next two consecutive sets of proficiency

testing samples, after completing a directed plan of correction, will result in the following action:

(a) The department will send, by certified mail, a notice to the owner and director of the medical test site to cease performing the identified test, subspecialty, or specialty; and

(b) The owner must notify the department in writing within (~~fifteen~~) 15 days of the receipt of the notice of the decision to voluntarily stop performing tests on patient specimens for the identified test, subspecialty, or specialty.

(6) The owner may petition the department for reinstatement of approval to perform tests on patient specimens after demonstrating satisfactory performance on two successive testing events of proficiency testing samples for the identified test, subspecialty, or specialty.

(7) The department will notify the owner in writing, within (~~fifteen~~) 15 days of receipt of petition, of the decision related to the request for reinstatement.

AMENDATORY SECTION (Amending WSR 05-04-040, filed 1/27/05, effective 3/19/05)

WAC 246-338-060 Personnel. (1) Medical test site owners must:

(a) Have a director responsible for the overall technical supervision and management of the test site personnel including oversight of the performance of test procedures and reporting of test results;

(b) Have technical personnel, competent to perform tests and report test results; and

(c) Meet the standards for personnel qualifications and responsibilities in compliance with federal regulation, as listed in 42 C.F.R. Part 493 Subpart M - Personnel for Non-waived Testing.

(2) The department will furnish a copy of 42 C.F.R. Part 493 Subpart M upon request.

(3) Medical test site directors must:

(a) Establish and approve policies for:

(i) Performing, recording, and reporting of tests;

(ii) Maintaining an ongoing quality assurance program;

(iii) Supervision of testing; and

(iv) Compliance with chapter 70.42 RCW and this chapter;

(b) Evaluate, verify, and document the following related to technical personnel:

(i) Education, experience, and training in test performance and reporting test results;

(ii) Sufficient numbers to cover the scope and complexity of the services provided;

(iii) Access to training appropriate for the type and complexity of the test site services offered; and

(iv) Maintenance of competency to perform test procedures and report test results;

(c) Be present, on call, or delegate the duties of the director to an on-site technical person during testing;

(d) Conduct on-site visits at the licensed medical test site at least once every six months, with a minimum four-month interval between the mandatory on-site visits. On-site visits must be documented and include evidence of performing activities that are part of the lab director responsibilities.

AMENDATORY SECTION (Amending WSR 16-18-073, filed 9/2/16, effective 10/3/16)

WAC 246-338-070 Records. Medical test sites must maintain records as described in this section.

(1) REQUISITIONS must include the following information, in written or electronic form:

(a) Patient name, identification number, or other method of patient identification;

(b) Name and address or other suitable identifiers of the authorized person ordering the test. The laboratory may accept oral requests for laboratory tests if it solicits a written or electronic authorization within (~~(thirty)~~) 30 days of the oral request and maintains the authorization or documentation of its efforts to obtain the authorization;

(c) Date of specimen collection, and time, if appropriate;

(d) Source of specimen, if appropriate;

(e) Type of test ordered;

(f) Sex, and age or date of birth, of the patient; and

(g) For cytology and histopathology specimens:

(i) Pertinent clinical information; and

(ii) For Pap smears:

(A) Date of last menstrual period; and

(B) Indication whether the patient had a previous abnormal report, treatment, or biopsy.

(2) TEST RECORD SYSTEMS MUST:

(a) Consist of instrument printouts, worksheets, accession logs, corrective action logs, and other records that ensure reliable identification of patient specimens as they are processed and tested to assure that accurate test results are reported; and

(b) Include:

(i) The patient's name or other method of specimen identification;

(ii) The date and time the specimen was received;

(iii) The reason for specimen rejection or limitation;

(iv) The date of specimen testing; and

(v) The identification of the personnel who performed the test.

(3) TEST REPORTS must:

(a) Be maintained in a manner permitting identification and reasonable accessibility;

(b) Except as provided in WAC 246-338-070 (3)(c) be released only to authorized persons or designees;

(c) Upon a request by a patient or patient's personal representative, the laboratory may provide patients, their personal representatives, and those persons specified under 45 C.F.R. 164.524 (c)(3)(ii), with access to completed test reports that, using the laboratory's authentication process, can be identified as belonging to that patient;

(d) Include:

(i) Name and address of the medical test site, or where applicable, the name and address of each medical test site performing each test;

(ii) Patient's name and identification number, or a unique patient identifier and identification number;

(iii) Date reported;

(iv) Time reported, if appropriate;

(v) Specimen source, when appropriate, and any information regarding specimen rejection or limitation; and

(vi) Name of the test performed, test result, and units of measurement, if applicable.

(4) CYTOLOGY REPORTS must:

(a) Distinguish between unsatisfactory specimens and negative results;

(b) Provide narrative ((descriptions for any abnormal)) descriptive nomenclature for all results, using a recognized system of disease nomenclature such as the ((2001)) Bethesda System ((of terminology as published in the Journal of the American Medical Association, 2002, Volume 287, pages 2114-2119)); and

(c) Include the signature or initials of the technical supervisor, or an electronic signature authorized by the technical supervisor, for nongynecological preparations and gynecological preparations interpreted to be showing reactive or reparative changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant (dysplasia, cervical intraepithelial neoplasia or all squamous intraepithelial neoplasia lesions including human papilloma-virus-associated changes) or malignant category.

(5) HISTOPATHOLOGY REPORTS must include the signature or initials of the technical supervisor or an electronic signature authorized by the technical supervisor on all reports. Reports must be signed by the same qualified individual who performs the diagnostic interpretation and evaluation, and must utilize appropriate terminology such as the SnoMed system.

(6) CYTOGENETICS REPORTS must:

(a) Use the International System for Human Cytogenetic Nomenclature on final reports;

(b) Include the number of cells counted and analyzed; and

(c) Include a summary and interpretation of the observations.

(7) If a specimen is referred to another laboratory for testing, the medical test site must:

(a) Report the essential elements of the referred test results without alterations that could affect the clinical interpretation of the results; and

(b) Retain or be able to produce an exact duplicate of each testing report from the referral laboratory.

(8) The medical test site must retain records, slides, and tissues as described in Table 070-1, under storage conditions that ensure proper preservation.

(9) If the medical test site ceases operation, it must make provisions to ensure that all records and, as applicable, slides, blocks and tissue are retained and available for the time frames specified in Table 070-1.

Table 070-1 Record/Slide/Tissue Retention Schedule

	Two Years	Five Years	Ten Years
(a) General Requirements for all Laboratory Specialties	<ul style="list-style-type: none"> • Test requisitions or equivalent; • Test records, including instrument printouts if applicable; • Test reports; • Quality control records; • Quality assurance records; 		

	Two Years	Five Years	Ten Years
	<ul style="list-style-type: none"> • Proficiency testing records; • Hard copy of report, or ability to reproduce a copy, for all specimens referred for testing; and • Discontinued procedures for all specialty areas 		
(b) Transfusion Services		<ul style="list-style-type: none"> • Test requisitions or equivalent; • Test records; • Test reports; • Quality control records; and • Quality assurance records 	<ul style="list-style-type: none"> • Individual product records*
(c) Cytology		<ul style="list-style-type: none"> • All cytology slides, from date of examination of the slide 	<ul style="list-style-type: none"> • All cytology reports
(d) Histopathology/Oral Pathology	<ul style="list-style-type: none"> • Specimen blocks, from date of examination 		<ul style="list-style-type: none"> • All histopathology and oral pathology reports; and • Stained slides, from date of examination of the slide
(e) Histopathology/Oral Pathology-Tissues	Retain remnants of tissue specimens in an appropriate preserved state until the portions submitted for microscopic examination have been examined and diagnosed		
(f) Instrument/method Validation Studies	For life of instrument/method plus two years		

* Must be retained for no less than ((ten)) 10 years in accordance with 21 C.F.R. 606.160 (7)(d).

AMENDATORY SECTION (Amending WSR 05-04-040, filed 1/27/05, effective 3/19/05)

WAC 246-338-080 Quality assurance. Each medical test site performing moderate complexity (including PPMP) or high complexity testing, or any combination of these tests, must establish and follow written policies and procedures for a comprehensive quality assurance program. The quality assurance program must be designed to monitor and evaluate the ongoing and overall quality of the total testing process (preanalytic, analytic, postanalytic). The medical test site's quality assurance program must evaluate the effectiveness of its policies and procedures; identify and correct problems; assure the accurate, reliable, and prompt reporting of test results; and assure the adequacy and competency of the staff. As necessary, the medical test site must revise policies and procedures based upon the results of those evaluations. The medical test site must meet the standards as they apply to the services offered, complexity of testing performed and test results reported, and the unique practices of each testing entity. All quality assurance activities must be documented.

(1) The medical test site must establish and implement a written quality assurance plan, including policies and procedures, designed to:

(a) Monitor, evaluate, and review quality control data, proficiency testing results, and test results, including biannual verification of:

(i) Accuracy of test results for:

(A) Tests that are not covered by proficiency testing;

(B) Tests that are covered by proficiency testing but have unsatisfactory scores, are not scored by the proficiency testing program, or where scoring does not reflect actual test performance (e.g., the proficiency testing program does not obtain the agreement required for scoring); and

(ii) Relationship between test results when the medical test site performs the same test on different instruments or at different locations within the medical test site;

(b) Identify and correct problems;

(c) Establish and maintain accurate, reliable, and prompt reporting of test results;

(d) Verify all tests performed and reported by the medical test site conform to specified performance criteria in quality control under WAC 246-338-090;

(e) Establish and maintain the adequacy and competency of the technical personnel; and

(f) Establish and follow written policies and procedures that ensure positive identification and optimum integrity of a patient's specimen from the time of collection or receipt of the specimen through completion of testing and reporting of results.

(2) The quality assurance plan must include mechanisms or systems to:

(a) Establish and apply criteria for specimen acceptance and rejection;

(b) Notify the appropriate individuals as soon as possible when test results indicate potential life-threatening conditions;

(c) Assess problems identified during quality assurance reviews and discuss them with the appropriate staff;

(d) Evaluate all test reporting systems to verify accurate and reliable reporting, transmittal, storage, and retrieval of data;

(e) Document all action taken to identify and correct problems or potential problems;

(f) Issue corrected reports when indicated;

(g) Provide appropriate instructions for specimen collection, handling, preservation, and transportation;

(h) Ensure that specimens are properly labeled, including patient name or unique patient identifier and, when appropriate, specimen source;

(i) Ensure confidentiality of patient information throughout all phases of the testing process; and

(j) Provide clients updates of testing changes that would affect test results or the interpretation of test results.

(3) The medical test site must establish criteria for and maintain appropriate documentation of any remedial action taken in response to quality control, quality assurance, personnel, proficiency testing, and transfusion reaction investigations.

(4) When results of control or calibration materials fail to meet the established criteria for acceptability, the medical test site must

have a system in place to determine if patient test results have been adversely affected. The system must include:

- (a) A review of all patient test results obtained in the unacceptable test run; and
 - (b) A review of all patient test results since the last acceptable test run.
- (5) The medical test site must have a system in place to assure:
- (a) All complaints and problems reported to the medical test site are documented and investigated when appropriate; and
 - (b) Corrective actions are instituted as necessary.
- (6) The owner must:
- (a) Maintain adequate space, facilities, and essential utilities for the performance and reporting of tests;
 - (b) Ensure that contamination of patient specimens, equipment, instruments, reagents, materials, and supplies is minimized;
 - (c) Ensure that molecular amplification procedures that are not contained in closed systems have a unidirectional workflow. This must include separate areas for specimen preparation, amplification and production detection, and as applicable, reagent preparation;
 - ~~((e))~~ (d) Ensure the laboratory has appropriate and sufficient equipment, instruments, reagents, materials, and supplies for the type and volume of testing it performs;
 - (e) Establish, make accessible, and observe safety precautions to ensure protection from physical, chemical, biochemical, and electrical hazards and biohazards; and
 - ~~((d))~~ (f) Establish and implement policies and procedures for infectious and hazardous medical wastes consistent with local, state, and federal authorities.
- (7) Information that must be available to authorized persons ordering or utilizing the test results includes:
- (a) A list of test methods, including performance specifications;
 - (b) Reference ranges; and
 - (c) Test method limitations.
- (8) If the medical test site refers specimens to another site for testing, the site to which specimens are referred must have a valid medical test site license or meet equivalent requirements as determined by CMS.

AMENDATORY SECTION (Amending WSR 16-18-073, filed 9/2/16, effective 10/3/16)

WAC 246-338-090 Quality control. The medical test site must use quality control procedures, providing and assuring accurate and reliable test results and reports, meeting the requirements of this chapter.

- (1) The medical test site must have and follow written procedures and policies available in the work area for:
 - (a) Analytical methods used by the technical personnel including:
 - (i) Principle;
 - (ii) Specimen collection and processing procedures;
 - (iii) Equipment/reagent/supplies required;
 - (iv) Preparation of solutions, reagents, and stains;
 - (v) Test methodology;
 - (vi) Quality control procedures;

- (vii) Procedures for reporting results (normal, abnormal, and critical values);
 - (viii) Reference range;
 - (ix) Troubleshooting guidelines - limitations of methodology;
 - (x) Calibration procedures; and
 - (xi) Pertinent literature references; and
 - (b) Alternative or backup methods for performing tests including the use of a reference facility if applicable.
- (2) The medical test site must establish written criteria for and maintain appropriate documentation of:
- (a) Temperature-controlled spaces and equipment;
 - (b) Preventive maintenance activities;
 - (c) Equipment function checks;
 - (d) Procedure calibrations; and
 - (e) Method/instrument validation procedures.
- (3) The medical test site must maintain documentation of:
- (a) Expiration date, lot numbers, and other pertinent information for:
 - (i) Reagents;
 - (ii) Solutions;
 - (iii) Culture media;
 - (iv) Controls;
 - (v) Calibrators;
 - (vi) Standards;
 - (vii) Reference materials; and
 - (viii) Other testing materials; and
 - (b) Testing of quality control samples.
- (4) For **quantitative tests**, the medical test site must perform quality control as follows:
- (a) Include two reference materials of different concentrations each day of testing unknown samples, if these reference materials are available; or
 - (b) Follow an equivalent quality testing procedure that meets federal CLIA regulations.
- (5) For **qualitative tests**, the medical test site must perform quality control as follows:
- (a) Use positive and negative reference material each day of testing unknown samples; or
 - (b) Follow an equivalent quality testing procedure that meets federal CLIA regulations.
- (6) The medical test site must:
- (a) Use materials within their documented expiration date;
 - (b) Not interchange components of kits with different lot numbers, unless specified by the manufacturer;
 - (c) Determine the statistical limits for each lot number of unassayed reference materials through repeated testing;
 - (d) Use the manufacturer's reference material limits for assayed material, provided they are:
 - (i) Verified by the medical test site; and
 - (ii) Appropriate for the methods and instrument used by the medical test site;
 - (e) Make reference material limits readily available;
 - (f) Report patient results only when reference materials are within acceptable limits;
 - (g) Rotate control material testing among all persons who perform the test;

(h) Use calibration material from a different lot number than that used to establish a cut-off value or to calibrate the test system, if using calibration material as a control material;

(i) For each test system that has an extraction phase, include two control materials, including one that is capable of detecting errors in the extraction process;

(j) For each molecular amplification procedure, include two control materials and, if reaction inhibition is a significant source of false negative results, a control material capable of detecting the inhibition is required; and

(k) Comply with general quality control requirements as described in Table 090-1, unless otherwise specified in subsection (9) (a) through (l) of this section.

(7) The medical test site must perform, when applicable:

(a) Calibration and calibration verification for **moderate and high complexity testing** as described in Table 090-2;

(b) Validation for **moderate complexity testing** by verifying the following performance characteristics when the medical test site introduces a new procedure classified as moderate complexity:

(i) Accuracy;

(ii) Precision;

(iii) Reportable range of patient test results; and

(iv) If using the reference range provided by the manufacturer, that it is appropriate for the patient population;

(c) Validation for **high complexity testing**:

(i) When the medical test site introduces a new procedure classified as high complexity;

(ii) For each method that is developed in-house, is a modification of the manufacturer's test procedure, or is an instrument, kit or test system that has not been cleared by FDA; and

(iii) By verifying the following performance characteristics:

(A) Accuracy;

(B) Precision;

(C) Analytical sensitivity;

(D) Analytical specificity to include interfering substances;

(E) Reference ranges (normal values);

(F) Reportable range of patient test results; and

(G) Any other performance characteristic required for test performance.

(8) When patient values are above the maximum or below the minimum calibration point or the reportable range, the medical test site must:

(a) Report the patient results as greater than the upper limit or less than the lower limit or an equivalent designation; or

(b) Use an appropriate procedure to rerun the sample allowing results to fall within the established linear range.

Table 090-1 General Quality Control Requirements

	Control Material	Frequency	
(a)	Each batch or shipment of reagents, discs, antisera, and identification systems	• Appropriate control materials for positive and negative reactivity	• When prepared or opened, unless otherwise specified
(b)	Each batch or shipment of stains	• Appropriate control materials for positive and negative reactivity	• When prepared or opened; and • Each day of use, unless otherwise specified
(c)	Fluorescent and immunohistochemical stains	• Appropriate control materials for positive and negative reactivity	• Each time of use, unless otherwise specified

	Control Material	Frequency
(d) Quality control for each specialty and subspecialty	<ul style="list-style-type: none"> • Appropriate control materials; or • Equivalent mechanism to assure the quality, accuracy, and precision of the test if reference materials are not available 	<ul style="list-style-type: none"> • At least as frequently as specified in this section; • More frequently if recommended by the manufacturer of the instrument or test procedure; or • More frequently if specified by the medical test site
(e) Direct antigen detection systems without procedural controls	<ul style="list-style-type: none"> • Positive and negative controls that evaluate both the extraction and reaction phase 	<ul style="list-style-type: none"> • Each batch, shipment, and new lot number; and • Each day of use

Table 090-2 Calibration and Calibration Verification—Moderate and High Complexity Testing

	Calibration Material	Frequency
CALIBRATION	<ul style="list-style-type: none"> • Calibration materials appropriate for methodology 	<ul style="list-style-type: none"> • Initial on-site installation/implementation of instrument/method; • At the frequency recommended by the manufacturer; and • Whenever calibration verification fails to meet the medical test site's acceptable limits for calibration verification.
CALIBRATION VERIFICATION	<ul style="list-style-type: none"> • Use assayed material, if available, at the lower, mid-point, and upper limits of procedure's reportable range; or • Demonstrate alternate method of assuring accuracy at the lower, mid-point, and upper limits of procedure's reportable range 	<ul style="list-style-type: none"> • At least every six months; • When there is a complete change of reagents (i.e., new lot number or different manufacturer) is introduced; • When major preventive maintenance is performed or there is a replacement of critical parts of equipment; or • When controls are outside of the medical test site's acceptable limits or exhibit trends.

(9) The medical test site must perform quality control procedures as described for each specialty and subspecialty in (a) through (l) of this subsection.

(a) Chemistry.

Perform quality control procedures for chemistry as described in Table 090-3 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

Table 090-3 Quality Control Procedures—Chemistry

Subspecialty/Test	Qualitative		Quantitative	
	Control Material	Frequency	Control Material	Frequency
Routine Chemistry	<ul style="list-style-type: none"> • Positive and negative reference material 	<ul style="list-style-type: none"> • Each day of use 	<ul style="list-style-type: none"> • Two levels of reference material in different concentrations 	<ul style="list-style-type: none"> • Each day of use
Toxicology	<ul style="list-style-type: none"> • Analyte-specific control 	<ul style="list-style-type: none"> • With each run of patient specimens 	<ul style="list-style-type: none"> • Analyte-specific control 	<ul style="list-style-type: none"> • With each analytical run

Subspecialty/Test	Qualitative		Quantitative	
	Control Material	Frequency	Control Material	Frequency
• Urine drug screen	• Positive control containing at least one drug representative of each drug class to be reported; must go through each phase of use including extraction	• With each run of patient specimens		
Urinalysis			• Two levels of control material • Calibrate to zero with distilled water • One level of control material	• Each day of use • Each day of use
Blood Gas Analysis			• Calibration • One level of control material • One-point calibration or one control material	• Follow manufacturer's specifications and frequency • Each eight hours of testing, using both low and high values on each day of testing • Each time patient specimen is tested, unless automated instrument internally verifies calibration every ((thirty)) 30 minutes
Electrophoresis	• One control containing fractions representative of those routinely reported in patient specimens	• In each electrophoretic cell	• One control containing fractions representative of those routinely reported in patient specimens	• In each electrophoretic cell

(b) **Hematology.**

(i) Run patient and quality control samples in duplicate for manual cell counts;

(ii) If reference material is unavailable, document the mechanism used to assure the quality, accuracy, and precision of the test; and

(iii) Perform quality control procedures for hematology as described in Table 090-4 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

Table 090-4 Quality Control Procedures—Hematology

	Control Material	Frequency
Automated	• Two levels of reference material in different concentrations	• Each day that patient samples are tested
Manual Blood Counts	• One level of reference material	• Every eight hours that patient samples are tested
Qualitative Tests	• Positive and negative reference material	• Each day of testing

(c) **Coagulation.**

(i) Run patient and quality control samples in duplicate for manual coagulation test (tilt tube);

- (ii) If reference material is unavailable, document the mechanism used to assure the quality, accuracy, and precision of the test; and
- (iii) Perform quality control procedures for coagulation as described in Table 090-5 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

Table 090-5 Quality Control Procedures—Coagulation

	Control Material	Frequency
Automated	<ul style="list-style-type: none"> • Two levels of reference material in different concentrations 	<ul style="list-style-type: none"> • Every eight hours that patient samples are tested; and • Each time reagents are changed
Manual Tilt Tube Method	<ul style="list-style-type: none"> • Two levels of reference material in different concentrations 	<ul style="list-style-type: none"> • Every eight hours that patient samples are tested; and • Each time reagents are changed

(d) **General immunology.**

- (i) Employ reference materials for all test components to ensure reactivity;
- (ii) Report test results only when the predetermined reactivity pattern of the reference material is observed; and
- (iii) Perform quality control procedures for general immunology as described in Table 090-6 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

Table 090-6 Quality Control Procedures—General Immunology

	Control Material	Frequency
Serologic tests on unknown specimens	<ul style="list-style-type: none"> • Positive and negative reference material 	<ul style="list-style-type: none"> • Each day of testing
Kits with procedural (internal) controls	<ul style="list-style-type: none"> • Positive and negative reference material (external controls) • Procedural (internal) controls 	<ul style="list-style-type: none"> • When kit is opened; and • Each day of testing, or follow an equivalent quality testing procedure that meets federal CLIA regulations • Each time patient sample is tested

(e) **Syphilis serology.**

- (i) Use equipment, glassware, reagents, controls, and techniques that conform to manufacturer's specifications;
- (ii) Employ reference materials for all test components to ensure reactivity; and
- (iii) Perform serologic tests on unknown specimens each day of testing with a positive serum reference material with known titer or graded reactivity and a negative reference material.

(f) **Microbiology.**

- (i) Have available and use:
 - (A) Appropriate stock organisms for quality control purposes; and
 - (B) A collection of slides, photographs, gross specimens, or text books for reference sources to aid in identification of microorganisms;
- (ii) Document all steps (reactions) used in the identification of microorganisms on patient specimens;
- (iii) For antimicrobial susceptibility testing:
 - (A) Record zone sizes or minimum inhibitory concentration for reference organisms; and
 - (B) Zone sizes or minimum inhibitory concentration for reference organisms must be within established limits before reporting patient results; and

(C) Perform quality control on antimicrobial susceptibility testing media as described in Table 090-8;

(iv) For noncommercial media, check each batch or shipment for sterility, ability to support growth and, if appropriate, selectivity, inhibition, or biochemical response;

(v) For commercial media:

(A) Verify that the product insert specifies that the quality control checks meet the requirements for media quality control as outlined by the Clinical Laboratory Standards Institute (CLSI). *M22-A3 Quality Control for Commercially Prepared Microbiological Culture Media; Approved Standard-Third Edition*. June 2004. (Volume 24, Number 19);

(B) Keep records of the manufacturer's quality control results;

(C) Document visual inspection of the media for proper filling of the plate, temperature or shipment damage, and contamination before use; and

(D) Follow the manufacturer's specifications for using the media; and

(vi) For microbiology subspecialties:

(A) **Bacteriology:** Perform quality control procedures for bacteriology as described in Tables 090-7 and 090-8.

Table 090-7 Quality Control Procedures—Bacteriology

	Control Material	Frequency
Reagents, disks, and identification systems Catalase, coagulase, oxidase, and Beta-lactamase Cefinase™ reagents Bacitracin, optochin, ONPG, X and V disks or strips	<ul style="list-style-type: none"> Positive and negative reference organisms, unless otherwise specified 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number unless otherwise specified
Stains, unless otherwise specified; DNA probes; and all beta-lactamase methods other than Cefinase™	<ul style="list-style-type: none"> Positive and negative reference organisms 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number; and Each day of use
Fluorescent stains	<ul style="list-style-type: none"> Positive and negative reference organisms 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number; and Each time of use
Gram stains	<ul style="list-style-type: none"> Positive and negative reference organisms 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number; and Each week of use
Direct antigen detection systems without procedural controls	<ul style="list-style-type: none"> Positive and negative controls that evaluate both the extraction and reaction phase 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number; and Each day of use
Test kits with procedural (internal) controls	<ul style="list-style-type: none"> Positive and negative reference material (external) controls Procedural (internal) controls 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number; and Each day of testing, or follow an equivalent quality testing procedure that meets federal CLIA regulations Each time patient sample is tested
Antisera	<ul style="list-style-type: none"> Positive and negative reference material 	<ul style="list-style-type: none"> Each batch, shipment, and new lot number; and Every six months

Table 090-8 Quality Control Procedures—Bacteriology - Media for Antimicrobial Susceptibility Testing

	Control Material	Frequency
Check each new batch of media and each new lot of antimicrobial disks or other testing systems (MIC)	<ul style="list-style-type: none"> Approved reference organisms (ATCC organisms) 	<ul style="list-style-type: none"> Before initial use and each day of testing; or May be done weekly if the medical test site can meet the quality control requirements for antimicrobial disk susceptibility testing as outlined by CLSI <i>M100S Performance Standards for Antimicrobial Susceptibility Testing; Twenty-Sixth Edition.</i>

(B) **Mycobacteriology:** Perform quality control procedures for mycobacteriology as described in Table 090-9.

Table 090-9 Quality Control Procedures—Mycobacteriology

	Control Material	Frequency
All reagents or test procedures used for mycobacteria identification unless otherwise specified	<ul style="list-style-type: none"> Acid-fast organism that produces a positive reaction and an acid-fast organism that produces a negative reaction 	<ul style="list-style-type: none"> Each day of use
Acid-fast stains	<ul style="list-style-type: none"> Acid-fast organism that produces a positive reaction and an organism that produces a negative reaction 	<ul style="list-style-type: none"> Each day of use
Fluorochrome acid-fast stains	<ul style="list-style-type: none"> Acid-fast organism that produces a positive reaction and an acid-fast organism that produces a negative reaction 	<ul style="list-style-type: none"> Each time of use
Susceptibility tests performed on <i>Mycobacterium tuberculosis</i> isolates	<ul style="list-style-type: none"> Appropriate control organism(s) 	<ul style="list-style-type: none"> Each batch of media, and each lot number and shipment of antimycobacterial agent(s) before, or concurrent with, initial use Each week of use

(C) **Mycology:** Perform quality control procedures for mycology as described in Table 090-10.

Table 090-10 Quality Control Procedures—Mycology

	Control Material	Frequency
Susceptibility tests: Each drug NOTE: Establish control limits and criteria for acceptable control results prior to reporting patient results	<ul style="list-style-type: none"> One control strain that is susceptible to the drug 	<ul style="list-style-type: none"> Each day of use
Lactophenol cotton blue stain	<ul style="list-style-type: none"> Appropriate control organism(s) 	<ul style="list-style-type: none"> Each batch or shipment and each lot number
Acid-fast stains	<ul style="list-style-type: none"> Organisms that produce positive and negative reactions 	<ul style="list-style-type: none"> Each day of use
Reagents for biochemical and other identification test procedures	<ul style="list-style-type: none"> Appropriate control organism(s) 	<ul style="list-style-type: none"> Each batch or shipment and each lot number
Commercial identification systems utilizing two or more substrates	<ul style="list-style-type: none"> Organisms that verify positive and negative reactivity of each media type 	<ul style="list-style-type: none"> Each batch or shipment and each lot number

(D) **Parasitology:**

(I) Have available and use:

- Reference collection of slides or photographs and, if available, gross specimens for parasite identification; and
- Calibrated ocular micrometer for determining the size of ova and parasites, if size is a critical parameter.

(II) Check permanent stains each month of use with reference materials.

(E) **Virology:**

(I) Have available:

- Host systems for isolation of viruses; and

- Test methods for identification of viruses that cover the entire range of viruses that are etiologically related to the clinical diseases for which services are offered; and
 - (II) Simultaneously culture uninoculated cells or cell substrate as a negative control when performing virus identification.
 - (g) **Histopathology:** Fluorescent and immunohistochemical stains must be checked for positive and negative reactivity each time of use. For all other differential or special stains, include a control slide of known reactivity with each slide or group of slides and document reactions.
 - (h) **Cytology.**
 - (i) Processing specimens:
 - (A) (~~Stain all gynecological smears~~) All gynecological slide preparations must be stained using a Papanicolaou or a modified Papanicolaou staining method;
 - (B) Have methods to prevent cross-contamination between gynecologic and nongynecologic specimens during the staining process; and
 - (C) Stain nongynecological specimens that have a high potential for cross-contamination separately from other nongynecological specimens, and filter or change the stains following staining.
 - (ii) Performing specimen examinations:
 - (A) All cytology preparations must be evaluated on the premises of the medical test site;
 - (B) Technical personnel must examine, unless federal law and regulation specify otherwise, no more than (~~one hundred~~) 100 cytological slides (one patient specimen per slide; gynecologic, nongynecologic, or both) in a (~~twenty-four~~) 24-hour period and in no less than an eight-hour work period;
 - (C) Previously examined negative, reactive, reparative, atypical, premalignant or malignant gynecological cases and previously examined nongynecologic cytology preparations and tissue pathology slides examined by a technical supervisor are not included in the (~~one hundred~~) 100 slide limit;
 - (D) Each nongynecologic slide preparation made using liquid-based slide preparatory techniques that result in cell dispersion over one-half or less of the total available slide may be counted as one-half slide; and
 - (E) Records of the total number of slides examined by each individual at all sites during each (~~twenty-four~~) 24-hour period must be maintained.
 - (iii) Establish and implement a quality assurance program that ensures:
 - (A) There is criteria for submission of material;
 - (B) All providers submitting specimens are informed of these criteria;
 - (C) All samples submitted are assessed for adequacy;
 - (D) Records of initial examinations and rescreening results are available and documented;
 - (E) Rescreening of benign gynecological slides is:
 - (I) Performed by an individual who meets the personnel requirements for technical or general supervisor in cytology as defined under 42 C.F.R. Part 493 Subpart M;
 - (II) Completed before reporting patient results on those selected cases;
 - (III) Performed and documented on:
 - No less than (~~ten~~) 10 percent of the benign gynecological slides; and

- Includes cases selected at random from the total caseload and from patients or groups of patients that are identified as having a high probability of developing cervical cancer, based on available patient information;

(F) The technical supervisor:

(I) Confirms all gynecological smears interpreted to be showing reactive or reparative changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant (dysplasia, cervical intraepithelial neoplasia or all squamous intraepithelial neoplasia lesions including human papillomavirus-associated changes) or malignant category;

(II) Reviews all nongynecological cytological preparations; and

(III) Establishes, documents, and reassesses, at least every six months, the workload limits for each cytotechnologist;

(G) All cytology reports with a diagnosis of high-grade squamous intraepithelial lesion (HSIL), adenocarcinoma, or other malignant neoplasms are correlated with prior cytology reports and with histopathology reports if available, and the causes of any discrepancies are determined;

(H) Review of all normal or negative gynecological specimens received within the previous five years, if available in the laboratory system, or records of previous reviews, for each patient with a current high grade intraepithelial lesion or moderate dysplasia of CIN-2 or above;

(I) Notification of the patient's physician if significant discrepancies are found that would affect patient care and issuance of an amended report;

(J) An annual statistical evaluation of the number of cytology cases examined, number of specimens processed by specimen type, volume of patient cases reported by diagnosis, number of cases where cytology and histology are discrepant, number of cases where histology results were unavailable for comparison, and number of cases where rescreen of negative slides resulted in reclassification as abnormal; and

(K) Evaluation and documentation of the performance of each individual examining slides against the medical test site's overall statistical values, with documentation of any discrepancies, including reasons for the deviation and corrective action, if appropriate.

(i) **Immunoematology/transfusion services.**

(i) Perform ABO grouping, Rh (D) typing, antibody detection and identification, and compatibility testing as described by the Food and Drug Administration (FDA) under 21 C.F.R. Parts 606 and 640.

(A) Perform ABO grouping:

(I) By concurrently testing unknown red cells with FDA approved anti-A and anti-B grouping sera;

(II) Confirm ABO grouping of unknown serum with known A1 and B red cells;

(B) Perform Rh (D) typing by testing unknown red cells with anti-D (anti-Rh) blood grouping serum; and

(C) Perform quality control procedures for immunoematology as described in Table 090-11.

(ii) Blood and blood products:

(A) Collecting, processing, and distributing:

(I) Must comply with FDA requirements listed under 21 C.F.R. Parts 606, 610.40, 610.53, and 640; and

(II) Must establish, document, and follow policies to ensure positive identification of a blood or blood product recipient.

(B) Labeling and dating must comply with FDA requirements listed under 21 C.F.R. 606 Subpart G, and 610.53.

(C) Storing:

(I) There must be an adequate temperature alarm system that is regularly inspected.

(II) The system must have an audible alarm system that monitors proper blood and blood product storage temperature over a (~~twenty-four~~) 24-hour period.

(III) High and low temperature checks of the alarm system must be documented.

(D) Collection of heterologous or autologous blood products on-site:

(I) Must register with the FDA; and

(II) Have a current copy of the form FDA 2830 "Blood Establishment Registration and Product Listing."

(E) Retention of samples of transfused blood:

(I) Establish and follow procedures to retain samples of each unit of transfused blood for further testing in the event of transfusion reactions; and

(II) Promptly dispose of blood not retained for further testing that has passed its expiration date.

(iii) Must have an agreement approved by the director for procurement, transfer, and availability to receive products from outside entities.

(iv) Promptly investigate transfusion reactions according to established procedures, and take any necessary remedial action.

Table 090-11 Quality Control Procedures—Immunoematology

Reagent	Control Material	Frequency
ABO antisera	• Positive control	• Each day of use
Rh antisera	• Positive and negative controls • Patient control to detect false positive Rh test results	• Each day of use • When required by the manufacturer
Other antisera	• Positive and negative controls	• Each day of use
ABO reagent red cells	• Positive control	• Each day of use
Antibody screening cells	• Positive control using at least one known antibody	• Each day of use

(j) **Histocompatibility.**

(i) Use applicable quality control standards for immunoematology, transfusion services, and diagnostic immunology as described in this chapter; and

(ii) Meet the standards for histocompatibility as listed in 42 C.F.R. Part 493.1278, Standard: Histocompatibility, available from the department upon request.

(k) **Cytogenetics.**

(i) Document:

(A) Number of metaphase chromosome spreads and cells counted and karyotyped;

(B) Number of chromosomes counted for each metaphase spread;

(C) Media used;

(D) Reactions observed;

(E) Quality of banding; and

(F) Sufficient resolution appropriate for the type of tissue or specimen and the type of study required based on the clinical information provided;

(ii) Assure an adequate number of karyotypes are prepared for each patient according to the indication given for performing cytogenetics study;

(iii) Use an adequate patient identification system for:

(A) Patient specimens;

(B) Photographs, photographic negatives, or computer stored images of metaphase spreads and karyotypes;

(C) Slides; and

(D) Records; and

(iv) Perform full chromosome analysis for determination of sex.

(1) **Radiobioassay and radioimmunoassay.**

(i) Check the counting equipment for stability each day of use with radioactive standards or reference sources; and

(ii) Meet Washington state radiation standards described under chapter 70.98 RCW and chapters 246-220, 246-221, 246-222, 246-232, 246-233, 246-235, 246-239, 246-247, 246-249, and 246-254 WAC.

WSR 25-02-003

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 18, 2024, 12:54 p.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clarifying "culturally congruent care" in chapter 246-835 WAC, Birth doula. The department of health (department) is adopting amendments to WAC 246-835-010 and 246-835-025 to update the definition of "culturally congruent care" and to clarify education and training requirements related to "culturally congruent care."

The department is adopting amendments to the definition of the term "culturally congruent care" in WAC 246-835-010. The updated definition better reflects the practice of "culturally congruent care" for the birth doula profession and addresses concerns expressed by the doula community regarding the definition.

Adopted amendments to WAC 246-835-025 provide clarity for the training and education requirements in this section. The adopted rule separates the term "culturally congruent care" from "culturally congruent ancestral practices" and clarifies that training related to culturally congruent care fulfills the requirements in WAC 246-835-025, as well as training or experience related to culturally congruent ancestral practices.

The adopted rules are the result of consultation with interested individuals and birth doula community organizations and they are intended to more accurately reflect what is best practice in the birth doula profession. The adopted rules provide clarity, address concerns raised by interested individuals, reflect best practices, and aligns rule language with what the department has done in practice when reviewing applications and providing certifications for birth doulas.

Citation of Rules Affected by this Order: Amending WAC 246-835-010 and 246-835-025.

Statutory Authority for Adoption: RCW 18.47.030 and 18.47.800.

Adopted under notice filed as WSR 24-20-008 on September 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: December 18, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5436.6

AMENDATORY SECTION (Amending WSR 23-18-048, filed 8/30/23, effective 10/1/23)

WAC 246-835-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Birth doula" or "doula" mean a state-certified birth doula under this chapter.

(2) "Culturally congruent care" means ~~((the care and respect towards families to uphold their cultural practices around birth as the duty of the doula regardless of their identity, as well as assisting families in accessing other doulas from the same background))~~ respecting and upholding a client's cultural practices around birth, regardless of one's own cultural identity. Culturally congruent care includes a birth doula's responsibility to use community resources and networks to help families access other doulas from the same background, religion, culture, and community as ((them)) the client.

(3) "Department" means the department of health.

(4) "Postpartum" means the 12-month period beginning on the last day of pregnancy.

(5) "Secretary" means the secretary of the department of health.

AMENDATORY SECTION (Amending WSR 23-18-048, filed 8/30/23, effective 10/1/23)

WAC 246-835-025 Culturally congruent ancestral practices, training, and education. (1) To apply for a birth doula certification, an applicant shall ~~((complete))~~ demonstrate knowledge of culturally congruent ancestral practices, training, and education that ~~((demonstrates learned familiarity with clients' cultural practices using culturally congruent care related to birth in client communities where the doula may practice. Such))~~ upholds culturally congruent care as defined in WAC 246-835-010(2).

(2) Culturally congruent ancestral training or experience may include, but is not limited to:

(a) ~~((Multicultural, ancestral and culturally congruent care; such as, but not limited to, rebozo use, belly binding, placenta burial, placenta encapsulation, cord burning, lotus birth, development of intuition;~~

~~((b-))~~ History of obstetrics; such as erasure of granny midwives and indigenous birth work;

~~((e))~~ (b) Trauma-informed care;

~~((d))~~ (c) Social determinants of health ~~((and));~~

(d) Adverse childhood experiences; or

(e) Other training and education that enhances the applicant's knowledge of culturally congruent care or culturally congruent ancestral practices, training, and education.

~~((2))~~ (3) Documentation of completion must include:

(a) An attestation that they have successfully completed a training or have experience in one of the categories in subsection ~~((1))~~ (2) of this section; or

(b) A certificate of completion from a relevant training that lists the applicant's name.

WSR 25-02-004
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed December 18, 2024, 1:58 p.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The board of registration for professional engineers and land surveyors received a petition for expedited rule making to update pronouns in various WAC. A CR-105 (expedited rule-making form) was filed, and parties notified. Objections to the use of expedited rule making and amending the language were received. The changes are minor without changing the effect of the rules.

Citation of Rules Affected by this Order: Amending WAC 196-09-130, 196-09-131, 196-09-135, 196-09-150, 196-23-010, 196-23-040, 196-33-400, and 196-34-115.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050, and 18.210.060.

Adopted under notice filed as WSR 24-20-128 on October 1, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 196-23-010 and 196-33-400 now read "It is the responsibility of each licensee to maintain control over the use of their stamp/seal."

WAC 196-23-040 removed proposed "their." Now reads "when representing licensing credentials."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 8, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: December 12, 2024.

Ken Fuller
Director

OTS-5697.1

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-130 Board member limitations—Contract selection.

(1) When a member of the board of registration for professional engineers and land surveyors (board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board in whole or in part, or when the member accepts, directly or indirectly, any

compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member must:

- (a) Exclude (~~him or herself~~) themselves from the board discussion regarding the specific contract, sale, lease, purchase or grant;
 - (b) Exclude (~~him or herself~~) themselves from the board vote on the specific contract, sale, lease, purchase or grant; and
 - (c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.
- (2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the board from using (~~his or her~~) their general expertise to educate and provide general information on the subject area to the other members.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-131 Board member limitations—Board actions. (1)

When a member of the board of registration for professional engineers and land surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is subject to a board action, the member must:

- (a) Recuse (~~him or herself~~) themselves from the board discussion regarding the specific action;
 - (b) Recuse (~~him or herself~~) themselves from the board vote on the specific action; and
 - (c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific action.
- (2) The prohibition against discussion and voting set forth in sections (a) and (c) may not prohibit the member of the board from using (~~his or her~~) their general expertise to educate and provide general information on the subject area to the other members.
- (3) "Board action" may include any of the following:
- (a) An investigation or adjudicative proceeding;
 - (b) Application or submission;
 - (c) Request for a ruling or other determination decision, finding, ruling, or order; or
 - (d) Monetary grant, payment, or award.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-135 Reporting of board member recusal. If exclusion or recusal occurs pursuant to WAC 196-09-130 or 196-09-131, the member of the board should disclose to the public the reasons for (~~his or her~~) their exclusion or recusal from any board action whenever it occurs. The board staff should record each instance of exclusion or recusal and the basis for it in the minutes of the board meetings.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-150 Public records. All public records of the board are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) Inspection of records. Public records are available for inspection and copying during normal business hours of the office of the Washington state board of registration for professional engineers and land surveyors. Records may be inspected at the board's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) Records index. An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the board's office.

(3) Organization of records. The board maintains its records in a reasonably organized manner. The board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the board's office. A variety of records are also available on the board's website at <https://brpels.wa.gov/>. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request using the board's public records request form available on the board's website or in writing by letter or email addressed to the public records officer. Written request must include the following information:

(i) Date of the request.

(ii) Name of the requestor.

(iii) Address of the requestor and other contact information, including telephone number and any email addresses.

(iv) Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, (~~he or she~~) they will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, (~~he or she~~) they should make that preference clear in the request. Copies will be made by the board's public records officer or designee.

(e) When fulfilling public records requests, the board will perform its public records responsibilities in the most expeditious manner consistent with the board's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a

redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the board's anticipated installment delivery timetable.

(h) In certain instances, the board may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within (~~(fifteen)~~) 15 days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the (~~(fifteen)~~) 15-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations: In order to obtain a list of individuals under the provisions of RCW 42.56.070(8), educational organizations and professional associations must provide sufficient information to satisfy the board that the requested list of individuals is primarily for educational and professionally related uses.

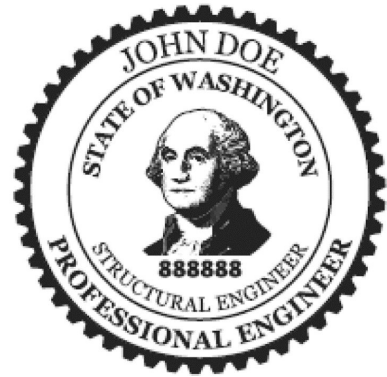
Board forms are available on the board's website or upon request.

OTS-5698.2

AMENDATORY SECTION (Amending WSR 08-10-009, filed 4/24/08, effective 7/1/08)

WAC 196-23-010 Seals. All individuals licensed in accordance with chapter 18.43 RCW must utilize a seal/stamp that conforms to the design as authorized by the board. It is the responsibility of (~~(the)~~) each licensee to maintain control over the use of (~~(his/her)~~) their stamp/seal. The impression or image of the seal/stamp must conform to the below-illustrated design and be of a size that assures full legibility of the following required information:

- (1) State of Washington;
- (2) Registered professional engineer or registered professional land surveyor;
- (3) Certificate number;
- (4) Licensee's name as shown on wall certificate.



AMENDATORY SECTION (Amending WSR 06-22-035, filed 10/25/06, effective 11/25/06)

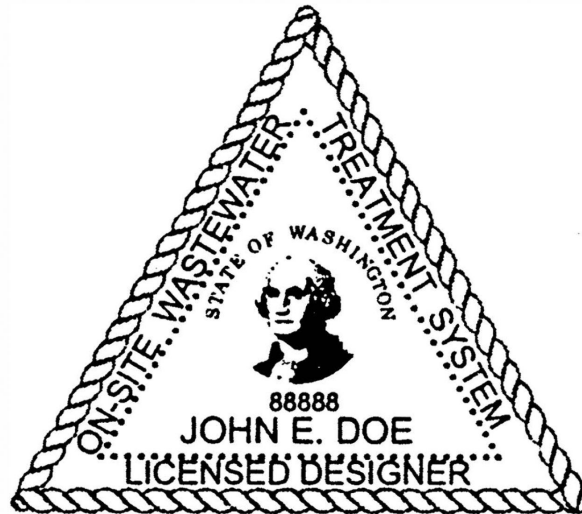
WAC 196-23-040 Use of the title S.E. Only professional engineers who have completed the state of Washington's requirements for licensure in structural engineering are permitted to use the title of S.E. when representing ~~((his or her))~~ licensing credentials, as in, *James Smith, P.E., S.E.* Use of the title S.E. by any individual who is not licensed in structural engineering as provided in chapter 18.43 RCW, is subject to disciplinary action by the board in accordance with chapter 18.43 RCW and/or chapter 18.235 RCW.

OTS-5699.2

AMENDATORY SECTION (Amending WSR 18-22-076, filed 11/2/18, effective 12/3/18)

WAC 196-33-400 Seals and stamps. All individuals licensed in accordance with chapter 18.210 RCW shall procure a seal/stamp that conforms to the design as authorized by the board. It is the responsibility of ~~((the))~~ each licensee to maintain control over the use of ~~((his/her))~~ their stamp/seal. The impression or image of the seal/stamp shall conform to the below-illustrated design and be of a size that assures full legibility of the following required information:

- (1) State of Washington;
- (2) Licensed on-site wastewater treatment system designer;
- (3) License number;
- (4) Licensee's name as shown on license.



OTS-5700.1

AMENDATORY SECTION (Amending WSR 12-09-008, filed 4/5/12, effective 5/6/12)

WAC 196-34-115 Qualifying activities. The board believes that designers under provisions of chapter 18.210 RCW should have the discretion to make independent choices on what activities help them to be improved practitioners. The board will not provide advance approvals for selected activities or vendors. The board expects designers to seek out qualifying activities that can be demonstrated to the board as relevant to (~~his or her~~) their professional development as a designer.

WSR 25-02-024
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-02—Filed December 18, 2024, 4:43 p.m., effective January 18, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: E2SSB 5213 (chapter 242, Laws of 2024) amends state law concerning the business practices of health care benefit managers (HCBMs) and pharmacy benefit managers (PBMs, which are a type of HCBM). The law's provisions address, among other issues, PBM reimbursement to pharmacies for dispensing prescription drugs; consumer access to mail order and retail pharmacies; consumer out-of-pocket costs for prescription drugs; HCBM registration and reporting; and oversight authority of the office of the insurance commissioner (OIC) regarding HCBM registration and operations. Rule making is necessary to revise existing HCBM rules at chapter 284-180 WAC and ensure that all affected entities understand their rights and obligations under the new law.

In addition, rule making related to HCBMs beyond the scope of E2SSB 5213 is necessary to ensure that OIC can effectively oversee HCBMs in light of recent health care industry developments like the Change Healthcare cyberattack in early 2024 and OIC's experience regulating HCBMs.

Citation of Rules Affected by this Order: New WAC 284-180-465, 284-180-501, 284-180-507, 284-180-517, and 284-180-522; and amending WAC 284-180-120, 284-180-130, 284-180-210, 284-180-220, 284-180-230, 284-180-240, 284-180-325, 284-180-405, 284-180-411, 284-180-455, 284-180-460, 284-180-500, 284-180-505, 284-180-515, and 284-180-520.

Statutory Authority for Adoption: RCW 48.200.900, 48.02.060.

Adopted under notice filed as WSR 24-21-158 on October 22, 2024.

A final cost-benefit analysis is available by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7038, fax 360-586-3109, email rulescoordinator@oic.wa.gov, website www.insurance.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 15, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 15, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 18, 2024.

Mike Kreidler
Insurance Commissioner

OTS-5883.3

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-120 Applicability and scope. (1) This chapter applies to:

(a) Health care benefit managers as defined in RCW 48.200.020, and health carriers who contract with health care benefit managers; and

(b) Pharmacy benefit managers who contract with pharmacies on behalf of health carriers, medicaid managed care organizations, and employee benefits programs as defined in RCW 48.200.020.

(2) Effective January 1, 2026, RCW 48.200.280, 48.200.310, and 48.200.320 and WAC 284-180-500, 284-180-507, 284-180-517, and 284-180-522 apply to self-funded group health plans that have elected to participate under RCW 48.200.330.

(3) This chapter does not apply to the actions of health care benefit managers providing services to, or acting on behalf of ((

(a) Self-insured health plans;

(b) Medicare plans;

(c) Medicaid; and

(d) Union plans)) medicare supplement or medicare advantage plans.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-130 Definitions. Except as defined in other sub-chapters and unless the context requires otherwise, the following definitions apply throughout this chapter:

(1) "Affiliate" or "affiliated employer" has the same meaning as the definition of affiliate or affiliated employer in RCW 48.200.020.

(2) "Annual gross income" means the sum of all amounts paid during a calendar year by any entities with which a health care benefit manager has contracted for the provision of health care benefit management services in Washington state.

(3) "Certification" has the same meaning as the definition of certification in RCW 48.43.005.

((3)) (4) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, such as through ownership of voting securities, membership rights, or by contract.

(5) "Corporate umbrella" means an arrangement consisting of, but not limited to, subsidiaries and affiliates operating under common ownership or control.

((4)) (6) "Covered person" has the same meaning as in RCW 48.43.005.

(7) As used in RCW 48.200.020 and 48.200.280, "credentialing" means the collection, verification, and assessment of whether a health care provider meets relevant licensing, education, and training requirements.

(8) "Employee benefits programs" has the same meaning as the definition of employee benefits program in RCW 48.200.020.

((5)) (9) "Generally available for purchase" means available for purchase by multiple pharmacies within the state of Washington from national or regional wholesalers.

~~((6))~~ (10) "Health care benefit manager" has the same meaning as the definition of health care benefit manager in RCW 48.200.020.

~~((7))~~ (11) "Health care provider" or "provider" has the same meaning as the definition of health care provider in RCW 48.43.005.

~~((8))~~ (12) "Health care services" has the same meaning as the definition of health care services in RCW 48.43.005.

~~((9))~~ (13) "Health carrier" or "carrier" has the same meaning as the definition of health carrier in RCW 48.43.005.

~~((10))~~ (14) "Laboratory benefit manager" has the same meaning as the definition of laboratory benefit manager in RCW 48.43.020.

~~((11))~~ (15) Effective January 1, 2026, "list" has the same meaning as the definition of list in RCW 48.200.280, as amended by section 5, chapter 242, Laws of 2024.

(16) "Mail order pharmacy" has the same meaning as the definition of mail order pharmacy in RCW 48.200.020.

(17) "Mental health benefit manager" has the same meaning as the definition of mental health benefit manager in RCW 48.200.020.

~~((12))~~ (18) Effective January 1, 2026, "multiple source drug" has the same meaning as the definition of multiple source drug in RCW 48.200.280, as amended by section 5, chapter 242, Laws of 2024.

(19) "Net amount" means the invoice price that the pharmacy paid to the supplier for a prescription drug that it dispensed, plus any taxes, fees or other costs, minus the amount of all discounts and other cost reductions attributable to the drug.

~~((13))~~ (20) "Network" has the same meaning as the definition of network in RCW 48.200.020.

~~((14))~~ (21) "Network pharmacy" has the same meaning as the definition of network pharmacy in RCW 48.200.280.

(22) "Oversight activities" includes all work done by the commissioner to ensure that the requirements of chapter 48.200 RCW are properly followed and in fulfilling its duties as required under chapter 48.200 RCW.

~~((15))~~ (23) "Person" has the same meaning as the definition of person in RCW 48.200.020.

~~((16))~~ (24) "Pharmacy benefit manager" has the same meaning as the definition of pharmacy benefit manager in RCW 48.200.020.

~~((17))~~ (25) "Pharmacy network" has the same meaning as the definition of pharmacy network in RCW 48.200.020.

(26) "Predetermined reimbursement cost" means maximum allowable cost, maximum allowable cost list, or any other benchmark price utilized by the pharmacy benefit manager, including the basis of the methodology and sources utilized to determine multisource generic drug reimbursement amounts. However, dispensing fees are not included in the calculation of predetermined reimbursement costs for multisource generic drugs.

~~((18))~~ (27) "Radiology benefit manager" has the same meaning as the definition of radiology benefit manager in RCW 48.200.020.

~~((19))~~ (28) "Readily available for purchase" means manufactured supply is held in stock and available for order by more than one pharmacy in Washington state when such pharmacies are not under the same corporate umbrella.

~~((20) "Retaliate"))~~ (29) (a) Through December 31, 2025, "retaliate" means action, or the implied or stated threat of action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has filed or intends to file an appeal under RCW 48.200.280.

~~((21))~~ (b) Effective January 1, 2026, "retaliate" means action, or the implied or stated threat of action, to cancel, restrict, or refuse to renew or offer a contract to a pharmacy, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has:

- (i) Filed or intends to file an appeal under RCW 48.200.280;
- (ii) Disclosed information in a court, in an administrative hearing, or legislative hearing, if the pharmacist or pharmacy has a good faith belief that the disclosed information is evidence of a violation of a state or federal law, rule, or regulation; or
- (iii) Disclosed information to a government or law enforcement agency, if the pharmacist or pharmacy has a good faith belief that the disclosed information is evidence of a violation of a state or federal law, rule, or regulation.

(30) "Union plan" means an employee welfare benefit plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) in which an employee organization participates and that exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare benefit plan.

(31) "Unsatisfied" means that the network pharmacy did not receive the reimbursement that it requested at the first tier appeal.

~~((22))~~ (32) "Utilization review" has the same meaning as the definition of utilization review in RCW 48.43.005.

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

WAC 284-180-210 Registration and renewal fees. (1) The commissioner must establish fees for registration and renewal in an amount that ensures the program for the registration, renewal, and oversight activities of the health care benefit managers is self-supporting. Each health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay for the reasonable costs, including overhead, of regulating health care benefit managers.

(2) The initial registration fee is \$200.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of the insurance commissioner's renewal and oversight activities of health care benefit managers. Each health care benefit managers' proportional share of the program annual operating costs will be based on their Washington state annual gross income of their health care benefit manager business for the previous calendar year. The renewal fee is \$500, at a minimum, and may increase based on a proportional share of each health care benefit ~~((managers))~~ manager's Washington state annual gross income as reported to the insurance commissioner.

(4) If an unexpended balance of health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

(5) Carriers are exempt from the definition of health care benefit manager under RCW 48.200.020.

(a) An entity that is owned or controlled by a holding company that owns or controls a carrier is not exempt from registration as a health care benefit manager.

(b) Under RCW 48.200.050, when a carrier, i.e., "carrier A," acts as a health care benefit manager for another carrier, i.e., "carrier B," carrier B is responsible for the conduct of carrier A with respect to its action as a health care benefit manager on carrier B's behalf.

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

WAC 284-180-220 Health care benefit manager registration. (1) Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must ~~((register and))~~ have an approved registration with the commissioner as required in RCW 48.200.030 and 48.200.300. The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation required by the commissioner, and the \$200 registration fee.

(2) Health care benefit managers must apply for registration using the commissioner's electronic system, which is available at www.insurance.wa.gov.

(3) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

~~((4) The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation if required by the commissioner, and paid the \$200 registration fee.~~

~~(5) A health care benefit manager may conduct business in this state after receiving notice of approval of the registration application from the commissioner.)~~

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

WAC 284-180-230 Health care benefit manager renewal. (1) Health care benefit managers must annually renew their registration~~((s))~~ and pay their renewal fee ~~((using))~~ as required by RCW 48.200.030. Registration renewal must be submitted through the commissioner's electronic system, which is available at www.insurance.wa.gov.

(2) Health care benefit managers renewing their registrations must, no later than March 1st of each year, submit an electronic renewal report and supporting documents for approval to include:

(a) Their Washington state annual gross income for health care benefit manager business for the previous calendar year, broken down by Washington state annual gross income received from each contracted entity, whether a carrier or another health care benefit manager, that has made payments to the health care benefit manager for services provided to covered persons in Washington state during the previous calendar year; and

(b) Any additional information, including supporting documents, as required by the commissioner.

(3) Health care benefit managers (~~may amend their annual gross income report for the previous year after the date of submission, but~~) may not amend (~~the~~) their Washington state annual gross income report for the previous year later than (~~May 31st~~) April 15th, of the submission year.

(4) On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the next July 1st through June 30th fiscal year. Invoices for the renewal fees and electronic payments will be available through the insurance commissioner's electronic filing and payment center. Renewal fee payments are due by July 15th of each year.

(5) The renewal application is not complete until the commissioner receives the complete renewal report, supporting documentation if required by the commissioner, and the payment of the invoiced renewal fee.

(6) Upon successful completion, the health care benefit manager will receive notice of approval of the renewal application from the commissioner.

(7) Failure to timely submit a completed renewal report and fee may result in a delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.

(8) Each renewed registration is valid for one fiscal year from July 1st through June 30th fiscal year.

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

WAC 284-180-240 Providing and updating registration information.

(1) When registering, a health care benefit manager must (~~apply with~~) submit with its application an affidavit affirming (~~its~~) the application's accuracy. An application for registering as a health care benefit manager must (~~provide for~~) include:

(a) The legal name as well as any additional names that it uses to conduct business;

(b) The names of persons and entities with any ownership or controlling interests, including stockholders, officers and directors, or limited liability company members, managers and officers in the health care benefit manager, and the identity of any entity for which the health care benefit manager has a controlling interest;

(c) A list of tax identification numbers and business licenses and registrations that are active;

(d) Identifying any areas of specialty, such as a pharmacy benefit management, radiology benefit management, laboratory benefit management, mental health care benefit management, or any other areas of specialty identified in the application;

(e) A copy of the health care benefit manager's certificate of registration with the Washington state secretary of state;

(f) Contact information for communications regarding registration, renewal and oversight activities, to include name of the contact person, address, phone number, and valid email address;

(~~f~~) (g) Name and contact information for the person the health care benefit manager has designated as responsible for compliance with state and federal laws to include name of the contact person, address, phone number, and valid email address;

~~((g))~~ (h) Identify if the health care benefit manager has committed any violations in this or any state or been the subject of an order from ~~((a))~~ any federal or state agency or court; and

~~((h))~~ (i) Any additional information requested by the commissioner.

(2) Registered health care benefit managers must provide any material change in the information filed with the commissioner.

(a) This information includes, but is not limited to:

(i) Any additional names that the health care benefit manager uses to conduct business; and

(ii) The contact's name and email address for official communications between the commissioner and the health care benefit manager as required in subsection (1)(f) of this section.

(b) Any change in the information provided to obtain, renew, non-renew, or surrender a registration as a health care benefit manager is a material change and must be reported to the commissioner within 30 days of the change.

(c) Any amendments to its annual renewal reports including the reported annual gross income must be reported to the commissioner no later than May 31st. Amended annual renewal reports may be accepted after review by the commissioner.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-325 Required notices. (1) Carriers must post on their website information that identifies each health care benefit manager contracted with the carrier, either directly or indirectly through subcontracting with a health care benefit manager or other entity, and identify the services provided by ~~((the))~~ each health care benefit manager. The information must be ~~((easy to find))~~ visually prominent and easily located on the carriers' website with a link from the web page utilized for enrollees. The carrier is required to update the information on their website within ~~((thirty))~~ 30 business days of any change, such as addition or removal of a health care benefit manager or a change in the services provided by a health care benefit manager.

(2) Carriers must notify enrollees in writing and at least annually, including at plan enrollment and renewal, of each health care benefit manager contracted with the carrier to provide any health care benefit management services, either directly or indirectly through subcontracting with a health care benefit manager or other entity. For example, written notices include disclosure in the policy or member handbook. This notice must identify the website address where enrollees can view an updated listing of all health care benefit managers utilized by the carrier.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-405 Definitions in this subchapter. The definitions in this section apply throughout this subchapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for a carrier or health care benefit manager; or

(b) A person employed by a carrier or health care benefit manager to file under this chapter.

(4) (~~"Form" means a~~) "Health care benefit management contract form" or "contract" (~~and~~) or "form" means any written agreement describing the rights and responsibilities of the parties, such as carriers, health care benefit managers, providers, pharmacy, pharmacy services administration organization, and employee benefit program conforming to chapter 48.200 RCW and this chapter including:

(a) All forms that are part of the contract; and

(b) All amendments to the contract.

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation, or other information; or

(b) Explains errors or omissions in the filing.

(7) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule, and form filings electronically to the commissioner.

(8) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-411 Purpose of this subchapter. The purpose of this subchapter is to:

(1) Adopt processes and procedures for filers to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Designate SERFF as the method by which filers, including (~~health care service contractors, health maintenance organizations, insurers as defined in RCW 48.01.050,~~) carriers and health care benefit managers, must submit all health care benefit management contract forms to the commissioner.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-455 Carrier filings related to health care benefit managers. (1)(a) A carrier must file all contracts and contract amendments (~~(with)~~) between a health care benefit manager and a carrier within (~~(thirty)~~) 30 days following the effective date of the contract or contract amendment.

(b) To meet its obligations under RCW 48.200.050(5), a carrier must, for any health care benefit manager that provides services to or acts on behalf of the carrier and is not directly contracted with the carrier:

(i) File all contracts to provide health care benefit management services to or on behalf of a carrier such as, but not limited to, health care benefit management services contracts that result from a carrier contracting with a health care benefit manager who then contracts or subcontracts with another health care benefit manager; or

(ii) Identify all contracts to provide health care benefit management services to or on behalf of the carrier, ensure that contracted health care benefit managers have filed all required contracts with the commissioner, whether the health care benefit manager is directly or indirectly contracted with the carrier, as required in RCW 48.200.040 and WAC 284-180-460, and submit to the commissioner, as required by the "Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions," as a supporting document to the carrier's filings, a list of all health care benefit manager contracts. The list must include the SERFF tracker identifier for each contract.

(2) If a carrier negotiates, amends, or modifies a contract or a compensation agreement that deviates from a previously filed contract, then the carrier must file that negotiated, amended, or modified contract or agreement with the commissioner within (~~(thirty)~~) 30 days following the effective date. The commissioner must receive the filings electronically in accordance with this subchapter.

(~~(+2)~~) (3) Carriers must maintain health care benefit manager contracts at its principal place of business in the state, or the carrier must have access to all contracts and provide copies to facilitate regulatory review upon (~~(twenty)~~) 20 days prior written notice from the commissioner.

(~~(+3)~~) (4) Nothing in this section relieves the carrier of the responsibility detailed in WAC 284-170-280 (3)(b) to ensure that all contracts are current and signed if the carrier utilizes a health care benefit manager's providers and those providers are listed in the network filed for approval with the commissioner.

(~~(+4)~~) (5) If a carrier enters into a reimbursement agreement that is tied to health outcomes, utilization of specific services, patient volume within a specific period of time, or other performance standards, the carrier must file the reimbursement agreement with the commissioner within (~~(thirty)~~) 30 days following the effective date of the reimbursement agreement, and identify the number of enrollees in the service area in which the reimbursement agreement applies. Such reimbursement agreements must not cause or be determined by the commissioner to result in discrimination against or rationing of medically necessary services for enrollees with a specific covered condition or disease. If the commissioner fails to notify the carrier that the agreement is disapproved within (~~(thirty)~~) 30 days of receipt, the

agreement is deemed approved. The commissioner may subsequently withdraw such approval for cause.

~~((5))~~ (6) Health care benefit manager contracts and compensation agreements must clearly set forth the carrier provider networks and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

AMENDATORY SECTION (Amending WSR 23-24-034, filed 11/30/23, effective 1/1/24)

WAC 284-180-460 Health care benefit manager filings. (1) A health care benefit manager must file all contracts and contract amendments between the health care benefit manager and a health carrier, provider, pharmacy, pharmacy services administration organization, or other health care benefit manager entered into directly or indirectly in support of a contract with a carrier or employee benefits program within 30 days following the effective date of the contract or contract amendment. Contracts that must be filed by a health care benefit manager shall include all contracts to provide health care benefit management services to or on behalf of the carrier, whether the health care benefit manager is directly or indirectly contracted with the carrier such as, but not limited to, health care benefit management services contracts that result from a carrier contracting with a health care benefit manager who then contracts or subcontracts with another health care benefit manager.

(2) If a health care benefit manager negotiates, amends, or modifies a contract or a compensation agreement that deviates from a filed agreement, then the health care benefit manager must file that negotiated, amended, or modified contract or agreement with the commissioner within 30 days following the effective date. The commissioner must receive the filings electronically in accordance with this chapter.

~~((2))~~ (3) Contracts or contract amendments that were executed prior to July 23, 2023, and remain in force, must be filed with the commissioner no later than 60 days following July 23, 2023.

~~((3))~~ (4) A health care benefit manager ~~((s))~~ must maintain health care benefit management contracts at its principal place of business in the state, or the health care benefit manager must have access to all contracts and provide copies to facilitate regulatory review upon 20 days prior written notice from the commissioner.

~~((4))~~ (5) Health care benefit manager contracts and compensation agreements must clearly set forth provider network names and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

NEW SECTION

WAC 284-180-465 Self-funded group health plan opt-in. (1)(a) A self-funded group health plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) that elects under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. Election decisions are effective beginning January 1, 2026. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by RCW 48.200.280, 48.200.310, and 48.200.320 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(b) A pharmacy benefit manager may not, by contract or otherwise, prohibit a self-funded group health plan from electing to participate under RCW 48.200.330.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least 15 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in pharmacy benefit manager regulation as provided in RCW 48.200.330 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by a Washington state employer has elected under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 and has employees that reside in other states, those employees are protected by RCW 48.200.330 in RCW 48.200.280, 48.200.310, and 48.200.320 when filling a prescription ordered by a provider in Washington state or at a pharmacy located in Washington state.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-500 Applicability and scope. This subchapter applies to (~~health care benefit managers providing pharmacy benefit management services, referred to as~~) pharmacy benefit managers (~~in this subchapter~~) as defined in RCW 48.200.020.

(1) Specifically, this subchapter applies to the actions of pharmacy benefit managers regarding contracts with pharmacies on behalf of

~~((an insurer, a third party payor, or the prescription drug purchasing consortium established under RCW 70.14.060)) a carrier, employee benefits program, or medicaid managed care program~~ in regard to:

(a) Fully insured health plans; and

(b) Medicaid managed care plans. However, the appeal requirements of RCW ~~((19.340.100))~~ 48.200.280 do not apply to medicaid managed care plans.

(2) This subchapter does not apply to:

~~(a) The actions of pharmacy benefit managers ((acting as)) contracting with third-party administrators ((regarding contracts with pharmacies on behalf of an insurer, a third party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:~~

~~(a) Self-insured)) to administer prescription drug benefits for self-funded group health plans or union plans, unless a self-funded group health plan or union plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) has elected to participate in RCW 48.200.280, 48.200.310, and 48.200.320 under WAC 284-180-465; and~~

~~(b) The actions of pharmacy benefit managers contracting to administer prescription drug benefits for medicare plans.~~

NEW SECTION

WAC 284-180-501 Pharmacy reimbursement. A pharmacy benefit manager may not reimburse a pharmacy in the state an amount less than the amount the pharmacy benefit manager reimburses an affiliate for dispensing the same prescription drug as dispensed by the pharmacy, calculated on a per unit basis.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-505 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services. A network pharmacy may appeal a reimbursement to a health care benefit manager providing pharmacy benefit management services (first tier appeal) if the reimbursement for the drug is less than the net amount the network pharmacy paid to the supplier of the drug and the claim was adjudicated by the pharmacy benefit manager within the past 90 days. "Network pharmacy" has the meaning set forth in RCW ~~((19.340.100-1)-(d))~~ 48.200.280. "Pharmacy benefit manager" is a health care benefit manager that offers pharmacy benefit management services and has the meaning set forth in RCW 48.200.020. A pharmacy benefit manager must process the network pharmacy's appeal as follows:

(1) A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, then this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager (~~(during normal business hours)~~) between 9 a.m. and 5 p.m. Pacific Time Zone Monday through Friday, except national holidays, and speak with an individual responsible for processing appeals;

~~(ii) ((A summary of the specific times when the pharmacy benefit manager will answer calls from network pharmacies at that telephone number;~~

~~(iii))~~) A fax number that a network pharmacy can use to submit information regarding an appeal; and

~~((iv))~~) (iii) An email address or a link to a secure online portal that a network pharmacy can use to submit information regarding an appeal. If the pharmacy benefit manager chooses to use a link to a secure online portal to satisfy the requirement of this subsection, the contract must include explicit and clear instructions as to how a pharmacy can gain access to the portal. Submission by a pharmacy of an appeal that includes the claim adjudication date or dates consistent with this subsection and documentation or information described in subsection (2) of this section, or of a request for or information regarding an appeal, to the email address or secure online portal included in the contract under this subsection must be accepted by the pharmacy benefit manager as a valid submission.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(2) The pharmacy benefit manager must reconsider the reimbursement. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with the opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. Documents or information that may be submitted by a network pharmacy to show that the reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug include, but are not limited to:

(a) An image of information from the network pharmacy's wholesale ordering system;

(b) Other documentation showing the net amount paid by the network pharmacy; or

(c) An attestation by the network pharmacy that:

(i) The reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug; and

(ii) Describes the due diligence the network pharmacy undertook to procure the drug at the most favorable amount for the pharmacy, taking into consideration whether the pharmacy has fewer than 15 retail outlets within the state of Washington under its corporate umbrella and whether the network pharmacy's contract with a wholesaler or secondary supplier restricts disclosure of the amount paid to the wholesaler or secondary supplier for the drug.

The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(3) The pharmacy benefit manager must complete the appeal within ~~((thirty))~~ 30 calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy ben-

efit manager's decision within that time frame, then the appeal is deemed denied.

(4) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than (~~fifteen~~) 15 retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110(7).

(5) (a) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial (~~and~~), the national drug code and price of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and the name of at least one wholesaler or supplier from which the drug was available for purchase at that price on the date of the claim or claims that are subject of the appeal. "Multisource generic drug" (~~is defined in RCW 19.340.100 (1)(c))~~) has the same meaning as the definition of "multisource generic drug" in RCW 48.200.280.

(b) If the pharmacy benefit manager bases its denial on the fact that one or more of the claims that are the subject of the appeal are not subject to RCW 48.200.280 and this chapter, it must provide documentation clearly indicating that the plan to which the claim relates is a self-funded group health plan that has not opted in under RCW 48.200.330, is a medicare plan or is otherwise not subject to RCW 48.200.280 and this chapter.

(6) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. The reasonable adjustment must include, at a minimum, payment of the claim or claims at issue at the net amount paid by the pharmacy to the supplier of the drug. The commissioner will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(7) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(8) A pharmacy benefit manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(9) Health care benefit managers providing pharmacy benefit management services benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

(10) This section expires December 31, 2025.

NEW SECTION

WAC 284-180-507 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services.

(1)(a) A network pharmacy, or its representative, may appeal the reimbursement amount for a drug to a health care benefit manager providing pharmacy benefit management services (first tier appeal) if the reimbursement amount for the drug is less than the net amount the network pharmacy paid to the supplier of the drug and the claim was adjudicated within the past 90 days.

(b) If a pharmacy is represented by a pharmacy services administrative organization, or other entity, the contract between the pharmacy benefit manager and the pharmacy must allow the pharmacy services administrative organization or other entity to use the appeal process included in the contract between the pharmacy benefit manager and the pharmacy. The pharmacy benefit manager must meet all statutory, regulatory, and contractual requirements when reviewing an appeal submitted by a representative on behalf of a pharmacy.

(c) A pharmacy services administrative organization may submit an appeal to a pharmacy benefit manager on behalf of multiple pharmacies if:

(i) The claims that are the subject of the appeal are for the same prescription drug; and

(ii) The pharmacies on whose behalf the claims are submitted are members of the pharmacy services administrative organization; and

(iii) The pharmacy benefit manager has contracts with the pharmacies on whose behalf the pharmacy services administrative organization is submitting the claims.

(2) Before a pharmacy files an appeal pursuant to this section, upon request by a pharmacy or pharmacist, a pharmacy benefit manager must provide, within four business days of receiving the request, a current and accurate list of bank identification numbers, processor control numbers, and pharmacy group identifiers for health plans and for self-funded group health plans that have elected under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and

48.200.320 with which the pharmacy benefit manager either has a current contract or had a contract that has been terminated within the past 12 months to provide pharmacy benefit management services.

(3) A pharmacy benefit manager must process the network pharmacy's appeal as follows:

A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager between 9 a.m. and 5 p.m. Pacific Time Zone Monday through Friday, except national holidays, and speak with an individual responsible for processing appeals;

(ii) A fax number that a network pharmacy can use to submit information regarding an appeal; and

(iii) An email address or a link to a secure online portal that a network pharmacy can use to submit information regarding an appeal. If the pharmacy benefit manager chooses to use a link to a secure online portal to satisfy the requirement of this subsection, the contract must include explicit and clear instructions as to how a pharmacy can gain access to the portal. Submission by a pharmacy of an appeal that includes the claim adjudication date or dates consistent with subsection (1) of this section and documentation or information described in subsection (4) of this section, or of a request for information regarding an appeal, to the email address or secure online portal included in the contract under this subsection must be accepted by the pharmacy benefit manager as a valid submission.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(4) The pharmacy benefit manager must reconsider the reimbursement amount. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with an opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. Documents or information that may be submitted by a network pharmacy or their representative to show that the reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug include, but are not limited to:

(a) An image of information from the network pharmacy's wholesale ordering system;

(b) Other documentation showing the amount paid by the network pharmacy; or

(c) An attestation by the network pharmacy that:

(i) The reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug; and

(ii) Describes the due diligence the network pharmacy undertook to procure the drug at the most favorable amount for the pharmacy, taking into consideration whether the pharmacy has fewer than 15 retail outlets within the state of Washington under its corporate um-

rella and whether the network pharmacy's contract with a wholesaler or secondary supplier restricts disclosure of the amount paid to the wholesaler or secondary supplier for the drug.

(5) The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(6) The pharmacy benefit manager must complete the appeal within 30 calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(7) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than 15 retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110.

(8) (a) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial, the national drug code, and price of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the reimbursement cost for the drug and the name of at least one wholesaler or supplier from which the drug was available for purchase at that price on the date of the claim or claims that are subject of the appeal.

(b) If the pharmacy benefit manager bases its denial on the fact that one or more of the claims that are the subject of the appeal is not subject to RCW 48.200.280 and this chapter, it must provide documentation clearly indicating that the plan to which the claim relates is a self-funded group health plan that has not opted in under RCW 48.200.330, is a medicare plan, or is otherwise not subject to RCW 48.200.280 and this chapter.

(9) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. The commissioner will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(10) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washing-

ton are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(11) A pharmacy benefit manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(12) Health care benefit managers providing pharmacy benefit management services must identify a pharmacy benefit manager employee who is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

(13) This section is effective January 1, 2026.

AMENDATORY SECTION (Amending WSR 22-23-069, filed 11/10/22, effective 12/11/22)

WAC 284-180-515 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. (1) The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

(2) This section expires December 31, 2025.

NEW SECTION

WAC 284-180-517 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. (1) The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network

pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

(2) This section is effective January 1, 2026.

AMENDATORY SECTION (Amending WSR 22-23-069, filed 11/10/22, effective 12/11/22)

WAC 284-180-520 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by submitting a petition at www.insurance.wa.gov according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's business address and mailing address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

(ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(iv) Any additional information that the commissioner may require;

(d) The network pharmacy must file the petition for review with the commissioner within 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the pharmacy benefit manager's deadline for responding to the first tier appeal;

(e) The network pharmacy making the appeal must have less than 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must include a signed attestation that this requirement is satisfied; and

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under subsection (1) of this ((subsection)) section have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multi-source generic drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

(11) This section expires December 31, 2025.

NEW SECTION

WAC 284-180-522 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by submitting a petition at <https://www.insurance.wa.gov> according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's business address and mailing address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

(ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the reimbursement cost for the drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(iv) Any additional information that the commissioner may require;

(d) The network pharmacy must file the petition for review with the commissioner within 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the phar-

macy benefit manager's deadline for responding to the first tier appeal;

(e) The network pharmacy making the appeal must have less than 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must include a signed attestation that this requirement is satisfied; and

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under subsection (1) of this section have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

(11) This section is effective January 1, 2026.

WSR 25-02-031

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed December 19, 2024, 9:29 a.m., effective January 19, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To bring Bellingham Technical College's student conduct code, chapter 485B-121 WAC into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Repealing WAC 495B-121-290, 495B-121-350, 495B-121-355, 495B-121-360, 495B-121-365, 495B-121-370, 495B-121-375, 495B-121-380, 495B-121-385, and 495B-121-390; and amending WAC 495B-121-235, 495B-121-240, 495B-121-245, 495B-121-260, 495B-121-265, 495B-121-270, 495B-121-280, 495B-121-285, 495B-121-286, 495B-121-295, 495B-121-300, 495B-121-315, 495B-121-320, 495B-121-325, 495B-121-330, 495B-121-335, and 495B-121-340.

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

Adopted under notice filed as WSR 24-21-144 on October 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 12, Repealed 9; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, Repealed 10.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 19, 2024.

Ronda Laughlin
Executive Assistant to the President

OTS-5611.3

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-235 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On (~~Bellingham Technical~~) college premises (~~and facilities~~);

(b) At or in connection with (~~college-sponsored~~) college programs or activities; or

(c) ~~((To off-campus conduct that in the judgment of the college, adversely affects))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or employee to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students ~~((or student groups))~~ are engaged in ~~((official))~~ college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated))~~ students, ~~((athletic events))~~ student government, student clubs or organizations, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from ~~((notification of))~~ the time they gain admission ~~((at))~~ to the college through the ~~((actual receipt of a))~~ last day of enrollment or award of any degree certificate ~~((or 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.

(4) 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 ~~((by students or student groups))~~ that occurs off campus.

(5) The student conduct officer or their designee has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violation of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-240 Statement of purpose. The purpose of these rules is to prescribe standards of conduct for students of Bellingham Technical College. Violations of these standards may be cause for disciplinary action as described in this code.

(1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college ((security)) administration or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-245 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) (~~"College" means Bellingham Technical College.~~

~~(3) "Student conduct officer" is a Bellingham Technical College employee designated by the president to be responsible for implementing and enforcing the student conduct code. The president or vice president of 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.~~

~~(4) "Student group" for purposes of this code is a student organization or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.~~

~~(5) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be 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.~~

~~(6) "The president" is the president of Bellingham Technical College. The president is authorized to:~~

~~(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and~~

~~(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(7)) "Business day" means a weekday, excluding weekends and college holidays.~~

(3) "College premises" includes 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.

(4) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination.

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(5) "Conduct review officer" is a college administrator designated by the president and is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(6) "Disciplinary action" is the process by which the student conduct officer or their designee imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not a disciplinary action.

~~((8))~~ (7) "Disciplinary appeal" is the process by which an aggrieved ((student)) party can appeal the discipline imposed or recommended by the student conduct officer or their designee. Disciplinary appeals from a suspension in excess of ((ten)) 10 instructional days or ((an expulsion)) a dismissal from the college are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

~~((9)) "Respondent" is the student against whom disciplinary action is initiated.~~

~~(10) "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) By sending the document by email 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 emailed and deposited in the mail.~~

~~((11))~~ (8) "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) By sending the document by email and first-class mail to the specified college official's office and college email address.

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

~~((12)) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.~~

~~(13) "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, and persons who have been~~

~~notified of their acceptance for admission are considered "students" for purposes of this chapter.~~

~~(14) "Day" means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.~~

~~(15) A "complainant" is an alleged victim of sexual misconduct.~~

~~(16) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-265(13).)~~ (9) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related conditions.

(10) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "Program" or "programs and activities" means all operations of the college.

(12) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(13) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(14) "Respondent" is a student who is alleged to have violated the student conduct code.

(15) "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) By sending the document by email 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 emailed and deposited in the mail, whichever is first.

(16) "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 notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(17) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(18) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a

student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(19) "Student group" is a student organization including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.

(20) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-260 Statement of student rights. As members of the Bellingham Technical College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college.

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including ~~((sexual))~~ sex-based harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(d) Students have the right to request disability-related accommodations through accessibility resources.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-265 Prohibited student conduct. The college may impose disciplinary sanctions against a student, student group, or a college-sponsored student ~~((group))~~ organization who commits, attempts to commit, aids, abets, incites, encourages ~~((r))~~ or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, ~~((any of))~~ the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including ~~((, but not limited to, cheating, plagiarism, and fabrication.))~~:

(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) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course or dismissal from an academic program. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer or their designee for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

~~((2) Other)~~ (4) Acts of dishonesty. ~~((Any other))~~ Acts of dishonesty ~~((Such acts))~~ include, but are not limited to:

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

~~((Tampering with an election by or for college students; or (e)))~~ (b) ~~((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 disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:~~

~~(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on campus 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. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, 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 code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.

(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 email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) Property violation. Damage to, misappropriation of, unauthorized use or possession of, 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 num-

bers, other confidential personal information, intellectual property, and college trademarks.

~~(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 their duties, including failure to properly identify oneself to such 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 devices, 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 their 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;~~

~~(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; or~~

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

~~(9) Hazing.~~

~~(a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group; and~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions.~~

~~(d) Consent is not a valid defense against hazing.~~

~~(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 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 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. 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, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.~~

~~(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.~~

~~(12) Discriminatory conduct. Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; 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. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-355 (supplemental Title IX student conduct procedures).~~

~~(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:~~

~~(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;~~

~~(ii) Alter the terms or conditions of employment for a college employee(s); and/or~~

~~(iii) Create 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 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. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, 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. Any actual or attempted sexual touching, however slight, with any body part or 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 bodily contact in a sexual manner.

~~(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(I) The length of the relationship;~~

~~(II) The type of relationship; and~~

~~(III) The frequency of interaction between the persons involved in the relationship.~~

~~(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(A) Fear for their safety or the safety of others; or~~

~~(B) Suffer substantial emotional distress.~~

~~(d) For the purposes of this code, "consent" means 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 they are unable to understand what is happening or are 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.~~

~~(14) Harassment. Unwelcome 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, that changes the terms or conditions of employment for a college employee, 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; 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.~~

~~(15) Retaliation. 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 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.~~

~~(16)) (c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.~~

~~(5) Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.~~

~~(6) Cannabis, drug, and tobacco violations.~~

~~(a) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.~~

~~(b) Drugs. The use, possession, production, 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.~~

~~(c) 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 25 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, vaporizers, and snuff.~~

~~(7) Cyber misconduct. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), 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 email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensu-~~

al recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(8) Disruption or obstruction. Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) Discriminatory harassment.

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race, ethnicity, creed, color, sex, gender identity or expression, citizenship or immigration status, national origin, age, religion, disability, veteran or military status, sexual orientation, genetic information, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, pregnancy, marital status, or any other characteristic protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(10) 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.

(11) 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 their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(13) Hazing. Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored 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 psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(15) Misuse of electronic resources. Theft or 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) Procedural interference. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:~~

~~(a) Disruption or interference with the orderly conduct of a proceeding;~~

~~(b) Interfering with someone else's proper participation in a proceeding;~~

~~(c) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness; or~~

~~(d) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member.~~

~~(19))~~ (16) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, theft, 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.

(17) Retaliation. Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

(18) Safety violations. Nonaccidental reckless, or unsafe 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, triggering false alarms or other emergency response systems (, or operating a motor vehicle on college property in a manner which is reasonably perceived as threatening the health or safety of another person.

~~(20) 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.~~

~~(21) 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 violations 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).~~

(19) Sex discrimination. The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) 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.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or 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.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;
(II) The type of relationship; and
(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) Consent. For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) A person cannot consent if they are unable to understand what is happening or are 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.

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

(c) Title IX retaliation means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(20) 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.

(21) 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 housing, traffic, and parking rules.

(22) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, and during college programming and activities, 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 their 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;

(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; or

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

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-270 Disciplinary sanctions. (1) Administration of the disciplinary procedure is the responsibility of the vice president of student services. The student conduct officer, or designee, shall serve as the principle investigator and prosecutor for alleged violations of this code.

(2) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(3) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(4) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member or college administrator, the student conduct officer or designee may set conditions for the student upon return to the class or activity.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer or designee in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse themselves from disciplinary hearings by withdrawing from the college.

(7) In addition to initiating discipline proceedings for the 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 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-280 Initiation of disciplinary action. (1) (~~All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer or designee for disciplinary action.

(4) If a student conduct officer or designee determines that a complaint appears to state a violation of the student conduct code, the student conduct officer or designee will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the parties.

(a) Informal dispute resolution shall not be used to resolve sex discrimination complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer or designee has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer or designee may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer or their designee. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(8) The student conduct officer or their designee shall initiate disciplinary action by serving the respondent with written notice directing them 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.

(9) At the meeting, the student conduct officer or designee 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 or designee may take disciplinary action based upon the available information.

~~((3))~~ The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, 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.

~~(4))~~ (10) Within ~~((ten))~~ 10 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 or designee shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed ~~((7))~~ (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer or designee, if additional information is necessary to reach a determination. The student conduct officer or their designee will notify the parties of any extension period and the reason therefore.

~~((5))~~ (11) The student conduct officer or designee may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 495B-121-265; or

(c) 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.

~~((6))~~ (12) In cases involving allegations of ~~((sexual misconduct))~~ sex discrimination, the student conduct officer or their designee, ~~((on the same date that the 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 their 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.))~~ shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer or their designee shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer or their designee for good cause.

(a) The complainant and respondent may either accept the student conduct officer's or their designee's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request may be verbal or written, but must be clearly communicated to the student conduct officer or their designee.

(d) The student conduct officer or designee shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer or designee may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complaint's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer or their designee, the student conduct officer's or their designee's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's or their designee's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If respondent is found responsible for engaging in sex discrimination, the Title IX coordinator or their designee shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-285 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex-based harassment, as set forth in WAC 495B-121-280, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~ten business~~) 21 calendar 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, complainant if any, 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 a 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 the respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

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

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

(a) ~~((The imposition of))~~ Disciplinary suspensions in excess of ((ten)) 10 instructional days;

(b) Dismissals; ~~((and))~~

(c) Sex discrimination, including sex-based harassment cases; and

(d) Discipline cases referred to the committee by the student conduct officer or their designee, ((the)) a conduct review officer, or the president.

~~((8) Student conduct appeals from the imposition of disciplinary sanctions shall be reviewed through a brief adjudicative proceeding subject to the procedures outlined in WAC 495B-121-290 through 495B-121-305.~~

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

~~(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(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.~~

~~(11) 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.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of disciplinary decisions shall be afforded the same procedural rights as are afforded the respondent.~~

~~(13) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and are not subject to appeal.)~~

(9) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s) to act as the conduct review officer, authorized to exercise any or all duties of the conduct review officer.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

WAC 495B-121-286 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495B-121-265(~~(+9)~~) (13).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization(~~(r)~~) or association(~~(r, or student living group)~~) is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the (~~code~~ ~~of~~) student conduct code, college (~~(anti-hazing)~~) antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-295 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 they are 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) The parties to a brief adjudicative proceeding are the respondent(~~(r)~~) and the student conduct officer(~~(r, and in cases involving sexual misconduct, the complainant)~~). Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college'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 the respondent and the student conduct officer within (~~(ten)~~) 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the deci-

sion and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 10 business days of service of the initial decision, the initial decision shall be deemed the final decision.

~~(4) ((In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the 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. The notice will also inform the complainant of their appeal rights.~~

~~(5))~~ If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension ~~((of more than ten))~~ in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-300 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ~~((ten))~~ 10 business days of service of the initial decision.

(2) The president shall not participate in any case in which they are 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 president shall give all parties 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 decisions and must be served on the parties within ~~((twenty business))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that ~~((committee))~~ judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty business))~~ 20 calendar days after the request is submitted.

(5) If the president ~~((7))~~ upon review ~~((7))~~ determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the 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 their appeal rights.)~~

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-310 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 president;
 (c) One administrative employee (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative employee appointed on a yearly basis shall serve as the chair of the committee and may act 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 the chair, 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)))~~.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair shall receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s), to act as presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-315 Student conduct committee—((Procedure and evidence)) Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(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. The chair may shorten this notice period if both parties agree, and may also continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(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) ~~((If a))~~ Upon request for a document exchange ~~((is))~~ 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, however, 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 or their designee, upon request, shall provide reasonable assistance to the respondent ~~((in obtaining relevant and admissible evidence that is within the college's control))~~ and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer or designee no less than three business days in advance of the hearing. The student conduct officer or their designee shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witness to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(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) In cases heard by the committee, each party may be accompanied at the hearing by ~~((a nonattorney assistant))~~ an advisor of their choice ~~((. A respondent in all appeals before the committee, or a com-~~

~~plainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their 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), which may be an attorney retained at the student's expense.~~

~~(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or complainant is represented by an attorney, the student conduct officer or their designee may also be represented by ((a second, appropriately screened)) an assistant attorney general.~~

~~((10) At the option of the college president, the college may appoint an administrative law judge as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.)) (11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.~~

~~(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.~~

~~(a) Notice. The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.~~

~~(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.~~

~~(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.~~

~~(d) Evidence. In advance of the hearing, the student conduct officer, or designee, shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.~~

~~(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.~~

~~(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:~~

(a) Notice. In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer or their designee shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

- WAC 495B-121-320 Student conduct committee (~~hearing procedures~~)—Presentation 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 (~~location~~) room.
- (3) The chair shall cause the hearing to be recorded by a method that they select, 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 or designee (unless represented by an assistant attorney general) shall present the college's case (~~for imposing disciplinary sanctions~~).
- (6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.
- (7) In cases involving allegations of (~~sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.~~) sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the chair will determine whether the questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.
- (a) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.
 - (b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.
 - (c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the priv-

ilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (i) Spousal/domestic partner privilege;
- (ii) Attorney-client communications and attorney work product privilege;
- (iii) Clergy privileges;
- (iv) Medical or mental health providers and counselor privileges;
- (v) Sexual assault and domestic violence advocate privileges; and
- (vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such questions or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-325 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the (~~student conduct~~) committee chair shall permit the parties to make closing arguments in whatever form (~~it~~), written or verbal, the committee 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 (~~ten business~~) 20 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue (~~an initial~~) a 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 so be identified.

(3) The committee's initial order shall also include a determination on appropriate (~~discipline~~) sanctions, if any. If the matter was referred to the committee by the student conduct officer or their designee, the committee shall identify and impose disciplinary sanc-

tion(s) or conditions(~~(7)~~) (if any), as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction(~~(-s)~~) and/or conditions imposed by the student conduct officer or designee, 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))~~ attorney, if any. The notice will inform the parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of ~~((sexual misconduct, the chair of the student conduct committee, on the same date as))~~ sex-based harassment, the initial decision ~~((is))~~ shall be served on ((the respondent, will serve a written notice upon the 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 complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the complainant of their appeal rights)) all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-330 ~~((Appeal from student conduct committee initial decision.))~~ Student conduct committee—Review of initial decision.

(1) ~~((A party who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party, including a complainant in sex-based harassment cases, may appeal the committee's ~~((initial))~~ decision to the president by filing a ~~((notice of))~~ written appeal with the president's office within ~~((ten business))~~ 21 calendar 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))~~ written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file

a timely response constitutes a waiver of the right to participate in the appeal.

~~(4)~~ If necessary ~~((7))~~ to aid review ~~((7))~~ 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))~~ (5) The president shall provide a written decision to all parties and their attorneys, if any, within ~~((twenty one business))~~ 20 calendar days after receipt of the notice of appeal. The president's decision shall be final and ~~((shall include a notice of any rights to request reconsideration and/or))~~ subject to judicial review pursuant to chapter 34.05 RCW, Part V.

~~((4))~~ (6) In cases involving allegations of ~~((sexual misconduct, 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.~~

~~(5))~~ sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-335 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises ~~((and/))~~ or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer or their designee 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)~~) warning the student that their 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, their designee, or conduct review officer, or to attend a disciplinary hearing.

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

~~(a) Determine)~~

(b) 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 (~~(; and~~

~~(b) Provide).~~

(c) The respondent ((the)) 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.

~~((6))~~ (d) If the respondent 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.

~~((7))~~ (e) 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.

~~((8))~~ (f) 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.

~~((9))~~ (6) In cases involving allegations of (~~sexual misconduct~~) sex-based harassment, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-340 Readmission after dismissal. A student dismissed due to a code of conduct violation from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writ-

ing to the student within ((thirty)) 30 calendar days after completion of the review process.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495B-121-290 Brief adjudicative proceedings authorized.
- WAC 495B-121-350 Order of precedence.
- WAC 495B-121-355 Prohibited conduct under Title IX.
- WAC 495B-121-360 Title IX jurisdiction.
- WAC 495B-121-365 Initiation of discipline.
- WAC 495B-121-370 Prehearing procedure.
- WAC 495B-121-375 Rights of parties.
- WAC 495B-121-380 Evidence.
- WAC 495B-121-385 Initial order.
- WAC 495B-121-390 Appeals.

WSR 25-02-032
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed December 19, 2024, 9:57 a.m., effective January 19, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend chapter 132Q-10 WAC, Standards of conduct for students. To bring the Community Colleges of Spokane's student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Repealing WAC 132Q-10-605; and amending WAC 132Q-10-600, 132Q-10-601, 132Q-10-602, 132Q-10-603, 132Q-10-604, 132Q-10-606, 132Q-10-607, and 132Q-10-608.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Adopted under notice filed as WSR 24-21-082 on October 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 8, Repealed 1; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 19, 2024.

John O'Rourke
Rules Coordinator

OTS-5663.1

AMENDATORY SECTION (Amending WSR 22-12-002, filed 5/19/22, effective 6/19/22)

WAC 132Q-10-600 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence. This supplemental student conduct code and procedure applies to allegations of (~~sexual harassment~~) sex discrimination for incidents occurring on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. (~~The college may, at its discretion,~~

~~contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.))~~

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-601 ~~Sex discrimination—Prohibited conduct ((under Title IX)) and definitions.~~ Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Community Colleges of Spokane may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "~~((sexual harassment))~~ sex discrimination."

For purposes of this supplemental procedure, ("~~sexual harassment~~" encompasses the following conduct:

~~(1) Quid pro quo harassment. A Community Colleges of Spokane employee conditioning the provision of an aid, benefit, or service of the Community Colleges of Spokane on an individual's participation in unwelcome sexual conduct.~~

~~(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Community Colleges of Spokane's educational programs or activities, or employment.~~

~~(3) Sexual assault. Sexual assault includes the following conduct:~~

~~(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, 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.~~

~~(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or 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.~~

~~(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.~~

~~(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.~~

~~(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim~~

~~who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(i) The length of the relationship;~~

~~(ii) The type of relationship; and~~

~~(iii) The frequency of interaction between the persons involved in the relationship.~~

~~(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.) the following definitions apply:~~

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) 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.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or 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.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protec-

ted from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) A person cannot consent if they are unable to understand what is happening or are 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.

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

(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unrea-

sonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class or work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-602 ((Title IX)) Sex discrimination jurisdiction.

~~((1))~~ This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132Q-10-601 and occurs:

~~((a) Occurred in the United States;~~

~~(b) Occurred during a Community Colleges of Spokane educational program or activity; and~~

~~(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.~~

~~(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Community Colleges of Spokane exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Community Colleges of Spokane.~~

~~(3) Proceedings under this supplemental procedure must be dismissed if one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Upon receipt of the formal complaint, the Title IX coordinator shall make an initial inquiry into whether Title IX jurisdiction extends to the complaint. If the Title IX coordinator determines there is no Title IX jurisdiction, the Title IX coordinator will issue a notice of dismissal in whole or part explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.~~

~~(4) After receipt of the investigation report, if the student conduct officer determines the facts in the investigation report are~~

~~not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503))~~

~~(1) On college premises;~~

~~(2) At or in connection with college programs or activities; or~~

~~(3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.~~

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-603 Sex discrimination—Dismissal and initiation of discipline. ~~((1) Upon receiving the Title IX investigation report from the Title IX coordinator or designee, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

~~(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct administrative panel and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:~~

~~(a) Set forth the basis for Title IX jurisdiction;~~

~~(b) Identify the alleged Title IX violation(s);~~

~~(c) Set forth the facts underlying the allegation(s);~~

~~(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and~~

~~(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:~~

~~(i) The advisors will be responsible for questioning all witnesses on the party's behalf;~~

~~(ii) An advisor may be an attorney; and~~

~~(iii) The Community Colleges of Spokane will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.~~

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.)) (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.~~

~~(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based~~

harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When interim suspension or other restriction proceedings are conducted under WAC 1320-10-320, the complainant shall be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the interim suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct administrative panel.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct administrative panel.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If

either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-604 Sex discrimination—Prehearing procedure. ((+1))

~~Upon receiving the disciplinary notice, the chair of the student conduct administrative panel will send a hearing notice to all parties, in compliance with WAC 132Q-10-315. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Community Colleges of Spokane intends to offer the evidence at the hearing.)~~ (1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct administrative panel must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct administrative panel and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132Q-10-315, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure

of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4) (b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required by WAC 1320-10-315, the prehearing notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but is not limited to, directives by the student conduct officer or chair issuing

directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-606 Sex discrimination—Presentation of evidence.

~~((The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:~~

~~(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.~~

~~(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.~~

~~(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:~~

~~(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or~~

~~(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.~~

~~(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.~~

~~(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:~~

~~(a) Spousal/domestic partner privilege;~~

~~(b) Attorney-client and attorney work product privileges;~~

~~(c) Privileges applicable to members of the clergy and priests;~~

~~(d) Privileges applicable to medical providers, mental health therapists, and counselors;~~

~~(e) Privileges applicable to sexual assault and domestic violence advocates; and~~

~~(f) Other legal privileges identified in RCW 5.60.060.)~~ In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or

witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(1) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(2) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(3) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client communications and attorney work product privilege;

(c) Clergy privileges;

(d) Medical or mental health providers and counselor privileges;

(e) Sexual assault and domestic violence advocate privileges; and

(f) Other legal privileges set forth in RCW 5.60.060 or federal law.

(4) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(5) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-607 ~~Sex discrimination—Initial order.~~ (1) ~~((In addition to complying))~~ The student conduct administrative panel will comply with WAC 132Q-10-330 ~~((, the student conduct administrative panel will be responsible for conferring and drafting an initial order that:~~

~~(a) Identifies the allegations of sexual harassment;~~

~~(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;~~

~~(c) Makes findings of fact supporting the determination of responsibility;~~

~~(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;~~

~~(e) Contains a statement of, and rationale for, the student conduct administrative panel's determination of responsibility for each allegation;~~

~~(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;~~

~~(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Community Colleges of Spokane's education programs or activities; and~~

~~(h) Describes the process for appealing initial orders from Spokane Community College to Spokane Falls Community College's vice president of student affairs or initial orders from Spokane Falls Community College to the vice president of student services).~~

~~(2) ((The committee chair will serve the initial order on the parties simultaneously.)) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.~~

AMENDATORY SECTION (Amending WSR 22-12-002, filed 5/19/22, effective 6/19/22)

WAC 132Q-10-608 Sex discrimination—Appeals. ~~((1) All parties, including the student conduct officer in their capacity as a representative of the college shall have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the appropriate vice president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.~~

~~(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.~~

~~(3) Upon receiving a timely appeal, the appropriately identified vice president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the appropriate vice president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the appropriate vice president shall serve copies of the responses to the other parties.~~

~~(4) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the appropriate vice president's office.~~

~~(5) The appropriate vice president or their delegate, based on their review of parties' submission and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and if amended set for the new disciplinary sanctions and conditions.~~

~~(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.~~

~~(7) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.)~~ (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final. For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal as the appeal authority. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal as the appeal authority.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct administrative panel and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132Q-10-605 Rights of parties.

WSR 25-02-034

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed December 19, 2024, 12:20 p.m., effective January 19, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To bring chapter 495B-168 WAC into compliance with RCW 28B.10.293 regarding collection of debts and clarify language.

Citation of Rules Affected by this Order: Amending WAC 495B-168-020, 495B-168-030, 495B-168-040, and 495B-168-050.

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

Adopted under notice filed as WSR 24-21-145 on October 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 19, 2024.

Ronda Laughlin
Executive Assistant to the President

OTS-5281.1

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-168-030 Fines. In cases where damage or loss of library material occurs, the patron will be assessed the replacement cost. In other instances where library-media materials are retained by the borrower beyond the designated due date, fines will be levied as a sanction to effect the prompt return of items which may be in demand by others. When materials are not returned, or fines not paid, holds are placed on the (~~transcript records~~) borrowing privileges of those involved. (~~In extreme cases,~~) When expensive or valuable items are involved(, the provisions of RCW 27.12.340 may be invoked) and reasonable attempts to advise and notify the debtor have been made, outstanding fines and fees may be assigned to a collection agency (RCW 19.16.500).

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-168-040 (~~(Student handbook.)~~) Library information. Detailed information governing the operation of the library-media center and the rules for loaning books, other print materials, and nonprint materials is (~~included in the student handbook of~~) located on Bellingham Technical College's website.

WSR 25-02-036
PERMANENT RULES
DEPARTMENT OF
VETERANS AFFAIRS

[Filed December 19, 2024, 3:09 p.m., effective January 19, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules update WAC 484-50-010 to align with the recent update to the governing statute RCW 42.56.440 and 43.60A.290. To accomplish this we intend to add language to subsection [(1)](j) regarding veteran discharge papers and also add language to subsection (2)(b) explaining the records denial appeal option to the public.

Citation of Rules Affected by this Order: Amending WAC 484-50-010.

Statutory Authority for Adoption: RCW 42.56.440 and 43.60A.290.

Adopted under notice filed as WSR 24-17-062 on August 15, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2024.

Heidi Audette
Communications and Legislative Director

OTS-5755.1

AMENDATORY SECTION (Amending WSR 20-15-006, filed 7/2/20, effective 8/2/20)

WAC 484-50-010 What if the public record contains information that is exempt from public disclosure? (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for WDVA clients. Personal information includes, but is not limited to:

- (i) Names;
- (ii) Telephone numbers;
- (iii) Fax numbers;
- (iv) Email addresses;
- (v) Social Security numbers;
- (vi) VA claim numbers;
- (vii) VA disability percentages;

(viii) DOD type of military separation, characterization of service, narrative reason for separation, reentry code, separation code;
(ix) Account numbers;
(x) Certificate or license numbers;
(xi) Vehicle identifiers and serial numbers, including license plate numbers;
(xii) Device identifiers and serial numbers;
(xiii) Web universal resource locators (URLs);
(xiv) Internet protocol (IP) address numbers;
(xv) Biometric identifiers, including finger and voice prints;
(xvi) Full face photographic images and any comparable images;
(xvii) Any other unique identifying number, characteristic, or code;

(xviii) All geographic subdivisions smaller than a state, including street address, mailing address, city, county, precinct, geocodes, and zip code, except for the initial three digits of a zip code; and
(xix) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death.

(b) Under chapter 70.02 RCW and related federal laws, protected health care information and medical records.

(c) Under RCW 42.56.230(3), personal information in files maintained for WDVA employees or elected officials to the extent that disclosure would violate their right to privacy.

(d) Under RCW 42.56.230(5), credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including Social Security numbers, except when disclosure is expressly required by or governed by other law.

(e) Under RCW 42.56.250, the following information from personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

(i) Residential addresses;
(ii) Residential phone numbers;
(iii) Personal wireless telephone numbers;
(iv) Personal email addresses;
(v) Social Security numbers;
(vi) Driver's license numbers;
(vii) Identocard numbers;
(viii) Emergency contact information; and
(ix) Names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

(f) Under RCW 42.56.235, records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.

(g) Effective July 1, 2020, agency employee records described under RCW 42.56.660.

(h) Effective July 1, 2020, lists of state agency employee names under RCW 42.56.675.

(i) Under RCW 42.56.640 and 43.17.410, sensitive personal information of vulnerable individuals and in-home caregivers for vulnerable populations, except as allowed under subsection (3) of this section.

(j) Under RCW 42.56.440, veteran discharge or separation documents held by the department of veteran affairs are confidential and not subject to disclosure, except as provided in RCW 43.60A.290.

(2) If the requested public record contains information that is exempt from public disclosure, WDVA may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record, sending a written explanation and citing the exemption that applies to the denial, while also giving the requestor the option to ask for an internal review of the records denial should they wish to do so; or

(c) Neither confirm or deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed, when a denial would reveal information that is confidential and must not be disclosed.

(3) Sensitive personal information under subsection (1)(i) of this section may be disclosed or produced if WDVA determines that the requestor:

(a) Meets the criteria under RCW 42.56.645; and

(b) Has complied with any procedures developed by WDVA to protect the confidentiality of the information.

WSR 25-02-038
PERMANENT RULES
DEPARTMENT OF
VETERANS AFFAIRS

[Filed December 19, 2024, 3:30 p.m., effective January 19, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules update outdated language, address changes in meeting structure, acknowledge homes liaisons and community town halls, and update the process for removing a veterans' affairs advisory committee member as a result of not attending regular meetings.

Citation of Rules Affected by this Order: Amending WAC 484-10-035.

Statutory Authority for Adoption: RCW 43.60A.070.

Adopted under notice filed as WSR 24-17-061 on August 15, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2024.

Heidi Audette
Communications and Legislative Director

OTS-5754.1

AMENDATORY SECTION (Amending WSR 92-17-045, filed 8/14/92, effective 9/14/92)

WAC 484-10-035 Veterans' affairs advisory committee. Rules of operation.

(1) The committee shall have the following powers and duties:

(a) To serve in an advisory capacity to the governor and the director on all matters pertaining to the department of veterans affairs;

(b) To acquaint themselves fully with the operations of the department and recommend such changes to the governor and the director as they deem advisable.

(2) The department of veterans affairs, and its director, shall fully recognize the advisory committee, as established under RCW 43.60A.080.

(3) The committee chair shall, following annual elections but before September, confer with the director to set the number of, and schedule for, authorized meetings during the following (~~twelve~~) 12 months.

(4) A quorum must be present prior to the transaction of official committee business. A quorum for the committee shall be construed to be a simple majority of the committee members authorized in RCW 43.60A.080.

(5) The order of business (~~(will be according to Robert's Rules of Order as revised, and the usual order of business)~~) for regular meetings shall be as follows:

- (a) Pledge of Allegiance;
- (b) Roll call and introductions;
- (c) (~~(Reading and)~~) Approval of minutes;
- (d) (~~(Reading of official and other communications;)~~) Discussion of upcoming town hall or community meetings;
- (e) (~~(Audience introductions;)~~) Homes liaisons reports and discussion;
- (f) Report from the director or (~~(his/her)~~) their designee;
- (g) Report of committees;
- (h) (~~(Old business;)~~) Other agenda items identified by the chair and director;

(i) New business;

(j) (~~(Agenda set for next meeting;~~

~~(k))~~) Time and place for next meeting;

(~~(l))~~) (k) Adjournment (by majority vote of members present).

(6) Summary minutes shall be kept of (~~(all of the)~~) committee proceedings and a complete copy will be provided to each member of the committee and the director within (~~(fourteen)~~) 14 calendar days of adjournment. When requested to do so by the committee, the director shall present a copy of the minutes to the governor.

(7) Each member of the committee is expected to actively participate in and attend all regular meetings of the committee either in person, or virtually if that option is available. (~~(The name of any committee member who)~~) If a committee member has three consecutive unexcused absences from (~~(regularly scheduled)~~) regular meetings (~~(will be automatically forwarded to the governor's office with a request that a replacement be named to the committee)~~), the director will meet with the member to determine if a replacement is needed. If a replacement is needed, a copy of the replacement request will be forwarded to the appropriate veterans organization department commander and subsequently to the governor's office for review and appointment.

(8) (~~(The chairperson shall notify, in writing, any member having three consecutive unexcused absences that a recommendation is being forwarded to the governor.~~

~~(9))~~) A member will receive an excused absence at the discretion of the chairperson or director.

(~~(10))~~) (9) The director, or (~~(his/her)~~) their designee, and such members of the department staff as the director selects, shall meet with the committee on a regular basis.

(~~(11))~~) (10) The committee will annually review the quality and range of services performed by the department.

(~~(12))~~) (11) Annually, the committee shall designate one of its meetings as a joint meeting with the commanders and service officers of all veterans organizations nationally recognized by the Federal Department of Veterans Affairs.

(~~(13))~~) (12) During June of each year, there shall be an election of the chairperson and vice chairperson for the coming year. New officers shall take office in September. Those elected will serve for one year and be limited to one term in succession.

~~((14))~~ (13) All meetings and events relating to the advisory committee shall be accessible to all members and guests.

~~((15))~~ (14) The chairperson may appoint special committees consisting of not less than two members when necessary to make special inquiries, reports, and investigations.

WSR 25-02-047
PERMANENT RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed December 20, 2024, 10:39 a.m., effective January 20, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This chapter establishes the underground storage tank revolving loan and grant program pursuant to chapter 70A.345 RCW and outlines the program requirements and processes. The purpose of the program is to assist owners or operators of petroleum underground storage tank systems to: Remediate past releases; upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The program also assists owners and operators of heating oil tanks to remediate past releases or prevent future releases by upgrading, replacing, decommissioning, or removing heating oil tank systems.

Citation of Rules Affected by this Order: New chapter 374-90 WAC, Underground storage tank revolving loan and grant program.

Statutory Authority for Adoption: RCW 70A.345.030.

Adopted under notice filed as WSR 24-21-143 on October 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 20, 2024.

Phi V. Ly
Legislative and Policy Manager

OTS-5919.1

Chapter 374-90 WAC
UNDERGROUND STORAGE TANK REVOLVING LOAN AND GRANT PROGRAM

NEW SECTION

WAC 374-90-010 Authority and purpose. This chapter establishes the underground storage tank revolving loan and grant program pursuant to chapter 70A.345 RCW and outlines the program requirements and processes. The purpose of the program is to assist owners or operators of

petroleum underground storage tank systems to: Remediate past releases; upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The program also assists owners and operators of heating oil tanks to remediate past releases or prevent future releases by upgrading, replacing, decommissioning, or removing heating oil tank systems.

NEW SECTION

WAC 374-90-020 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" or "PLIA" means the pollution liability insurance agency, as used throughout this chapter. For purposes of chapter 70A.345 RCW, agency or PLIA shall mean staff or employees of the pollution liability insurance agency.

(2) "Applicant" means the owner or operator of a petroleum underground storage tank or heating oil tank who has applied to the program.

(3) "Ecology" means the Washington state department of ecology.

(4) "Facility" or "petroleum underground storage tank facility" means the property where the enrolled tank is located, including any tank-related infrastructure within that property. The term encompasses all real property under common ownership associated with the operation of the petroleum underground storage tank. For purposes of this program, facility does not have the same meaning as WAC 173-340-200.

(5) "Grant" means a financial award to a program participant that is not repaid by the grantee.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means the same as RCW 70A.345.020(2). Heating oil tank does not include a tank used solely for industrial process heating purposes or generation of electrical energy. This term does not include any:

(a) Tank owned by the federal government or located on a federal military installation or federal military base.

(b) Tank located within the Hanford site.

(8) "Location" means the physical area or site where the assessment, cleanup, or infrastructure replacement, upgrade, or installation will occur.

(9) "Model Toxics Control Act" or "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW, and chapter 173-340 WAC.

(10) "Online community" means the cloud-based application and data system used by the agency and the applicant or participant to submit documentation and to report, process, and look up project information.

(11) "Operator" means the entity in control of, or having a responsibility for, the daily operation of a petroleum underground storage tank or heating oil tank.

(12) "Owner" means a person who owns a petroleum underground storage tank or heating oil tank.

(13) "Participant" means a petroleum underground storage tank owner or operator accepted into the program who receives and accepts a financial award offer, other than a preliminary planning assessment grant, and signs a participant agreement.

(14) "Petroleum" has the same meaning as defined in WAC 173-360A-0150(48).

(15) "Petroleum underground storage tank" means an underground storage tank regulated under chapter 70A.355 RCW or subtitle I of the Solid Waste Disposal Act (42 U.S.C. chapter 82, subchapter IX) that is used for storing petroleum. This includes tanks owned or operated on property under the direct jurisdiction of either the federal government or tribal governments other nonstate regulating agency. This term does not include any:

(a) Septic tank;

(b) Pipeline facility (including gathering lines):

(i) Which is regulated under 49 U.S.C. chapter 601; or

(ii) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(c) Surface impoundment, pit, pond, or lagoon;

(d) Storm water or wastewater collection system;

(e) Flow-through process tank;

(f) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(g) Tank owned by the federal government or located on a federal military installation or federal military base; and

(h) Tank located within the Hanford site.

(16) "Petroleum underground storage tank system" or "tank system" means a petroleum underground storage tank and connected underground piping, underground ancillary equipment, and containment system, if any.

(17) "Preliminary planning assessment" means an identification report, to the agency, of any existing contamination at the facility, the necessary actions to address such contamination, and the cost estimate for cleanup and any desired infrastructure upgrades.

(18) "Prime consultant" means an environmental consultant or business contracted by PLIA to perform the preliminary planning assessment or remediation under the program.

(19) "Program" means the underground storage tank revolving loan and grant program established by chapter 70A.345 RCW.

(20) "Release" has the same meaning as defined in RCW 70A.305.020.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of chapter 70A.305 RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Site" has the same meaning as "facility" in RCW 70A.305.020. The phrase "facility" as used in this program is defined above.

(23) "Technical assistance program" means the program administered by the agency under the requirements of chapter 374-80 WAC.

NEW SECTION

WAC 374-90-030 Eligibility—Underground storage tank owner or operator. To be eligible for the program, an owner or operator of a petroleum underground storage tank must meet the following requirements.

(1) For an operational petroleum underground storage tank:

(a) Maintain compliance with the petroleum underground storage tank requirements of chapter 173-360A WAC, or equivalent federal regulating agency; and

(b) Be registered with the department of ecology or equivalent federal regulating agency.

(c) The petroleum underground storage tank cannot be within the site boundary currently under a Model Toxics Control Act order or decree.

(2) For a nonoperational petroleum underground storage tank, or if the tank has been removed, then the tank must not be within the site boundary of a Model Toxics Control Act order or decree. If the tank has been removed, the applicant must show by clear, cogent, and convincing evidence that the release occurred from a petroleum underground storage tank.

(3) The owner or operator is seeking financial assistance to pay for costs associated with at least one of the following actions:

(a) Remediation of a release or prevention of a threatened release of petroleum from a petroleum underground storage tank or its system;

(b) Upgrade, replacement, or removal of a petroleum underground storage tank system unless closure in place is necessary; or

(c) Upgrade, replacement, or retrofit of existing infrastructure, or the installation of new infrastructure to dispense renewable or alternative energy for motor vehicles, including recharging stations for electric vehicles or alternate fuels.

NEW SECTION

WAC 374-90-040 Eligibility—Heating oil tank owner or operator.

(1) To be eligible for the program, a heating oil tank owner or operator must have a heating oil tank or a historic heating oil release, and be seeking financial assistance to pay for costs associated with at least one of the following actions:

(a) Remediation of a release or prevention of a threatened release of petroleum from a heating oil tank or its system;

(b) Upgrade, replacement, or removal of a heating oil tank or its system unless a determination is made that closure in place is necessary; or

(c) Upgrade or installation of new infrastructure to replace the heating oil tank with another source for heating purposes.

(2) For a heating oil tank (operational or nonoperational), or if the tank has been removed, then the tank must not be located within the site boundary of a Model Toxics Control Act order or decree. If the heating oil tank has been removed, then the applicant must show by clear, cogent, and convincing evidence that the release occurred from a heating oil tank.

NEW SECTION

WAC 374-90-050 Application. (1) The application cycle and acceptance dates for the program will be posted on the agency's website.

(2) The director may suspend an application cycle when program funding is limited or if the agency must address a large number of applicants from an application cycle.

(3) Applicants will submit applications through the agency's on-line community. Alternative formats will be provided if requested from the agency.

(4) Applications must be complete with all required information and must be submitted by the application deadline.

(5) PLIA will require an applicant's personal credit history report if the applicant seeks loan funding. This information will be used to assess the applicant's financial condition.

(6) The agency will review all completed applications in the application cycle and will issue written notice about program acceptance to applicants.

(a) For accepted applicants, the notice letter will indicate whether a preliminary planning assessment is required.

(b) The agency may determine that a preliminary planning assessment is not required if an applicant provides evidence of an equivalent and technically sufficient assessment. Such an assessment should be provided in an applicant's application. If PLIA accepts the assessment, the notice letter will confirm that the assessment is accepted and that a preliminary planning assessment is not required.

(c) If an application is denied, the notice letter will list the reasons for program denial. Denied applicants may apply to the program in another application cycle if they address the reasons for denial.

NEW SECTION

WAC 374-90-070 Preliminary planning assessment grant. (1) The agency may award grant funding for a preliminary planning assessment if there has been a release or threatened release of a hazardous substance to the environment.

(2) The amount awarded through a preliminary planning assessment grant reduces an applicant's total funding award amount. Preliminary planning assessment grant amounts are listed in the program guidance.

(3) If PLIA determines that a preliminary planning assessment is required, the agency will designate a prime consultant to perform the preliminary planning assessment at the location of the release or threatened release.

(4) An award of a preliminary planning assessment grant does not guarantee that the applicant will receive further program funding.

NEW SECTION

WAC 374-90-080 Project prioritization—Underground storage tank owner or operators. (1) The agency may rank each application to establish funding and project prioritization.

(2) To ensure that program funds are used to address contamination from petroleum underground storage tanks, the agency may prioritize funding for project locations that require remediation.

(3) The agency will review information from the preliminary planning assessment, the application, and the following factors and any other factors PLIA deems relevant to establish ranking:

(a) Whether or not a release from a petroleum underground storage tank has occurred, and the nature and extent of contamination from that release.

(b) An assessment of whether the petroleum contamination poses a threat to public health and the environment.

(c) An evaluation of the location with preestablished criteria including, but not limited to, proximity to drinking water, provided in the program guidance.

(d) An assignment of a numeric score to each applicant project location and a ranking of each applicant within an application cycle.

(4) The agency may adjust project rankings if the extent of petroleum contamination is later identified as posing an immediate threat to human health or the environment. The agency may also rerank projects within an application award cycle due to emergent conditions or new information.

(5) Applicants may not appeal the agency's project rankings.

NEW SECTION

WAC 374-90-090 Project prioritization—Heating oil tank owners or operators. (1) The agency may rank each application to establish funding and project prioritization, which will determine timing on when project remediation work may occur and may limit funding offered based on the factors in subsection (3) of this section.

(2) To ensure that program funds are used to address contamination from heating oil tank releases, the agency may prioritize funding and timing of when project remediation may occur for projects that require immediate remediation and where it is known that the release is impacting surface water, groundwater used for drinking water, or a stormwater system.

(3) The agency will prioritize participants based on the time the application was submitted, general location information, and the following factors and any other factors PLIA deems relevant:

(a) Determine if the project location has contamination from a heating oil tank release and only requires remediation funding.

(b) The project location has contamination from a heating oil tank release and requires funding for remediation and infrastructure upgrade. Program funding is allocated to the cleanup of contamination

from the heating oil tank release before allocation for infrastructure upgrades.

(c) The project location requires funding for only infrastructure upgrades.

(d) The project location includes a vulnerable population as defined in RCW 70A.02.010(14), or an overburdened community as identified in RCW 70A.02.010(11).

(4) The agency may adjust project rankings when the extent of contamination from the heating oil tank release is later identified as posing a threat to human health or the environment.

(5) The program may re-rank or reassess applications due to emergent conditions or availability of new information. Affected applicants will be notified in writing.

(6) Applicants may not appeal the agency's project rankings.

NEW SECTION

WAC 374-90-100 Funding awards—Underground storage tank owners or operators. (1) The agency may award funding for any amount up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single petroleum underground storage facility.

(2) Program funding is awarded by loan, grant, agency-led remediation, or a combination of these. The total funding amount cannot exceed the maximum amount established in RCW 70A.345.030(2).

(3) An applicant is considered for the following award types.

(a) Loan.

(i) A loan award is for the amount that the participant is borrowing from the program. The participant will be charged with interest on the outstanding balance of moneys applied to project work. Financing and repayment terms will be described in the participant loan agreement.

(ii) The loan amount is reduced by any grant amount paid towards the preliminary planning assessment and the technical assistance program fee, if applicable.

(iii) Loan awards must be applied to remedial action prior to infrastructure upgrade costs.

(iv) Program participants may select their own consultant to perform remediation and infrastructure upgrades.

(b) Grant.

(i) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(ii) All work may be performed by a prime consultant.

(iii) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(c) Government grant.

(i) A government grant may only be awarded to a state agency, local government, or a tribal government who is the owner or operator of a petroleum underground storage tank.

(ii) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(iii) All work may be performed by a prime consultant.

(iv) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(d) Agency-led remediation.

(i) Agency-led remediation funding is limited to costs associated with remedial action and is subject to cost recovery as provided in RCW 70A.345.070.

(ii) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award.

(iii) All remediation work will be conducted by a prime consultant.

(4) Program funding awards are made after:

(a) The department of health conducts a review of the applicant's financial circumstances and provides a recommendation (as applicable); and

(b) The agency reviews a completed preliminary planning assessment or a technically sufficient assessment that was submitted with the application.

(5) If selected for funding, any applicant with funding needs for remediation will enroll in the agency's technical assistance program with the enrollment fee paid from the funding awarded under this chapter.

(6) When PLIA issues an applicant a written program funding award, the agency may require a meeting to review the terms and conditions of the award. Applicants have 30 calendar days to either accept or decline the program funding award and, if accepting the award, must sign a participant agreement. If the applicant does not accept the program funding award after 30 calendar days, the award terminates.

(7) Funds are not dispersed directly to the participant except with the director's approval.

(8) The agency will directly pay the prime consultant or participant-selected contractor direct costs from the program funding award after review and approval of invoices.

(9) PLIA may terminate a program funding award or may adjust a ranking of an application if information about the project significantly differs from the preliminary planning assessment. If a program funding award is terminated or a ranking is adjusted, the agency will provide written notice to the applicant with an explanation.

NEW SECTION

WAC 374-90-110 Funding awards—Heating oil tank owners or operators. (1) The agency may award funding in total of any amount up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(a) Program funding offered by grant is an amount up to, but not exceeding, \$60,000.

(b) Where program funding is only a loan the amount is up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(c) Where a project is awarded a grant and loan, the program funding combined may not exceed the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(2) Program funding may be offered by loan, grant, or combination of both.

(3) A program funding award is determined after the agency reviews the preliminary planning assessment or technically sufficient assessment, and the department of health conducts an applicant financial review (as applicable). Applicants not seeking loan funding do not need a department of health review.

(4) If the program funding award is applied to remediation, then the applicant must enroll in the agency's technical assistance program. The enrollment fee will then be paid from the total funding award.

(5) The application will be considered for the following program funding award types.

(a) Loan.

(i) A loan award amount is reduced by the amount used for the preliminary planning assessment and the technical assistance program enrollment fee, if applicable.

(ii) Loan funding will be applied to remediation prior to infrastructure upgrades.

(iii) Program participants may select their own consultant to perform remediation and infrastructure upgrades.

(b) Grant.

(i) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(ii) All work may be performed by a prime consultant.

(iii) If applicants or participants are not able to provide access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(6) If applicants receive a written program funding award, the agency may require a meeting to review the terms and conditions of the award. Applicants have 30 calendar days to either accept or decline the program funding award and, if accepting the award, sign a participant agreement. If the applicant does not accept the program funding award after 30 calendar days, the award terminates.

(7) Funds are not dispersed directly to the participant except with the director's approval.

(8) The agency will directly pay the prime consultant or participant-selected contractor direct costs from the program funding award after review and approval of invoices.

(9) If required, applicants receiving a program funding award may have their award terminated or ranking adjusted when, in PLIA's discretion, information about the project significantly differs from the preliminary planning assessment. In that event, the agency will provide written notice to the applicant with an explanation.

NEW SECTION

WAC 374-90-120 Eligible and ineligible costs—Underground storage tank program funding awards. (1) Program funding awards used for an asset (e.g., infrastructure), then that asset must have a useful life of at least 13 years.

(2) Loan funding. Eligible costs include, but are not limited to, the following:

(a) Remedial action, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of petroleum underground storage tanks.

(b) Testing and assessments to determine the nature and extent of a release of petroleum and whether cleanup standards have been met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage as required by municipal law.

(d) Replacement costs for a new petroleum underground storage tank and certain equipment related to the operation of the affected tank.

(e) Some infrastructure upgrades, including alternative energy fueling facilities.

(3) Grant funding. Eligible grant costs include, but are not limited to, the following:

(a) Remedial action, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of petroleum underground storage tanks.

(b) Testing and assessments to determine the extent and severity of a release of petroleum and whether cleanup standards have been met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage as required by municipal law.

(4) Ineligible costs for any program funding award. The program will not pay for ineligible costs incurred by the program participant. PLIA has discretion to determine whether costs are ineligible.

(5) Ineligible costs include, but are not limited to, the following:

(a) Costs covered by other valid insurance or warranties.

(b) Remedial action that exceeds cleanup levels required by the agency or MTCA.

(c) Remedial action to address a release of petroleum from or damage to a petroleum underground storage tank, or its system, or surrounding property caused by the owner or operator, an owner/operator's contractor, or the prime consultant.

(d) Replacement of tanks that were decommissioned or nonoperational at the time of a release.

(e) Any legal costs.

(f) Costs not included in an agency-approved scope of work.

(g) Costs incurred by the participant after the date the participant received a termination letter.

(h) Business related expenses, including:

(i) Costs related to development of the application package.

(ii) Costs for a business to remain operational during remedial activities.

(iii) Costs for lost revenue, including lost business income resulting from closures related to the release or remediation.

(iv) Retroactive costs.

NEW SECTION**WAC 374-90-130 Eligible and ineligible costs—Heating oil tanks.**

(1) Program funding award must be used for improvements (e.g., heating oil tank) that have a useful life of at least 13 years.

(2) Loan funding. Eligible loan costs include, but are not limited to, the following:

(a) Remedial actions, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of heating oil tanks.

(b) Testing and assessments, including:

(i) Costs necessary to determine the nature and extent of the petroleum release.

(ii) Soil sampling, water sampling, soil vapor sampling, and testing to determine if cleanup standards are met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage required by municipal law.

(d) Infrastructure upgrades, including:

(i) Replacement costs for a new heating oil tank that meets the current standards for such tanks, as specified in guidance policy.

(ii) Replacement of certain equipment related to the operation of the affected tank.

(e) Replacement of the heating oil tank and infrastructure with heating infrastructure including:

(i) Alternative energy heating systems.

(ii) Upgrades to existing home heating oil systems.

(f) Other costs included within an agency-approved scope of work.

(3) Grant funding. Eligible grant costs include, but are not limited to, the following:

(a) Remedial actions, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of heating oil tanks.

(b) Testing and assessments, including:

(i) Costs necessary to determine the nature and extent of the petroleum release.

(ii) Soil sampling, water sampling, soil vapor sampling, and testing to determine if cleanup standards are met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage as required by municipal law.

(d) Other costs included within an agency-approved scope of work.

(4) Loan or grant funding. Ineligible costs will not be paid with program funds. The program is not responsible for paying any ineligible costs incurred by the participant. Ineligible costs include, but are not limited to, the following:

(a) Costs covered by other valid insurance or warranties.

(b) Remedial action that exceeds cleanup levels required by the agency or MTCA.

(c) Remedial action to address a release or damage to a heating oil tank or its system or surrounding property caused by the owner or operator, the owner/operator's contractor, or the prime consultant.

(d) Replacement of tanks that were decommissioned, temporarily out of service, or abandoned at the time of a release of petroleum.

- (e) Any legal costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions.
- (f) Costs not included in an agency-approved scope of work.
- (g) Costs incurred by the participant after the date the participant received a termination letter.
- (h) Temporary heat restoration.
- (i) Business related expenses, including:
 - (i) Costs needed to develop the application package.
 - (ii) Costs for a business to remain operational during remedial activities.
 - (iii) Costs for lost revenue.
 - (iv) Retroactive costs.

NEW SECTION

WAC 374-90-140 Participant program termination. (1) The agency may terminate the program funding award, in whole or in part, for any of the following situations.

(a) The participant fails to comply with the program funding award terms and conditions.

(b) The participant and agency mutually agree to the suspension or termination of the program funding award.

(c) A participant's facility enters into a Model Toxics Control Act enforcement order, agreed order, or consent decree.

(2) The agency may immediately terminate a loan or grant without notice when necessary to protect the interests of the state.

(3) The participant will be notified in writing if the agency terminates the program funding award. A cost calculation, record keeping, and program summarization process will begin no later than one week after written notice of the termination has been mailed to the participant. The notice will describe the procedures necessary to close out participation in the program. The participant will repay the remainder of the loan according to the established loan terms.

NEW SECTION

WAC 374-90-150 Overpayments. (1) The agency may require an owner or operator or prime consultant to return any overpayment made by the program. Overpayments may occur if:

(a) Another party, such as an insurer, has paid costs prior to payments from the program; or

(b) The agency discovers an accidental overpayment has been made to an owner, operator, or prime consultant for any reason.

(2) If an overpayment is not paid upon demand, the agency may pursue one of the following actions:

(a) Collections. The agency may request cost recovery with a debt collection agency.

(b) Lien filing. The agency may seek cost recovery of remedial action costs from any liable person by filing a lien on the petroleum underground storage tank facility as authorized under RCW 70A.345.070.

(c) Civil action. The agency may request the attorney general's office to commence a civil action against the owner or operator in su-

perior court to recover costs and the agency's administrative and legal expenses to pursue recovery.

NEW SECTION

WAC 374-90-160 Fraud and material omissions. (1) The agency may seek return of payments made if:

(a) Any party misrepresents or omits material facts relevant to the agency's determination of coverage; or

(b) Any party, with intent to defraud, initiates a loan or grant request or issues or approves an invoice or request for payment, with knowledge that the information submitted is false in whole or in part.

(2) If the agency determines that any party has committed program fraud or omitted material information, the agency may request the attorney general's office to:

(a) Commence a civil action against the person in superior court; or

(b) Recover the overpayment and other expenses as determined by a court.

(3) If the agency determines that the owner or operator of an enrolled petroleum underground storage tank omitted material facts or intentionally defrauded the program, it will terminate program enrollment, and any person or party determined to have committed program fraud may be prohibited from applying for future funding. The agency will report instances of fraud to the appropriate authorities including criminal referral for prosecution.

(4) Any party participating in the program must agree to allow the agency to conduct financial audits related to the receipt of payments intended for remedial actions.

WSR 25-02-051
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 20, 2024, 1:16 p.m., effective January 20, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to adopt a new section in chapter 388-106 WAC describing the list of holidays which private duty nursing providers may claim holiday pay; WAC 388-106-1021 What days are considered holidays for private duty nursing providers?

Citation of Rules Affected by this Order: New WAC 388-106-1021.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 24-21-156 on October 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: December 20, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5057.3

NEW SECTION

WAC 388-106-1021 What days are considered holidays for private duty nursing providers? The following dates are holidays solely for the purpose of contracted services rates for private duty nursing providers:

- (1) The first day of January (New Year's Day);
- (2) The third Monday of January (Martin Luther King, Jr.'s birthday);
- (3) The third Monday of February (Presidents' Day);
- (4) The last Monday of May (Memorial Day);
- (5) The 19th day of June (Juneteenth);
- (6) The fourth day of July (Independence Day);
- (7) The first Monday in September (Labor Day);
- (8) The 11th day of November (Veteran's Day);
- (9) The fourth Thursday in November (Thanksgiving Day);
- (10) The Friday immediately following the fourth Thursday in November (Native American Heritage Day); and
- (11) The 25th day of December (Christmas Day).

WSR 25-02-054

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed December 20, 2024, 2:39 p.m., effective January 20, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule seeks to improve regulatory compliance for vehicle dealers and manufacturers by clarifying definitions related to certain vehicle dealer and manufacturer activities under chapter 46.70 RCW, Dealers and manufacturers. The amendment further defines the "soliciting" of a sale and creates a new definition for the act of "public education." Additionally, the amendment adds examples of what constitutes "public education."

Citation of Rules Affected by this Order: Amending WAC 308-66-110 Definitions.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.70.160 Rules and regulations.

Other Authority: RCW 46.70.011 Definitions.

Adopted under notice filed as WSR 24-21-149 on October 22, 2024.

A final cost-benefit analysis is available by contacting Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-3846, email rulescoordinator@dol.wa.gov, website dol.wa.gov/about/rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 20, 2024.

Ellis Starrett
Rules and Policy Manager

OTS-5912.1

AMENDATORY SECTION (Amending WSR 07-03-119, filed 1/22/07, effective 2/22/07)

WAC 308-66-110 Definitions. For the purpose of administering chapter 46.70 RCW, the following terms shall be construed in the following manner:

(1) "Offering" the sale of a vehicle shall include the distribution by any means of a list, with or without prices, of vehicles for sale.

(2) "Soliciting" the sale of a vehicle (~~(shall include)~~) means:

(a) An offer to effect the purchase or sale of a vehicle on behalf of another person.

(b) Discussing any of the following topics on behalf of another person:

(i) The price of a vehicle;

(ii) Terms of purchase;

(iii) Prospective financing;

(iv) Availability of vehicles for purchase; or

(v) Vehicle trade-ins.

(3) "Normal business hours" or "reasonable times" shall include, but not be limited to, the hours from 10:00 a.m. through 4:00 p.m. for five days each week. When a dealer closes the place of business during normal business hours, a sign must be posted on the main door of the business stating the time that the dealer will next be open for business and how the dealer may be contacted provided that this is not permission to routinely avoid maintaining normal business hours.

(4) An "employee" of a dealer is a person on the payroll who appears on the record of the dealer as an employee for whom Social Security, withholding tax, and all deductions required by law have been made.

(5) A "broker" shall mean any person acting independently, who for a commission, fee or any other form of compensation arranges or engages in the wholesale or retail purchase, sale or lease with option to purchase, of a vehicle.

(6) A "vehicle dealer identification card" is a card, prescribed by the department and issued by a licensed dealer, that is used to identify the principal of a dealership, including a corporate officer, a partner of a partnership, or sole proprietor, or a member of a limited liability company, or an "employee," for purposes of driving a vehicle bearing dealer license plates.

(7) A "demonstration permit" is a permit issued by a dealer to a prospective customer entitling the prospective customer to operate a particular vehicle for demonstration purposes.

(8) Current service agreement - The agreement between a vehicle manufacturer or vehicle distributor and a seller, stipulating that the seller will provide warranty adjustments for the owners of that manufacturer's or distributor's new vehicles which qualify for adjustments under the manufacturer's or distributor's warranty.

(9) New vehicle warranty - The warranty extended by a manufacturer or distributor to the first retail purchaser.

(10) "Closing" shall mean the process of completion of sale transaction.

(11) "Completion of sale" in the case of a consigned vehicle shall mean that the purchaser has possession of the vehicle, all liens against the vehicle are paid, the seller has the proceeds of sale, and title to the vehicle has been transferred to the retail purchaser.

(12) "Listing" shall mean a contract between a seller of a used mobile/manufactured home and a listing dealer for the dealer to locate a willing purchaser for that home.

(13) "Consignment" shall mean an arrangement whereby a vehicle dealer accepts delivery or entrustment of a vehicle and agrees to sell the vehicle on behalf of another.

(14) "Remanufactured" shall mean to remake or reprocess into a finished product by a large scale industrial process.

(15) "Guaranteed title" as it relates to a consigned vehicle shall mean a guarantee by the consignor to convey title to the consignee upon sale of the vehicle. The consignment agreement between the

consignor and consignee shall comply with the provisions of WAC 308-66-155.

(16) "Used vehicle" in keeping with RCW 46.04.660, and for purposes of the requirement for a service agreement in RCW 46.70.101

(1)(a)(vii), a vehicle will be considered used if it meets the following requirements:

(a) It has been titled or registered to a bona fide retail purchaser/lessee for a period of 90 days or more; and

(b) The vehicle has been operated (driven) to the extent that its odometer registers 3,000 miles or more.

However, the requirements of (a) and (b) of this subsection will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met those requirements. To document such an exemption, the subsequent wholesaling and retailing dealer must keep, as a dealer business record, a notarized affidavit from either the bona fide retail purchaser/lessee, or in the case of an imported vehicle, a notarized affidavit from the importer of the vehicle. That affidavit will be prescribed by the department and must confirm that the retail purchaser/lessee was a bona fide retail purchaser/lessee.

(17) A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purposes of resale or lease.

(18) The "principal" of a business as used herein means a true party of interest, including:

(a) The proprietor of a sole proprietorship;

(b) A partner of a partnership or a limited liability partnership;

(c) An officer of a corporation;

(d) A member or manager of a limited liability company;

(e) A spouse, if he or she is a true party of interest;

(f) In addition, any owner of (~~ten~~) 10 percent or more of the assets who is not already listed.

(19) "Public education" means increasing the public's knowledge of a vehicle's specifications, features, and capabilities, but does not include any activities in RCW 46.70.011(17).

(a) When displaying or demonstrating vehicles for public education purposes, a licensed manufacturer must take reasonable steps to inform the public that the manufacturer may not engage in any motor vehicle dealer business activity, as defined in RCW 46.70.011(17).

(b) The following activities are examples of public education:

(i) The display of vehicles in a facility owned, leased, rented, or operated by a licensed manufacturer that prominently posts legible signs throughout such facility stating that the vehicles cannot be sold.

(ii) The display of vehicles by a museum.

(iii) A representative from a licensed manufacturer driving a vehicle that is clearly marked as "not for sale" for the sole purpose of displaying, discussing, or demonstrating the vehicle's specifications, features, and capabilities.

(c) Public education is not considered a motor vehicle dealer business activity that requires licensure.

WSR 25-02-065
PERMANENT RULES
BIG BEND
COMMUNITY COLLEGE

[Filed December 23, 2024, 9:20 a.m., effective January 23, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revisions to bring Big Bend Community College's (college) student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Amending WAC 132R-04-015, 132R-04-017, 132R-04-053, 132R-04-057, 132R-04-061, 132R-04-063, 132R-04-064, 132R-04-112, 132R-04-113, 132R-04-116, 132R-04-1170, 132R-04-125, 132R-04-130, 132R-04-131, 132R-04-150, and 132R-04-320.

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

Adopted under notice filed as WSR 24-21-146 on October 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 16, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 12, 2024.

Chandra Rodriguez
Executive Assistant to the President

OTS-5634.1

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-015 Definitions. For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The vice president of learning and student success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for (~~receiving and facilitating~~) reviewing or referring appeals (~~from~~) of student disciplinary

actions ~~((and for reviewing initial decisions issued in a brief adjudicative proceeding. The conduct review officer shall be designated by the president and shall be authorized to grant appropriate relief upon review))~~ as specified in this code. The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

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

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or ~~((an expulsion))~~ dismissal from the college are heard by the ~~((disciplinary))~~ student conduct committee. Appeals of all other ~~((appealable))~~ disciplinary action may be reviewed through brief adjudicative proceedings.

(6) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(7) "Program" or "programs and activities" means all operations of the college.

(8) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(9) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(10) "Respondent" is the student ~~((against whom disciplinary action is being taken))~~ who is alleged to have violated the student conduct code.

~~((7))~~ (11) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

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

(b) By sending the document ~~((to the college assigned))~~ by email, once one has been generated, and by certified 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 emailed, if possible, and deposited into the mail.

~~((8))~~ (12) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a

disciplinary review by a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

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

(b) By sending the document by email and first class mail to the recipient's college-assigned email and office address.

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

~~((9))~~ (13) "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.

~~((10))~~ (14) "Student" is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses (excluding those trainings occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

~~((11))~~ (15) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(16) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(17) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student co-

hort, student performance groups, and student living groups within student housing.

~~((12))~~ (18) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations, and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

(19) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

~~((13))~~ (20) "Complainant" means ((any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint)) the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a person or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

~~((14))~~ (21) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-017 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises; or

(b) At or in connection with ~~((college-sponsored))~~ college programs or activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college programs or 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 and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or 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.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-053 Authority. The Big Bend Community College (BBCC) board of trustees, acting according to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. Administration of the student disciplinary procedures is the responsibility of the vice president of learning and student success. The vice president of learning and student success will serve as the student conduct officer, or appoint a designee, except in the cases involving allegations of sex discrimination including sex-based harassment when the Title IX coordinator or designee will serve as the student conduct officer. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-057 (~~(Student code of conduct violations.)~~) Prohibited student conduct. The college may impose sanctions against a student or student group who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct, which includes, but is not limited to, any of the following:

- (1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, or fabrication.
 - (a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.
 - (b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence 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 in an instructional course concerning the completion of an assignment.
 - (d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.
 - (e) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.
- (2) **Other dishonesty.** Acts of dishonesty 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; or

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(3) **Obstructive or disruptive conduct.** Conduct not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, 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.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, 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 code, bullying is repeated or aggressive unwanted behavior, not otherwise protected by law, that humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), 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.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive(s) 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 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, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of

their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

(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 or designee 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.

(9) **Hazing.**

~~((a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group; or~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions. See RCW 28B.10.900.~~

~~(d) Consent is not a valid defense against hazing.) Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:~~

~~(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(b) Humiliation by ritual act;~~

~~(c) Striking another person with an object or body part;~~

~~(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

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

(c) Drugs. The use, possession, production, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(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, or in any location other than the parking lots, including 25 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, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; 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. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132R-04-103.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcomed sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs or activities;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create 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. This includes, but is

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

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, 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. Any actual or attempted sexual touching, however slight, with any object or body part, 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) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.

(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(viii) Consent. Clear, knowing, and voluntary 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 actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past

agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are 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 incapable of consent has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Discriminatory harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently (~~serious~~) severe, persistent, or pervasive, so 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 and/or social programs and/or student housing; alter the terms of an employee's employment; or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; (~~gender~~) sex, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity or expression; veteran's or military status; HIV/AIDS and hepatitis C status; or membership in any other ((legally)) group protected ((classification)) by federal, state, or local law. See supplemental definitions: "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 not otherwise protected by law.

(15) **Retaliation.** 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 college policy, provided information about an alleged violation of federal, state, or local law, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(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 nonaccidental, reckless, or unsafe 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) **Abuse of process.** 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 or order to appear at a hearing;

(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 disciplinary committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(20) **Unsafe vehicle operation.** 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.

(21) **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 housing, traffic and parking rules.

(22) **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.

(23) **Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

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.

(24) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) **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.

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or 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.

(C) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protec-

ted from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) A person cannot consent if they are unable to understand what is happening or are 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.

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

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-061 Hazing (~~(prohibited)~~) sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132R-04-057.

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor. See RCW 28B.10.901 (2) and (3).

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. RCW 28B.10.901(3).

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college. RCW 28B.10.902(1).

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college. RCW 28B.10.902(2).

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 19-21-080, filed 10/14/19, effective 11/14/19)

WAC 132R-04-063 Corrective action, disciplinary ((actions)) sanctions terms and conditions. One or more corrective actions or disciplinary ((actions)) sanctions include, but are not limited to, the following sanctions that may be imposed alone or in conjunction upon students found to have committed the violations in WAC 132R-04-057. The college may impose additional sanctions on a student who fails to comply with any imposed sanctions including, but not limited to, preventing that student from registering for classes.

(1) Warning: A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(2) 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.

(3) 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. Other conditions and restrictions may include, but not be limited to, restrictions from being present on certain parts of the

campus or in certain college buildings; restriction from attending certain college activities or participation in extra-curricular activities; orders of no contact between the student under probation and other students, college employees, or other persons.

(4) **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:

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

(b) 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.

(5) **Education.** The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(6) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(7) **No contact (~~order~~) directive.** 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.

(8) **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.

(9) **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.

(10) **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.

(11) **Expulsion:** Permanent separation of the student from the college with no promise (implied or otherwise) that the student may return at any future time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student will also be barred from college premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice of trespass pursuant to WAC 132R-117-020(2). The notice of trespass may be given by any manner specified in chapter 9A.52 RCW.

(12) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(13) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may

be imposed before a student is permitted to return to a residence hall.

More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-064 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 procedures are pending.

(2) The student conduct officer (or designee) 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 disruption of, or interference with, the operations of the college.

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

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

(a) The reasons for imposing the summary suspension, including 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 chair of the student disciplinary committee 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 designee, or to attend a disciplinary hearing.

(5) (a) The conduct review officer or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) 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.

(c) 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.

(d) If the notice of summary suspension proceedings has been served upon the respondent in accordance with these rules and 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.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief statement of findings of fact and conclusions of law, the policy reasons justifying imposition of the summary suspension. If summary suspension is upheld and/or other discipline imposed, the order shall inform the respondent of the duration of the summary suspension or the nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the order may be appealed.

(f) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension.

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

(6) In cases involving allegations of sexual ~~((misconduct))~~ discrimination, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-112 Initiation of disciplinary action. ~~((1) All disciplinary proceedings will be initiated by the student conduct officer or a designee. If that officer is the subject of a complaint initiated by the respondent, the president 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 the respondent to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is charged with violating, 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 appear after proper notification, the student conduct officer may take disciplinary action based upon the available information.

~~(3) The student conduct officer, prior to initiating taking disciplinary action in a case involving allegations of sexual misconduct, 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.~~

~~(4) 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 specific student conduct code provisions alleged to have been violated, the action taken, and a notice of appeal rights (if any).~~

~~(5) The student conduct officer may take any of the following actions:~~

~~(a) Exonerate the respondent and terminate the proceeding;~~

~~(b) Dismiss the case after providing appropriate counseling and advice to the respondent. Such action is final and is not subject to review on appeal;~~

~~(c) Issue a verbal warning to the respondent directly. Such action is final and is not subject to review on appeal;~~

~~(d) Impose a disciplinary action(s), as described in WAC 132R-04-063. Such actions are subject to review on appeal as provided in this chapter. Any decision imposing a disciplinary action(s) must state the facts and conclusions supporting the student conduct officer's decision, the specific student conduct code provision(s) found to have been violated, the details of the discipline imposed, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal;~~

~~(e) Refer the matter directly to the student disciplinary committee for such action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the disciplinary committee, with a copy served on the respondent.~~

~~(6) In cases involving allegations of sexual misconduct, 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.)~~ (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or

third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them 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.

(9) 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.

(10) Within 10 calendar 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 their decision, the specific student conduct code provisions found to have been violated, the discipline

imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132R-04-063; or

(c) 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.

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-113 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132R-04-057, the respondent may appeal ((the results of)) a disciplinary action by filing a written notice of appeal with the conduct review officer within ((twenty)) 21 calendar 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 order 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, complainant if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student disciplinary committee, has a 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) In the event of a conflict between this student conduct code and the Administrative Procedure Act, chapter 34.05 RCW, this student conduct code will govern.

~~((6))~~ (7) The college hereby adopts the Model rules of procedure, chapter 10-08 WAC, by reference. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

~~((7))~~ (8) Imposition of discipline for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

~~((8))~~ (9) The student disciplinary committee shall hear the following cases as fully adjudicated proceedings:

- (a) Appeals from suspensions in excess of ten instructional days;
- (b) Appeals from dismissals;

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president; and

(d) Cases in which students request to have their discipline case heard by the committee.

~~((9))~~ (10) Student conduct appeals involving the following disciplinary actions shall be reviewed as brief adjudicative proceedings:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-116 Brief adjudicative proceedings—Initial hearing.

(1) Brief adjudicative proceedings shall be conducted by the student conduct officer. The presiding 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) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the college'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 all the parties within ~~((ten business))~~ 10 calendar days of consideration of the initial hearing. 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))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final order.

(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))~~ in excess of 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The conduct review officer may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-1170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or his or her designee, provided the respondent files a written request for review with the conduct review officer within ~~((twenty-one))~~ 21 calendar days of service of the initial decision.

(2) The president 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 president 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 proceedings must be referred to the student disciplinary 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))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. The order 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 reviewing officer does not make a disposition of the matter within ~~((twenty))~~ 20 calendar days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The president or designee may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-125 Student ~~((disciplinary))~~ conduct committee—General. (1) The student ~~((disciplinary))~~ conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
 - (b) Two faculty members recommended by the faculty association and appointed by the president;
 - (c) The conduct review officer or other member of the administration appointed by the president at the beginning of the academic year.
- (2) The conduct review officer shall serve as the committee chair and may take action on preliminary hearing matters prior to the appointment of the committee. The committee 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 the chair, 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 disciplinary 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 the committee for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee

must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-130 Student disciplinary committee—((Hearing)) Pre-hearing. (1) The student conduct administrative panel will conduct full adjudicative proceedings in accordance with the provisions of this standards of conduct for students code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, conclusions, and sanctions. To the extent there is a conflict between the conduct code and the model rules, this student conduct code shall control.

(2) The committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

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

(4) Upon request filed at least five business days before the hearing by either 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 in their respective cases. 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, unless the party can show good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (i) the student conduct officer's notification of imposition of discipline (or referral to the committee) and (ii) the notice of appeal (or any response to referral) by the respondent. If doing so, however, 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 shall provide reasonable assistance to the respondent, upon request, 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; 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 their choice. A respondent or complainant in a case involving allegations of sexual misconduct may elect to be represented by an attorney at their 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 or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings upon request by a party.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-131 Student disciplinary committee hearing—Presentation of evidence. ~~((1) Upon the failure of any party to attend or participate in a hearing, the committee may either (a) proceed with the hearing and issuance of its order or (b) serve an order of default in accordance with RCW 34.05.440. If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.~~

~~(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record or in writing that some or all of the proceedings should be open, the committee chair shall determine any extent to which the hearing will be open. For hearings involving sexual misconduct allegations, complainant, accused student, and their respective attorney representatives may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student disciplinary committee. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.~~

~~(3) The committee chair shall cause the hearing to be recorded by a method that the committee chair selects, in accordance with RCW 34.05.449. Panel deliberations are not recorded. The recording, or a copy, is property of the college, but will be made available to the respondent 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 the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.

~~(4) The committee chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee, and make rulings on the admissibility of evidence, motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. These rulings shall be made on the record. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence, in conjunction with the Administrative Procedure Act, chapter 34.05 RCW. Questions related to the order of the proceedings are also determined by the committee chair.~~

~~(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.~~

~~(6) All testimony shall be given under oath or affirmation. The panel chair determines which records, exhibits, and written statements may be accepted as information for consideration by the panel. These rulings shall be made on the record. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.~~

~~(7) The president of the college or designee, the chair of the student disciplinary committee, the administrators assigned to the student disciplinary committee, deans, and/or the student conduct officer have the authority to issue subpoenas.~~

~~(8) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student disciplinary committee. Each party is responsible for informing their witnesses of the time and place of the hearing.~~

~~(9) The committee chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.~~

~~(10) In cases involving allegations of sexual misconduct, neither party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be submitted in writing to the committee chair, who in his or her discretion shall pose the questions on the party's behalf.~~

~~(11) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee may also permit each party to propose findings, conclusions, and/or an order for its consideration.)~~ (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 they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure 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 college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-150 Appeal from student ((disciplinary)) conduct committee initial decision. ~~((1) A respondent who is aggrieved by the findings or conclusions issued by the student disciplinary committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty calendar days of service of the committee's initial decision.~~

~~(2) The notice of appeal must assign error to specific findings of fact and/or conclusions of law in the initial decision and must contain argument regarding why the appeal should be granted. The president's review on appeal shall be limited to a review of those issues and arguments raised in the notice of appeal. Review shall be restricted to the record created below.~~

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

~~(4) The president may exercise discretion to suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~

~~(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.~~

~~(6) Respondents and complainants in a case involving allegations of sexual misconduct shall have the right to be accompanied by an attorney or nonattorney assistant of their choosing during the appeal process, but will be deemed to have waived that right unless they file with the president a written notice of the attorney's identity and participation within twenty calendar days of service of the committee's initial decision.~~

~~(7) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.~~

~~(a) In addition to the appeal rights provided to the respondent above, a complainant may also appeal the following actions by the student conduct officer:~~

~~(i) The dismissal of a sexual misconduct complaint; or~~

~~(ii) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

~~(b) 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.

~~(c) The president will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the respondent. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.)~~ (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) 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 appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-320 Prehearing procedure. ~~((1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132R-04-130. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.)~~ (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. 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. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The 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 calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third 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 chair may provide to the committee members in advance of the hearing copies of:

- (a) The student 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, however, 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) (Optional: The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.)

(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) (Optional: In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.)

(10) (Optional: For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing.) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

WSR 25-02-075
PERMANENT RULES
SEATTLE COLLEGES

[Filed December 24, 2024, 5:33 a.m., effective January 24, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To bring the Seattle Colleges' student conduct code chapter 132F-121 WAC into compliance with a new final rule issued by the United States Department of Education pursuant to its authority under Title IX of the Education Amendment of 1972 and to update other provisions of the student conduct code to reflect current issues and needs of the colleges district and its students.

Citation of Rules Affected by this Order: Amending WAC 132F-121-110, 132F-121-270, 132F-121-280, 132F-121-290, 132F-121-300, 132F-121-310, 132F-121-330, 132F-121-340, and 132F-121-350.

Statutory Authority for Adoption: RCW 34.05.010(16), 28B.50.140(13).

Adopted under notice filed as WSR 22-10-006 [24-21-017] on August 20, 2024 [October 4, 2024].

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 9, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 24, 2024.

Lorine Hill
Interim Director of Compliance

OTS-5793.2

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

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

(2) Sexual misconduct. Sexual misconduct includes sexual harassment, sexual intimidation, sexual violence, domestic violence, and

dating violence. Sexual misconduct may also include acts of ~~((sexual))~~ sex-based harassment and sex discrimination prohibited under Title IX. See WAC 132F-121-280.

(a) ~~((Sexual))~~ Sex-based harassment is a form of ~~((sexual))~~ sex discrimination consisting of unwelcome, gender-based, verbal, written, electronic and/or physical conduct. ~~((Sexual))~~ Sex-based harassment does not need to be sexual in nature and can include offensive remarks about a person's gender. There are two types of ~~((sexual))~~ sex-based 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 and/or student housing))~~ is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the recipient's education program or activity.

(ii) ~~Quid pro quo harassment ((occurs when an individual, in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors))~~ is an employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(b) Sexual exploitation. Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or take advantage of anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(i) Invading another person's sexual privacy;

(ii) Prostituting another person;

(iii) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(iv) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(v) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed,

photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(vi) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(vii) Causing the nonconsensual indecent exposure of another person, as defined by subsection (21) of this section.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, incest, statutory rape, and stalking are all types of sexual violence.

(i) Nonconsensual 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 (fondling) is any (~~intentional~~) actual or attempted sexual touching, however slight, with any object or body part, 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.

(d) 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 they are 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 reasonably 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.

(e) 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, and, includes conduct that causes emotional, psychological, physical, and sexual trauma~~) physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.55.010.

(f) Dating violence means (~~violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction~~) physical violence, bodily injury,

assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

~~(g) 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 person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent))~~ engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(3) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct not otherwise protected by law, that is directed at a person because of their membership in a protected class 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; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication not otherwise protected by law.

(4) Academic dishonesty. Any act of course-related dishonesty including, but not limited to, cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Other dishonesty. Any other act of dishonesty related to district operations. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

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

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

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Bullying is unwelcome conduct, whether verbal, physical or otherwise, including "cyber" bullying that is objectively offensive and sufficiently severe, or persistent, and/or pervasive, that it has the effect of substantially limiting the ability of an individual to participate in or benefit from the colleges' educational and/or social programs, and/or student housing. Bullying behavior is conduct that is not otherwise protected by law. Bullying may be top-down, perpetuated by someone with greater positional power towards another with lesser positional power; bottom-up, perpetuated by someone with lesser positional power towards someone with greater positional power; or peer-to-peer. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as bullying.

(9) 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 email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(10) (~~Stalking. 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 person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.~~) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for their safety or the safety of others; or

(b) Suffer substantial emotional distress.

(11) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

(12) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of their duties, or failure to properly identify oneself to such a person when requested to do so.

(13) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(14) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing 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 firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing 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 therein.

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

(15) Hazing. Hazing includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. 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.

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

(17) Drugs.

(a) Marijuana. The use, possession, delivery, or sale 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.

(b) Other 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.

(18) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(19) Conduct which is disorderly, lewd, or obscene.

(20) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

(21) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(22) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including 25 feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(23) Theft or other misuse of computer time or other electronic information resources of the district. 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 district'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 district's electronic information resources without authorization; or

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

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

(25) 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.

(26) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reason-

bly perceived as threatening the health or safety of another person. 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.

(27) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(28) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

(29) 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 proceeding 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.

(30) Attempting to commit any of the foregoing acts of misconduct or aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(31) 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))~~ means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-270 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence. This supplemental ~~((procedure applies to allegations of sexual harassment subject to Ti-~~

~~title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Seattle Colleges' standard disciplinary procedures, WAC 132F-121-110 through 132F-121-260, these supplemental procedures shall take precedence. The Seattle Colleges may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair)) student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard student conduct code and procedure, WAC 132F-121-110 through 132F-121-260, these supplemental student conduct code and procedure shall take precedence.~~

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

WAC 132F-121-280 ((Prohibited conduct under Title IX.)) Sex discrimination—Prohibited conduct and definitions. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Seattle Colleges may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of (~~"sexual harassment."~~) "sex discrimination."

For purposes of this supplemental procedure, (~~"sexual harassment"~~ encompasses the following conduct:

~~(1) Title IX quid pro quo harassment. Quid pro quo harassment occurs when a student in their capacity as an employee of the Seattle Colleges conditions the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.~~

~~(2) Title IX hostile environment. Unwelcome sexual or gender-based conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Seattle Colleges' educational programs or activities, or employment.~~

~~(3) Sexual assault. Sexual assault includes the following conduct:~~

~~(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, 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.~~

~~(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or 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.~~

~~(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.~~

~~(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.~~

~~(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(i) The length of the relationship;~~

~~(ii) The type of relationship; and~~

~~(iii) The frequency of interaction between the persons involved in the relationship.~~

~~(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.) the following definitions apply.~~

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to

educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex discrimination." The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) 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.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or 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.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half

related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) 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.

(iii) A person cannot consent if they are unable to understand what is happening or are 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.

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

(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a

student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-290 ((Title IX jurisdiction.)) Sex discrimination—Jurisdiction. ((1)) This supplemental procedure applies only if the alleged misconduct ((÷

~~(a) Occurred in the United States;~~

~~(b) Occurred during a Seattle Colleges' educational program or activity; and~~

~~(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.~~

~~(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Seattle Colleges exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Seattle Colleges.~~

~~(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1) (a) through (c) of this section have not~~

been met. Dismissal under this supplemental procedure does not prohibit the Seattle Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Seattle Colleges' student conduct code, WAC 132F-121-110.

~~(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.)~~ meets the definition of "sex discrimination" as that term is defined in WAC 132F-121-280 and occurs:

- (1) On college premises;
- (2) At or in connection with college programs or activities; or
- (3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-300 Sex discrimination—Dismissal and initiation of discipline. ~~((1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

~~(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:~~

- ~~(a) Set forth the basis for Title IX jurisdiction;~~
- ~~(b) Identify the alleged Title IX violation(s);~~
- ~~(c) Set forth the facts underlying the allegation(s);~~
- ~~(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and~~
- ~~(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:~~
 - ~~(i) The advisors will be responsible for questioning all witnesses on the party's behalf;~~
 - ~~(ii) An advisor may be an attorney; and~~
 - ~~(iii) The Seattle Colleges will appoint the party an advisor of the Seattle Colleges' choosing at no cost to the party, if the party fails to do so.~~

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.)~~ (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplina-

ry process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When a summary suspension is imposed pursuant to WAC 132F-121-250, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended finding and disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive meas-

ures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-310 Sex discrimination—Prehearing procedure.

~~((1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132F-121-180. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Seattle Colleges intends to offer the evidence at the hearing.)~~ (1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132F-121-180 as well as a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required to be provided in a prehearing notice pursuant to WAC 132F-121-180, the prehearing notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

WAC 132F-121-330 Sex discrimination—Presentation of evidence.

~~((The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:~~

~~(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.~~

~~(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.~~

~~(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:~~

~~(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or~~

~~(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.~~

~~(4) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.~~

~~(5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:~~

~~(a) Spousal/domestic partner privilege;~~

~~(b) Attorney-client and attorney work product privileges;~~

~~(c) Privileges applicable to members of the clergy and priests;~~

~~(d) Privileges applicable to medical providers, mental health therapists, and counselors;~~

~~(e) Privileges applicable to sexual assault and domestic violence advocates; and~~

~~(f) Other legal privileges identified in RCW 5.60.060.)~~ In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or

witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(1) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(2) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(3) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client communications and attorney work product privilege;

(c) Clergy privileges;

(d) Medical or mental health providers and counselor privileges;

(e) Sexual assault and domestic violence advocate privileges; and

(f) Other legal privileges set forth in RCW 5.60.060 or federal law.

(4) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(5) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-340 Sex discrimination—Initial order. (~~((1) In addition to complying with WAC 132F-121-210 the student conduct committee will be responsible for conferring and drafting an initial order that:~~

~~(a) Identifies the allegations of sexual harassment;~~

~~(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;~~

- ~~(c) Makes findings of fact supporting the determination of responsibility;~~
 - ~~(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;~~
 - ~~(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;~~
 - ~~(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;~~
 - ~~(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Seattle Colleges' education programs or activities; and~~
 - ~~(h) Describes the process for appealing the initial order to the Seattle Colleges' president.~~
- ~~(2) The committee chair will serve the initial order on the parties simultaneously.)) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.~~

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

- WAC 132F-121-350 Sex discrimination—Appeals.** (~~(1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.~~
- ~~(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.~~
- ~~(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.~~
- ~~(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.~~
- ~~(5) The president's office shall serve the final decision on the parties simultaneously.~~

~~(6) All administrative decisions reached through this process may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.)~~ (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority'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 appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on all parties and the Title IX coordinator.

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

WSR 25-02-077

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed December 24, 2024, 8:15 a.m., effective January 24, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These changes are meant to clarify and/or simplify the appeals process.

Citation of Rules Affected by this Order: Amending WAC 456-09-230, 456-09-550, 456-09-555, 456-09-560, 456-09-743, 456-09-745, 456-10-110, 456-10-230, 456-10-310, 456-10-365, 456-10-505, 456-10-510, 456-10-515, 456-10-540, and 456-10-550.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 24-21-162 on October 23, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 456-09-230, clarification regarding contacting administrative staff or the executive director; 456-09-550, remove requirement for prior approval for reply briefs; 456-09-555, remove requirement for proposed order and allow provisions for faster responses to emergency motions; 456-09-560, remove language regarding party's first request for continuance; 456-09-743, add language to clarify procedure when the respondent has the burden of proof; 456-09-745(1), change party to appellant; 456-10-110, add clarification that filings are due by 5:00 p.m. to conform with other established deadlines; 456-10-230, clarification regarding contacting administrative staff or executive director; 456-10-310, add name of representative as required in subsection [(1)](b); 456-10-365, remove requirement to specify pages of the board of equalization record; 456-10-505, clarify that the prehearing order controls were issued; 456-10-510, allow provisions for faster response time frame for responses to emergency motions; 456-10-515, remove language regarding a party's first request for continuance; 456-10-540, add language to clarify procedure when the respondent has the burden of proof; and 456-10-550(1), change party to appellant.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 24, 2024.

Claire Hesselholt
Chair

OTS-5932.2

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-230 Ex parte communication. Neither the board nor any person may make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which is prohibited by the Administrative Procedure Act. Attempts by anyone to make such prohibited ex parte communications will be subject to the sanctions in WAC 456-09-220 and 456-09-750. Communication with the board's administrative staff or executive director are not considered ex parte communication.

AMENDATORY SECTION (Amending WSR 22-23-080, filed 11/14/22, effective 12/15/22)

WAC 456-09-745 Failure to attend and hearing on the record. (1) (~~(When a party has failed)~~) If an appellant fails to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal brought by any party to the proceedings or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

Within 14 calendar days of service of the default order or dismissal, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated together with proof of service pursuant to WAC 456-09-345. The board may set aside a dismissal or default for good cause.

(2) If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of one or more parties will not be required.

OTS-5933.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-550 Time for filing evidence, briefs, replies, witness lists, stipulations, and documentary evidence. (1) In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board by the following deadlines:

(a) A list of fact or expert witnesses who will testify at the hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 100 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(b) Any factual stipulations must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 55 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(c) Documentary evidence to be introduced at a hearing must be submitted to the board together with proof of service pursuant to WAC

456-09-345. Documentary evidence must be introduced at least 38 calendar days before the hearing. Each page of documentary evidence must be numbered and indicate whether it is submitted by the appellant or respondent. A list of the documentary evidence submitted must be filed at the same time.

(d) Pretrial motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Pretrial motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(e) Summary judgment motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Summary judgment motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(f) Trial briefs are required and must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Trial briefs must be submitted at least 31 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(g) Responses or response briefs are not required, but if submitted to the board, the responding party must include proof of service pursuant to WAC 456-09-345. Responses and response briefs must be submitted according to the timeline outlined in the prehearing order. Three copies are required if the proceeding occurs in front of the entire board.

(h) Replies to any motion or brief are (~~only permitted with written permission. If allowed, replies~~) not required but when filed must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Replies must be submitted at least 17 calendar days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(i) Posthearing briefing and proposed findings of fact and conclusions of law may be required by the board. If so, this document must be submitted together with proof of service pursuant to WAC 456-09-345. Proposed findings of fact and conclusions of law must be received by the board no later than the date specified by the board, or if no date is specified, no later than 21 calendar days after a hearing. Three copies are required if the proceeding occurs in front of the entire board.

(2) Failure to comply with these requirements or the prehearing order may be grounds to exclude evidence, witnesses, replies, responses, or briefs, or to dismiss the appeal in accordance with WAC 456-09-750.

OTS-5934.3

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-555 Motions. (1) Any request for an order or ruling or a request for relief is considered a motion. Every motion, unless made during hearing, must be in writing and include:

- (a) A statement of the relief sought;
- (b) The basis for the relief;
- (c) A statement that the moving party made a good faith effort to meet and confer with the other party or parties to resolve the subject of the motion;
- (d) A request for oral argument, if any, and if so, how much time the party desires; and
- (e) Proof of service pursuant to WAC 456-09-345(~~(f) and~~ ~~(f) A proposed order~~)).
- (2) All motions must be properly captioned and signed by the party, their attorney, or their representative.
- (3) At the discretion of the board, a hearing on a motion may be held in person, by phone, by video, or by other electronic means.
- (4) A response to a motion must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-09-345.
- (5) (~~Replies are not permitted absent prior permission of the board. The board will consider a request to file a reply within 24 hours of a response being filed. If granted, the~~) Any reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.
- (6) In cases where good cause is shown for a motion to be filed less than 14 days before a hearing or significant submission date, the board may alter the response deadline. The board will notify the parties of changes to response deadlines within one business day of the motion filing.

OTS-5935.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

- WAC 456-09-560 Postponement, continuance, and extensions of time.** (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.
- (2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference must be made in writing and comply with WAC 456-09-555 and 456-09-345. (~~The board will freely grant a party's first request. For second and subsequent requests,~~) The moving party must show good cause as to why a new date and time is needed.
- (3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-09-555 and 456-09-345, and be filed 30 calendar days before the scheduled hearing. (~~The board will freely grant a party's first request. For second and subsequent requests,~~) The moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.
- (4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and

456-09-345. The presiding officer will decide whether to hear argument and will rule on the request.

(5) This section does not extend any deadline to file an initial appeal.

OTS-5936.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-743 Hearing procedure. (1) Unless otherwise ordered, hearings will be conducted in the following format:

- (a) Administration of an oath to all persons testifying;
- (b) The appellant's opening statement;
- (c) The respondent's opening statement;
- (d) The appellant's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the respondent;
 - (iii) Redirect examination by the appellant;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
- (e) The respondent's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the appellant;
 - (iii) Redirect examination by the respondent;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
- (f) The appellant's rebuttal, following the procedure in subsection (d) for each witness;
- (g) The appellant's closing argument;
- (h) The respondent's closing argument;
- (i) The appellant's closing rebuttal.

(2) The board may pose questions to the parties, their representatives, and any witnesses at any time during the hearing.

(3) In appeals where the respondent in the party with the burden of proof, the board may permit the respondent to present their evidence and arguments first.

OTS-5937.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-110 Definitions. (1) In this chapter, the subsequent terms have the following meanings:

- (a) "Appellant" means a person or entity who appeals any order or decision.
- (b) "Board" means the board of tax appeals described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the

term "board" also refers to the designated hearing officers, tax referees, or agents of the board.

(c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees or agents of the board.

(d) "File" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably. Documents filed with the board are considered timely if received by 5:00 p.m. Pacific time on the due date.

(e) "Motion" means a written or oral request for the board to take action.

(f) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.

(g) "Party" means any person or entity who is an appellant, respondent, or intervenor.

(h) "Presiding officer" or "hearing officer" means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer has the authority outlined in WAC 10-08-200 and chapter 34.05 RCW.

(i) "Respondent" means a person or entity who is listed as a responding party in any appeal.

(j) "Submit" means to present or deliver to the board. Submissions may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "submit" and "file" are used interchangeably.

(k) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

OTS-5938.2

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-230 Ex parte communication. Neither the board nor any person will make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which are prohibited by the Administrative Procedure Act in RCW 34.05.455. Attempts to make such communications will be subject to the sanctions in WAC 456-10-220 and 456-10-555. Communication with the board's administrative staff or executive director are not considered ex parte communication.

OTS-5939.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-310 Contents of a notice of appeal. (1) An appellant must submit a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) Name of the respondent together with respondent's mailing address, email address, and ~~((phone))~~ telephone number ~~((if known))~~, and that of a representative, if any.

The board may add additional respondents to ensure that all necessary entities are a party to the appeal.

(c) A copy of the order, decision, or determination appealed from.

(d) The type of tax.

(i) In excise tax cases, the amount of the tax that should be reduced or refunded and the reasons for it, as well as the tax period of time at issue;

(ii) In property tax cases, the parcel number of the property, the assessment year(s) at issue, the value determined by the local board of equalization, and the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property, and the year(s) for which the exemption is at issue.

(e) The relief sought.

(f) A signature or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

(2) The board may, upon motion of a party or upon its own motion, require additional information or explanation of any matter stated in a notice of appeal.

OTS-5940.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-365 Limits on exhibits and evidence. (1) Each party ~~((must))~~ is encouraged to indicate the specific pages of evidence it intends to rely on, if any, from the body from which the party appeals. For property tax appeals this includes the record at the county board. For excise tax appeals, this includes audit papers, refund reviews, and exemption applications. For other appeals, this includes documents submitted by both parties to the decision maker below. The actual decision appealed from (the county board ruling, department determination, or the equivalent) is not counted within the evidence limits. ~~((Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.))~~

(2) For property tax appeals, each party is strongly encouraged to submit the following exhibits or evidence in the following instances:

(a) If the party intends to rely on comparable sales, a table of comparable sales. The table should list the sales in order of most similar to least similar to the subject property, and include each sale's age, size, sales price, date of sale, and location relative to the subject property. A suggested format is available on the board's website or by contacting the board's staff.

(b) If the party intends to rely on an income approach, an outline. The outline should at least include the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, income, and capitalization rate.

(c) If the party intends to rely on a cost approach, a cost breakdown that includes the cost elements used and how the costs were determined.

(3) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. Excluded from these limits are the actual decisions appealed from (the county board ruling, department determination, or the equivalent) and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 75 pages per assessment-year appealed, including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 125 pages per assessment-year appealed, excluding the subject's rent roll and income statements, but including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(c) For excise tax appeals, each party is limited to submitting a total of 250 pages, including the record of the department of revenue not excluded as outlined above that the party intends to rely on;

(d) For all other appeals, each party is limited to submitting a total of 75 pages, including the record of the body from which a decision is appealed, and which the party intends to rely on.

(4) For property tax appeals, each party should submit no more than five comparable sales. If both unimproved and improved sales are necessary, no more than five of each type should be submitted.

(5) A party may file a motion with the board to submit evidence and/or exhibits beyond the page limits up to 500 pages, which the board will grant for good cause. Exceeding the page limits without the board's permission may result in the hearing being continued, or the exclusion of evidence beyond the limits.

(6) The board will not review the record of a county board of equalization or any other tribunal that is unduly large, disorganized, or not numbered.

OTS-5941.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-505 Time for filing evidence, briefs, replies, and documentary evidence. The prehearing order controls the course of action in cases where one is issued. If the board does not issue a prehearing order, evidence, briefs, and other documents must be submitted to the board by the following due dates:

(1) Documentary evidence must be submitted at least 38 calendar days prior to hearing, together with proof of service according to WAC 456-10-410. Failure to comply may be grounds for exclusion of such evidence or dismissal of the appeal as outlined in WAC 456-10-555.

(2) Briefs or other supporting statements, if any, must be submitted at least 31 calendar days prior to the hearing, together with proof of service according to WAC 456-10-410.

(3) Reply briefs or other supporting statements, if any, must be submitted at least 17 calendar days prior to the hearing, together with proof of service according to WAC 456-10-410.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is exempted from these requirements.

OTS-5942.2

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-510 Motions. (1) Any request for an order, ruling, or a request for relief is considered a motion. Every motion, unless made during a hearing, must be in writing and include the following:

(a) A statement of the relief or order sought;

(b) The basis for the relief or order;

(c) A statement that the moving party has made a good faith effort to meet and confer with the other party or parties to resolve the subject matter of the motion;

(d) A statement whether oral argument is requested, and if so, how much time is sought. Motions for summary judgment and motions to dismiss will receive approximately 10 minutes per side; and

(e) Proof of service according to WAC 456-10-410.

(2) All motions must be properly captioned, contain the docket number assigned by the board, and be signed by the party, their attorney or their representative.

(3) At the discretion of the board, the hearing on a motion may be held in person, by phone, video, or by other electronic means.

(4) Any response to the motion must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-10-410. Responses are strongly encouraged, but not required.

(5) (~~Replies are not permitted, absent prior permission of the board. If permitted, the~~) Any reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

(6) In cases where good cause is shown for a motion to be filed less than 14 days before a hearing or significant submission date, the board may alter the response deadline. The board will notify the parties of changes to response deadlines within one business day of the motion filing.

OTS-5943.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-515 Postponements, continuances, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, must be made in writing and comply with WAC 456-10-510 and 456-10-410. ~~The ((board will freely grant a party's first request. For second and subsequent requests, the))~~ moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-10-510 and 456-10-410, and be filed 14 calendar days before the scheduled hearing. ~~The ((board will freely grant a party's first request. For second and subsequent requests, the))~~ moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

(4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-10-510 and 456-10-410. The presiding officer will decide whether to hear argument on the request.

(5) This section does not extend any deadline to file an initial appeal.

OTS-5944.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-540 Hearing procedure. Informal hearings are structured similarly to formal hearings, although more relaxed. As such, informal hearings will generally be organized as follows:

(1) All parties and witnesses will be sworn in by a hearings officer to tell the truth;

(2) Each party may then provide a short explanation of what the testimony of their witnesses and evidence will show;

(3) Next, each party may call witnesses to testify, beginning with the party that is appealing. The opposing party will have an op-

portunity to ask each witness questions, and the party calling the witness an opportunity to ask the witness questions to clarify the testimony; and

(4) (~~Lastly,~~) Each party may summarize the testimony and evidence that supports their case, beginning with the (~~party that appealed~~) appellant.

(5) In appeals where the respondent is the party with the burden of proof, the board may permit the respondent to present their evidence and arguments first.

The board or hearing officer may ask a party, a representative, or a witness a question at any time during the hearing.

OTS-5945.1

AMENDATORY SECTION (Amending WSR 22-23-079, filed 11/14/22, effective 12/15/22)

WAC 456-10-550 Failure to attend and hearings on the record.

(1) (~~When a party has failed~~) If an appellant fails to attend a hearing after receiving timely notice, the board (~~will~~) may consider a motion for default or dismissal brought by any party to the proceedings, or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

(2) Within 14 calendar days of service of the order, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated, together with proof of service pursuant to WAC 456-10-410. The board may set aside a dismissal, default, or final order for good cause.

(3) If the parties agree in writing and the presiding officer approves, an appeal may be submitted to the board on the record and the attendance of one or more parties at the hearing will not be required.

WSR 25-02-079

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 26, 2024, 11:21 a.m., effective January 26, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 246-350 WAC, Standards for designation of 988 contact hubs. The department of health (department) is adopting new chapter 246-350 WAC to implement E2SHB 1477 (chapter 302, Laws of 2021). The rules establish standards for designation of crisis centers as contact hubs within the 988 national suicide prevention and mental health crisis hotline system.

Citation of Rules Affected by this Order: New WAC 246-350-001, 246-350-010, 246-350-020, and 246-350-030.

Statutory Authority for Adoption: E2SHB 1477 (chapter 302, Laws of 2021), E2SHB 1143 (chapter 454, Laws of 2023); RCW 43.70.040(1) and 71.24.890(3).

Adopted under notice filed as WSR 24-20-090 on September 29, 2024.

A final cost-benefit analysis is available by contacting Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, phone 360-764-9161, TTY 711, email mekyel.bailey@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: December 26, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5558.1

**Chapter 246-350 WAC
STANDARDS FOR DESIGNATION OF 988 CONTACT HUBS**

NEW SECTION

WAC 246-350-001 Purpose. The purpose of this rule is to establish consistent standards and a process for the department to design-

nate crisis centers as 988 contact hubs. To qualify for designation as a 988 contact hub, a crisis center must comply with this chapter and any other state or federal requirements.

NEW SECTION

WAC 246-350-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "988 contact hub" means a state-designated contact center that streamlines clinical interventions and access to resources for people experiencing a behavioral health crisis, participates in the 988 Suicide and Crisis Lifeline network to respond to statewide or regional 988 contacts, and meets the requirements of RCW 71.24.890.

(2) "988 Suicide and Crisis Lifeline" means the national network of local crisis centers, reachable by dialing or texting "988," providing free and confidential emotional support to people in crisis or emotional distress 24 hours a day, seven days a week.

(3) "Authority" means the Washington state health care authority.

(4) "Behavioral health services" means either mental health services as described in chapters 71.24 and 71.36 RCW, substance use disorder treatment services as described in chapter 71.24 RCW, or both, which, depending on the type of service, are provided by licensed or certified behavioral health agencies, or behavioral health providers, or are integrated into services offered by other health care providers.

(5) "Care coordination" means the coordination of an individual's health care needs with the assistance of a primary point of contact.

(6) "Certified peer counselor" means a person who has met the requirements of WAC 182-115-0200 and has been recognized by the Washington state health care authority as a certified peer counselor.

(7) "Community-based crisis team" means a team that is part of an emergency medical services agency, a fire service agency, a public health agency, a medical facility, a nonprofit crisis response provider, or a city or county government entity other than a law enforcement agency, that provides the on-site community-based interventions of a mobile rapid response crisis team for individuals who are experiencing a behavioral health crisis.

(8) "Crisis center" means a resource for people in behavioral health crisis that responds to crisis contacts via phone, text, or chat capabilities.

(9) "Culturally appropriate services" means effective, equitable, understandable, respectful, western and indigenous quality care and treatment services that are responsive to a community's cultural health beliefs, practices, and preferences.

(10) "Cultural humility" means the ability to remain open to another person's identity, including their cultural background, beliefs, values, and traditions, and its effects on behavioral health care decision-making.

(11) "Department" means the Washington state department of health.

(12) "Help seeker" means an individual in crisis, as defined by that individual, who contacts 988 via any of the available modalities.

(13) "Indian health care provider" means a health care program operated by the Indian health service or by an Indian tribe, tribal

organization, or urban Indian organization as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. § 1603).

(14) "Mobile rapid response crisis team (MRRCT)" means a team that provides professional on-site community-based intervention such as outreach, de-escalation, stabilization, resource connection, and follow-up support for individuals who are experiencing a behavioral health crisis, that shall include certified peer counselors as a best practice to the extent practicable based on workforce availability, and that meets standards for response times established by the authority.

(15) "Mobile response and stabilization services (MRSS) teams" are mobile rapid response crisis teams that provide developmentally appropriate crisis intervention and a separate but connected in-home stabilization phase for youth and families.

(16) "Primary point of contact" means the person who provides information to the individual and their caregivers and works with the individual to ensure they receive the most appropriate treatment without duplication of care.

(17) "Secretary" means the secretary of the Washington state department of health.

(18) "Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

NEW SECTION

WAC 246-350-020 Standards for designation as a 988 contact hub.

A crisis center must meet the requirements of this section in order to be designated as a 988 contact hub. At a minimum, a crisis center must:

- (1) Obtain and maintain an active agreement with the administrator of the 988 Suicide and Crisis Lifeline and remain in substantial compliance with that agreement to the satisfaction of the administrator.
- (2) Participate in the 988 Suicide and Crisis Lifeline network.
- (3) Adopt and use a technology platform approved by the department and maintain the necessary infrastructure, including equipment and software, maintenance, upgrades, and technical support, to operate all required 988 services and respond to help seekers via phone calls, text, chat, and other similar methods of communication that may be developed in the future.
- (4) Ensure interpretation services are available in the help seeker's preferred language.
- (5) Ensure services are accessible to those who are deaf or hard of hearing.
- (6) Employ sufficient staff to respond to 90 percent of initial incoming contacts within 30 seconds without placing those contacts on hold.
- (7) Provide designated 988 contact hub staff with initial and on-going trauma-informed training in skills including, but not limited

to, best practices in risk assessment; effective triage to system partners when additional clinical intervention is needed; cultural humility; providing developmentally appropriate, culturally appropriate services to support members of communities at higher risk for suicide, including members of the agricultural community; crisis de-escalation; information security; and collecting basic safety information. Training shall also include a self-care component designed to address secondary trauma.

(8) Provide crisis line counseling, intervention services, triage, care coordination, referrals, and connections to incoming contacts from any jurisdiction within Washington 24 hours a day, seven days a week, every day of the year.

(9) Provide referrals in the help seeker's geographical region to developmentally and needs-appropriate services including, but not limited to:

(a) Emergency medical care;

(b) Behavioral health crisis services;

(c) Tribal behavioral health services and, where needed, tribal first responders.

(10) Coordinate with certified peer counselors as available to respond to follow-up calls with the help seeker's consent.

(11) Maintain sufficient resources to provide follow-up communications with help seekers as appropriate.

(12) Provide services to help seekers regardless of the ability or willingness of the help seeker to disclose all information requested by crisis center staff and regardless of whether the help seeker is communicating through a third party.

(13) Collect and maintain current information on local resources that could be used as alternate interventions to 911, and ensure that staff are guided on how to access such services so that emergency services (911, police, sheriff) are contacted for assistance only in cases where risk of harm to self or others is imminent or in progress, and when a less invasive plan for the help seeker's safety cannot be collaborated on with the individual.

(14) Adopt and implement policies and procedures for connecting self-identified tribal members in crisis to appropriate tribal services when the help seeker wishes to use tribal services; follow the tribe's established tribal crisis coordination protocols; and coordinate responses whenever possible with tribes, including tribal behavioral health agencies, Indian health care providers, and, where necessary, tribal police.

(15) Ensure messaging about the 988 and the Suicide and Crisis Lifeline is consistent with messaging released by the authority, the department, the National 988 Administrator, the Substance Abuse and Mental Health Services Administration, and the Veterans Crisis Line networks.

(16) Comply with all reporting requirements established by the department.

(17) Enter into and comply with an agreement with the department.

NEW SECTION

WAC 246-350-030 Designation process. (1) The department may issue a 988 contact hub designation to a crisis center that demonstrates

to the satisfaction of the department that it meets the standards under this chapter.

(2) To apply for designation, a crisis center shall submit to the department an application on forms provided by the department.

(3) To recommend a crisis center for designation as a 988 contact hub, behavioral health administrative services organizations shall comply with the recommendation process established by the department.

(4) 988 contact hub designations are valid for five years and may be renewed by the department upon application by the crisis center to the department.

(5) The department may deny, suspend, or revoke the designation of any 988 contact hub at any time for failure to meet minimum standards under this chapter or for failure to substantially comply with the contract specified in subsection (6) of this section.

(a) If an application is suspended, revoked, or denied, the department shall provide the designated 988 contact hub or hub applicant a letter of denial, suspension, or revocation, including a statement of the reasons for the action. Letters of suspension and revocation shall be effective 28 days after the designated 988 contact hub receives the notice.

(b) A designated 988 contact hub or hub applicant that is aggrieved by the decision to suspend, revoke, or deny designation has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application for adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, and be served on or received by the department within 28 days of the effective date of the decision.

(6) Upon designation, a 988 contact hub shall enter into a contract and data sharing agreement with the department.

WSR 25-02-080

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Nursing)

[Filed December 26, 2024, 11:46 a.m., effective January 26, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Education requirements for advanced registered nurse practitioner (ARNP) licensure. Amending WAC 246-840-010, 246-840-340, and 246-840-342. The Washington state board of nursing (board) adopted amendments to education requirements for ARNP licensure in response to the joint administrative rules review committee's recommendation.

The board adopted amendments to WAC 246-840-010 to define the term "graduate degree" as a master's or doctoral degree, technical edits to WAC 246-840-340, and amendments to WAC 246-840-342 (1)(b) to provide for exemptions to education requirements for ARNP licensure as outlined in board procedure B09.06(II).

Citation of Rules Affected by this Order: Amending WAC 246-840-010, 246-840-340, and 246-840-342.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.79.160, and 18.79.250.

Adopted under notice filed as WSR 24-20-129 on October 1, 2024.

A final cost-benefit analysis is available by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email WABONRules@doh.wa.gov, website www.nursing.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 26, 2024.

Alison Bradywood, DNP, MH/MPH, RN, NEA-BC
Executive Director

OTS-5616.4

AMENDATORY SECTION (Amending WSR 22-17-144, filed 8/23/22, effective 9/23/22)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and national specialty certification through a (~~commission~~) board approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and
- (d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection (~~(28)~~) (29) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Board" means the Washington state board of nursing.

(7) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(~~(7)~~) (8) "Client advocate" means a licensed nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and choices by providing the client with adequate information about their care and options.

(~~(8)~~ "Commission" means the Washington state nursing care quality assurance commission.)

(9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(10) "Conditional approval" is the approval given a nursing education program that has not met the requirements of the law and the rules of the (~~commission~~) board. Conditions are specified that must be met within a designated time to rectify the deficiency.

(11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules of the ~~((commission))~~ board.

(15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own; receipt of the examination results after 30 days after the nurse technician's date of graduation; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program or licensed practical nursing program approved by the ~~((commission))~~ board and is successfully meeting all program requirements.

(17) "Graduate degree" means a master's or doctoral degree.

(18) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

~~((18))~~ (19) "Home state" is defined as where the nursing education program has legal domicile.

~~((19))~~ (20) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

~~((20))~~ (21) "Immediately available" as applied to nursing technicians, means that an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed which may include the use of two-way communication devices which allow conversation between the nursing technician and an RN who has agreed to act as supervisor.

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

~~((21))~~ (22) "Initial approval" of nursing education program is the approval status conferred by the ~~((commission))~~ board to a new nursing program based on its proposal prior to the graduation of its first class.

~~((22))~~ (23) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

~~((23))~~ (24) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a ~~(commission)~~ board approved refresher course. This authorization does not permit practice for employment.

~~((24))~~ (25) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

~~((25))~~ (26) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

~~((26))~~ (27) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching and learning component in clinical settings.

~~((27))~~ (28) "Nursing education program administrator" is an individual who has the authority and responsibility for the administration of the nursing education program.

~~((28))~~ (29) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

~~((29))~~ (30) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

~~((30))~~ (31) "Nursing technician" means a nursing student preparing for RN or LPN licensure who meets the qualifications for registration under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic. Approved nursing education programs do not include nontraditional schools as defined in subsection ~~((26))~~ (27) of this section.

~~((31))~~ (32) "Philosophy" means the beliefs and principles upon which a nursing education program curriculum is based.

~~((32))~~ (33) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate or degree that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

~~((33))~~ (34) "Registered nurse" or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

~~((34))~~ (35) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the

premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

~~((35))~~ (36) "Traditional nursing education program" means a program that has a curriculum which includes a faculty supervised teaching and learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-340 Initial ARNP requirements. (1) An applicant for licensure as an ARNP shall have the following qualifications:

(a) An active Washington state RN license, without sanctions or restrictions;

(b) A graduate degree from an advanced nursing education program accredited by a national nursing accreditation body recognized by the United States Department of Education;

(c) Certification from a certifying body as identified in WAC 246-840-302;

(d) Completion of advanced clinical practice hours, as defined in WAC 246-840-010(1) and in the role of an advanced practice nurse as defined in WAC 246-840-010(2), when applicable, in situations under subsection (3) of this section.

(2) An applicant for ARNP licensure shall submit:

(a) A completed ARNP application for licensure to the ~~((commission))~~ board;

(b) The license fee as specified in WAC 246-840-990;

(c) A request to the certifying body, as identified in WAC 246-840-302, to send official documentation of certification directly to the ~~((commission))~~ board;

(d) A request to the advanced nursing educational program to send an official transcript directly to the ~~((commission))~~ board showing courses, grades, degree or certificate granted, official seal, and appropriate registrar; and

(e) Program objectives and course descriptions when requested by the ~~((commission))~~ board.

(3) To be granted a license without meeting the advanced clinical practice requirements identified in subsection (4) of this section, the ARNP shall initiate the application process within one year of earning a graduate degree from an advanced nursing education program.

(4) An ARNP applicant who does not apply within one year of earning a graduate degree from an advanced nursing education program may be eligible to receive an ARNP interim permit for the purpose of completing ~~((one hundred twenty-five))~~ 125 hours of advanced clinical practice for every additional year following graduation, not to exceed ~~((one thousand))~~ 1,000 hours. The ARNP interim permit expires one year after the submission of the application.

(a) An ARNP applicant's clinical practice must be supervised by an ARNP under chapter 18.79 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or equivalent licensure in another state or United States jurisdiction. The ARNP interim permit holder must complete supervised advanced clinical practice as defined in subsections (4) and (5) of this section.

(b) The supervisor must be in the same practice specialty in which the applicant is seeking licensure. The supervising ARNP or physician:

(i) Shall have an active ARNP or physician license, for two or more years, without sanctions or restrictions;

(ii) Must not be a member of the applicant's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the supervisor's duties to impartially supervise and evaluate the nurse;

(iii) Must not have current disciplinary action on their license;

(iv) Shall submit documented evidence to the ~~((commission))~~ board verifying the applicant's successful completion of the required supervised clinical practice hours in an ARNP role.

(5) An ARNP applicant needing to complete supervised advanced clinical practice:

(a) Shall meet the requirements of subsection (1)(a) and (b) of this section;

(b) Shall indicate on the ARNP application the need for an interim permit; and

(c) Must obtain:

(i) ~~((commission))~~ Board approval of the supervising ARNP or physician; and

(ii) The interim permit.

(6) The nurse must use the designation interim ARNP at all times and on all documentation of the supervised clinical practice hours.

(7) An applicant holding an active RN license, without sanctions or restrictions; and current national certification as a CNS; and is practicing in Washington state in an advanced nursing role, will be exempt from the supervised practice requirement if they can provide evidence of ~~((two hundred fifty))~~ 250 hours of advanced clinical practice within the last two years.

AMENDATORY SECTION (Amending WSR 20-10-015, filed 4/24/20, effective 4/24/20)

WAC 246-840-342 Licensure for ARNP applicants by interstate endorsement. (1) An applicant for interstate endorsement for Washington state licensure as an ARNP shall meet the following requirements:

(a) Have an active RN and ARNP license, or recognition in another state or jurisdiction, as practicing in an advanced practice role, without sanctions or restrictions;

(b) Have a graduate degree from an advanced nursing education program as identified in WAC 246-840-340 (1)(b), unless the applicant has been practicing in another state, U.S. territory, or the District of Columbia (D.C.) as an ARNP and demonstrates that the following criteria have been met:

(i) Current advanced nursing practice, as defined in WAC 246-840-010(2), in the advanced role and population focus area;

(ii) National certification or recertification, in the advanced role and population focus area;

(iii) Compliance with the ARNP educational requirements of the board that were in effect at the time the ARNP completed their ARNP education program; and

(iv) Compliance with all other criteria for licensure set forth by the board; and

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3).

(2) An applicant for an ARNP license through interstate endorsement shall:

(a) Apply for and be granted a Washington state RN license as identified in WAC 246-840-090;

(b) Submit a completed ARNP application for licensure to the ~~((commission))~~ board;

(c) Submit the license fee as specified in WAC 246-840-990;

(d) Request the certifying body, as identified in WAC 246-840-302, to send official documentation of certification directly to the ~~((commission))~~ board;

(e) Request the advanced nursing educational program to send an official transcript directly to the ~~((commission))~~ board showing courses, grades, degree or certificate granted, official seal and appropriate registrar; and

(f) Submit nursing education program objectives and course descriptions when requested by the ~~((commission))~~ board.

WSR 25-02-081

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 26, 2024, 11:52 a.m., effective April 1, 2025]

Effective Date of Rule: April 1, 2025.

Purpose: Birth doulas; amending WAC 246-835-040 to remove certification barriers and to align rule with recent legislation.

The department of health (department) is adopting amendments to WAC 246-835-040 to waive education, training, experience, and examination requirements for applicants that qualify for certification by endorsement to implement RCW 18.130.077.

Under RCW 18.130.077, all disciplining authorities shall waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days. The statute also allows disciplining authorities to choose to waive education, training, experience, and exam requirements for applicants who have achieved the national credential for their profession; however, birth doulas do not have a national credential.

To align with RCW 18.130.077, the adopted rules:

- Remove the requirement of submitting proof of 10 hours of continuing education (CE) for out-of-state applicants that have been credentialed as a birth doula in another jurisdiction with standards that are substantially equivalent to Washington's standards.

- Maintain the requirement of submitting proof of 10 hours of CE for out-of-state applicants that have been credentialed as a birth doula for two years or more in another state or jurisdiction with standards that are not substantially equivalent to Washington.

- Clarify in rule that applicants who have been credentialed for less than two years in a state or jurisdiction with standards that are not substantially equivalent may apply for certification through the initial application pathway in WAC 246-835-030.

The adopted rule will streamline and shorten the credentialing process for birth doulas, remove barriers to entering and remaining in the birth doula workforce, clarify the requirements, and align the section with RCW 18.130.077.

Citation of Rules Affected by this Order: Amending WAC 246-835-040.

Statutory Authority for Adoption: RCW 18.47.800; 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Adopted under notice filed as WSR 24-21-016 on October 4, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 26, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5539.4

AMENDATORY SECTION (Amending WSR 23-18-048, filed 8/30/23, effective 10/1/23)

WAC 246-835-040 Applicants currently certified in other states or territories. An initial applicant currently certified to practice as a birth doula in another state, the District of Columbia, or a territory of the United States may be (~~licensed~~) certified by endorsement. An applicant shall comply with the requirements for licensure as specified in chapters 18.47 RCW and 246-835 WAC and submit proof of:

(1) Current certification from another United States jurisdiction (~~and~~), if the applicant is certified in a United States jurisdiction that has substantially equivalent standards to Washington.

(2) For applicants who have been certified for at least two years in another United States jurisdiction (~~for at least two years, completion~~) that does not have substantially equivalent standards, the applicant must submit:

(a) Current certification from another United States jurisdiction; and

(b) Proof of 10 hours of continuing education within the two-year period immediately preceding (~~licensure~~) certification.

(3) For applicants who have been certified for less than two years in a United States jurisdiction that does not have substantially equivalent standards, the applicant may apply for certification through the application process in WAC 246-835-030.

WSR 25-02-084
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-03—Filed December 27, 2024, 1:59 p.m., effective January 27, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In 2023, the legislature modernized prior authorization processes to prevent delays in care and improve health outcomes. To implement those objectives, the office of the insurance commissioner (OIC) resumed its proposed rule making on prior authorization revisions from last year's E2SHB 1357 (RCW 48.43.830). Multiple provisions within chapter 284-43 WAC needed amendments to update prior authorization processes and timelines and to be consistent with the enacted legislation.

This rule making facilitates implementation of these laws by ensuring that all affected health care entities understand their rights and obligations.

Citation of Rules Affected by this Order: Amending WAC 284-43-2020 and 284-43-2050.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.0161, and 48.43.520.

Adopted under notice filed as WSR 24-22-130 on November 5, 2024.

A final cost-benefit analysis is available by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7038, fax 360-586-3109, email rulescoordinator@oic.wa.gov, website www.insurance.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 27, 2024.

Mike Kreidler
Insurance Commissioner

OTS-5967.1

AMENDATORY SECTION (Amending WSR 20-24-105, filed 12/1/20, effective 1/1/21)

WAC 284-43-2020 Drug utilization review—Generally. (1) These definitions apply to ~~((this section only))~~ the prescription drug utilization management timelines covered in this section only, excluding

prescription drug prior authorization timelines, which are covered in WAC 284-43-2050:

(a) "Nonurgent review request" means any request for approval of care or treatment (~~(where the request is made in advance of the patient obtaining medical care or services)~~), or a renewal of a previously approved request (~~(, and)~~) that is not an urgent care request.

(b) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function or, in the opinion of a provider with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each issuer must maintain a documented drug utilization review program that meets the definitions and requirements of RCW 48.43.400 and 48.43.410. "Utilization review" has the same meaning as defined in RCW 48.43.005. The program must include a method for reviewing and updating criteria. Issuers must make drug review criteria available upon request to a participating provider. Beginning January 1, 2021, an issuer must post its clinical review criteria for prescription drugs and the drug utilization management exception process on its website. An issuer must also require any entity performing prescription drug benefit administration on the issuer's behalf to post the drug utilization management exception process and clinical review criteria used for the issuer's enrollees on the entity's website. The review criteria must be accessible to both providers and enrollees and presented in plain language that is understandable to both providers and enrollees. The clinical review criteria must include all rules and criteria related to the prescription drug utilization management exception process including the specific information and documentation that must be submitted by a health care provider or enrollee to be considered a complete exception request.

(3) The drug utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(4) The drug utilization review program must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(5) Each issuer must have written procedures to assure that reviews are conducted in a timely manner.

(a) If the review request from a provider or enrollee is not accompanied by all necessary information, the issuer must tell the provider or enrollee what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer determination and notification must be no less favorable than United States Department of Labor standards, and are as follows:

(i) For urgent care review requests:

(A) Must approve the request within (~~(forty-eight)~~) 48 hours if the information provided is sufficient to approve the claim (~~(and include the authorization number, if a prior authorization number is required, in its approval)~~);

(B) Must deny the request within (~~(forty-eight)~~) 48 hours if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within (~~twenty-four~~) 24 hours, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the (~~prior authorization~~) utilization management determination:

(I) The issuer must give the provider (~~forty-eight~~) 48 hours to submit the requested information;

(II) The issuer must then approve or deny the request within (~~forty-eight~~) 48 hours of the receipt of the requested additional information and include the authorization number in its approval;

(ii) For nonurgent care review requests:

(A) Must approve the request within five calendar days if the information is sufficient to approve the claim and include the authorization number in its approval;

(B) Must deny the request within five calendar days if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within five calendar days, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the (~~prior authorization~~) utilization management determination:

(I) The issuer must give the provider five calendar days to submit the requested additional information;

(II) The issuer must then approve or deny the request within four calendar days of the receipt of the additional information and include the authorization number in its approval.

(b) Notification of the (~~prior authorization~~) utilization management determination must be provided as follows:

(i) Information about whether a request was approved must be made available to the provider;

(ii) Whenever there is an adverse determination resulting in a denial the issuer must notify the requesting provider by one or more of the following methods; phone, fax and/or secure electronic notification, and the covered person in writing or via secure electronic notification. Status information will be communicated to the billing pharmacy, via electronic transaction, upon the issuer's receipt of a claim after the request has been denied. The issuer must transmit these notifications within the time frames specified in (a)(i) and (ii) of this subsection in compliance with United States Department of Labor standards.

(6) When a provider or enrollee requests an exception to an issuer's drug utilization program, the urgent and nonurgent time frames established in RCW 48.43.420, WAC 284-43-2021 and 284-43-2022 shall apply.

(7) No issuer may penalize or threaten a pharmacist or pharmacy with a reduction in future payment or termination of participating provider or participating facility status because the pharmacist or pharmacy disputes the issuer's determination with respect to coverage or payment for pharmacy service.

AMENDATORY SECTION (Amending WSR 20-24-120, filed 12/2/20, effective 1/2/21)

WAC 284-43-2050 Prior authorization processes. (1) This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and

stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018. Unless stated otherwise, this section does not apply to prescription drug services. For health plans as defined in RCW 48.43.005, carriers must meet the requirements of RCW 48.43.830 in addition to the requirements in this section.

(2) A carrier or its designated or contracted representative must maintain a documented prior authorization program description and use evidence-based clinical review criteria. A carrier or its designated or contracted representative must make determinations in accordance with the carrier's current clinical review criteria and use the medical necessity definition stated in the enrollee's plan. The prior authorization program must include a method for reviewing and updating clinical review criteria. A carrier is obligated to ensure compliance with prior authorization requirements, even if they use a third-party contractor. A carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement for its prior authorization program. A carrier or its designated or contracted representative is not required to use medical evidence or standards in its prior authorization of religious nonmedical treatment or religious nonmedical nursing care.

(3) A prior authorization program must meet standards set forth by a national accreditation organization including, but not limited to, National Committee for Quality Assurance (NCQA), URAC, Joint Commission, and Accreditation Association for Ambulatory Health Care in addition to the requirements of this chapter. A prior authorization program must have staff who are properly qualified, trained, supervised, and supported by explicit written, current clinical review criteria and review procedures.

(4) Effective November 1, 2019, a carrier or its designated or contracted representative must have a current and accurate online prior authorization process. All parts of the process that utilize personally identifiable information must be accessed through a secure online process. The online process must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee's plan and the information necessary to submit a complete prior authorization request. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system. The online process must provide the information required for a provider or facility to determine for an enrollee's plan for a specific service:

- (a) If a service is a benefit;
 - (b) If a prior authorization request is necessary;
 - (c) What, if any preservice requirements apply; and
 - (d) If a prior authorization request is necessary, the following information:
 - (i) The clinical review criteria used to evaluate the request;
- and
- (ii) Any required documentation.

(5) Effective November 1, 2019, in addition to other methods to process prior authorization requests, a carrier or its designated or contracted representative that requires prior authorization for services must have a secure online process for a participating provider or facility to complete a prior authorization request and upload documentation if necessary. A carrier with an integrated delivery system is

not required to comply with this subsection for the employees participating in the integrated delivery system.

(6) Except for an integrated delivery system, a carrier or its designated or contracted representative must have a method that allows an out-of-network provider or facility to:

(a) Have access to any preservice requirements; and

(b) Request a prior authorization if prior authorization is required for an out-of-network provider or facility.

(7) A carrier or its designated or contracted representative that requires prior authorization for any service must allow a provider or facility to submit a request for a prior authorization at all times, including outside normal business hours.

(8) A carrier or its designated or contracted representative is responsible for maintaining a system of documenting information and supporting evidence submitted by a provider or facility while requesting prior authorization. This information must be kept until the claim has been paid or the appeals process has been exhausted.

(a) Upon request of the provider or facility, a carrier or its designated or contracted representative must remit to the provider or facility written acknowledgment of receipt of each document submitted by a provider or facility during the processing of a prior authorization request.

(b) When information is transmitted telephonically, a carrier or its designated or contracted representative must provide written acknowledgment of the information communicated by the provider or facility.

(9) A carrier or its designated or contracted representative must have written policies and procedures to assure that prior authorization determinations for a participating provider or facility are made within the appropriate time frames.

(a) Time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the prior authorization request.

(b) If the request from the participating provider or facility is not accompanied by all necessary information, the carrier or its designated or contracted representative must inform the provider or facility what additional information is needed and the deadline for its submission as set forth in this section.

(10) For health plans as defined in RCW 48.43.005, the prior authorization time frames for health care services and prescription drugs in RCW 48.43.830 apply.

(a) For purposes of the prior authorization time frames in RCW 48.43.830 and this subsection, the following definitions apply:

(i) "Electronic prior authorization request" means a prior authorization request that is delivered through a two-way communication system that meets the requirements of a secure online prior authorization process or an interoperable electronic process or prior authorization application programming interface.

(ii) "Nonelectronic prior authorization request" means a prior authorization request other than an electronic prior authorization request including, but not limited to, requests delivered through email, a phone call, a text message, a fax, or U.S. mail.

(b) If insufficient information has been provided to the carrier to make a prior authorization determination and the carrier requests additional information from the provider or facility under RCW 48.43.830, the initial prior authorization request time frames in RCW

48.43.830 apply once the carrier has the necessary information to make a determination. Those time frames are as follows:

(i) For electronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within three calendar days, excluding holidays, of receiving the necessary information needed to make the determination.

(ii) For electronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within one calendar day of receiving the necessary information needed to make the determination.

(iii) For nonelectronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within five calendar days of receiving the necessary information needed to make the determination.

(iv) For nonelectronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within two calendar days of receiving the necessary information needed to make the determination.

(11) For limited health care services contracts as defined in RCW 48.44.035, stand-alone dental plans, and stand-alone vision plans, the time frames for carrier prior authorization determination and notification to a participating provider or facility are as follows:

(a) For standard prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within five calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calendar days to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility five calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within four calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(b) For expedited prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within two calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has one calendar day to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility two calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within two calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(iii) If the time frames for the approval of an expedited prior authorization are insufficient for a provider or facility to receive approval prior to the preferred delivery of the service, the prior authorization should be considered an extenuating circumstance as defined in WAC 284-43-2060.

~~((11))~~ (12) A carrier or its designated or contracted representative when conducting prior authorization must:

(a) Accept any evidence-based information from a provider or facility that will assist in the authorization process;

(b) Collect only the information necessary to authorize the service and maintain a process for the provider or facility to submit such records;

(c) If medical records are requested, require only the section(s) of the medical record necessary in that specific case to determine medical necessity or appropriateness of the service to be delivered, to include admission or extension of stay, frequency or duration of service; and

(d) Base review determinations on the medical information in the enrollee's records and obtained by the carrier up to the time of the review determination.

~~((12))~~ (13) When a provider or facility makes a request for the prior authorization, the response from the carrier or its designated or contracted representative must state if it is approved or denied. If the request is denied, the response must give the specific reason for the denial in clear and simple language. If the reason for the denial is based on clinical review criteria, the criteria must be provided. Written notice of the decision must be communicated to the provider or facility, and the enrollee. A decision may be provided orally, but subsequent written notice must also be provided. A denial must include the department and credentials of the individual who has the authorizing authority to approve or deny the request. A denial must also include a phone number to contact the authorizing authority and a notice regarding the enrollee's appeal rights and process.

Whenever the prior authorization relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

~~((13))~~ (14) A prior authorization approval notification for all services must inform the requesting provider or facility, and the enrollee, whether the prior authorization is for a specific provider or facility. The notification must also state if the authorized service may be delivered by an out-of-network provider or facility and if so, disclose to the enrollee the financial implications for receiving services from an out-of-network provider or facility.

Whenever the notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

~~((14))~~ (15) A provider or facility may appeal a prior authorization denial to the carrier or its designated or contracted representative.

~~((15))~~ (16) Prior authorization determinations shall expire no sooner than ~~((forty-five))~~ 45 days from date of approval. This requirement does not supersede RCW 48.43.039.

~~((16))~~ (17) In limited circumstances when an enrollee has to change plans due to a carrier's market withdrawal as defined in RCW 48.43.035 (4)(d) and 48.43.038 (3)(d), the subsequent carrier or its designated or contracted representative must recognize the prior authorization of the previous carrier until the new carrier's prior au-

thorization process has been completed and its authorized treatment plan has been initiated. The subsequent carrier or its designated or contracted representative must ensure that the enrollee receives the previously authorized initial service as an in-network service. Enrollees must present proof of the prior authorization.

(a) For medical services, a carrier or its designated or contracted representative must recognize a prior authorization for at least ~~((thirty))~~ 30 days or the expiration date of the original prior authorization, whichever is shorter.

(b) For pharmacy services, a carrier or its designated or contracted representative must recognize a prior authorization for the initial fill, or until the prior authorization process of the new carrier or its designated or contracted representative has been completed.

~~((17))~~ (18) Prior authorization for a facility-to-facility transport that requires prior authorization can be performed after the service is delivered. Authorization can only be based on information available to the carrier or its designated or contracted representative at the time of the prior authorization request.

~~((18))~~ (19) A carrier or its designated or contracted representative must have a prior authorization process that allows specialists the ability to request a prior authorization for a diagnostic or laboratory service based upon a review of medical records in advance of seeing the enrollee.

~~((19))~~ (20) A carrier or its designated or contracted representative must have a method that allows an enrollee, provider or facility to make a predetermination request when provided for by the plan.

~~((20))~~ (21) Predetermination notices must clearly disclose to the enrollee and requesting provider or facility, that the determination is not a prior authorization and does not guarantee services will be covered. The notice must state "A predetermination notice is not a prior authorization and does not guarantee services will be covered." Predetermination notices must be delivered within five calendar days of receipt of the request. Predetermination notices will disclose to a provider or facility for an enrollee's plan:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) If any preservice requirements apply;

(d) If a prior authorization request is necessary or if a medical necessity review will be performed after the service has been delivered, the following information:

(i) The clinical review criteria used to evaluate the request;

and

(ii) Any required documentation.

(e) Whenever a predetermination notice relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

WSR 25-02-086

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 30, 2024, 8:02 a.m., effective January 30, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is amending WAC 458-20-210 to incorporate 2024 legislation, 2EHB 1757. This legislation provides a retail sales and use tax exemption, in the form of a remittance, for the purchase and use of goods and services by an eligible farmer.

Citation of Rules Affected by this Order: Amending WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 24-21-084 on October 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 29, 2024.

Brenton Madison
Rules Coordinator

OTS-5914.1

AMENDATORY SECTION (Amending WSR 24-04-005, filed 1/24/24, effective 2/24/24)

WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers. (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 (Tax registration and tax reporting) to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

(a) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may be relevant.** Farmers and persons making sales to farmers may also want to refer to rules in the following list for additional information:

(i) WAC 458-20-178 Use tax and the use of tangible personal property;

(ii) WAC 458-20-209 Farming for hire and horticultural services performed for farmers;

(iii) WAC 458-20-222 Veterinarians;

(iv) WAC 458-20-229 Refunds;

(v) WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services;

~~((v))~~ (vi) WAC 458-20-243 Litter tax; and

~~((vi))~~ (vii) WAC 458-20-262 Retail sales and use tax exemptions for farmworker housing.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, on the person's own lands or on the lands in which the person has a present right of possession, any agricultural product to be sold. ~~((Effective July 1, 2015,))~~ A "farmer" also includes eligible apiarists that grow, raise, or produce honey bee products for sale, or provide bee pollination services. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; ~~((or))~~ any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals ~~((Effective July 1, 2015, "agricultural product" includes))~~; and honey bee products. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals" ~~((Effective June 12, 2014, RCW 82.04.213))~~ and also excludes cannabis ~~((from the definition of "agricultural product." Cannabis is any product with a THC concentration greater than .3 percent))~~ as defined under RCW 69.50.101. RCW 82.04.213.

(4) **Who is an eligible apiarist?** An "eligible apiarist" is a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(5) **What are honey bee products?** "Honey bee products" are queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" do not include manufactured substances or articles. RCW 82.04.213.

(6) **What is cannabis?** "Cannabis" is any product with a THC concentration greater than .3 percent. For additional information on cannabis see RCW 69.50.101.

(7) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing

B&O tax on the gross proceeds of such sales. Persons making retail sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. Refer to subsection (9) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must take and retain from the buyer a copy of the buyer's reseller permit, or a completed "Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions" to document the wholesale nature of any transaction.

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department, the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. For detailed information regarding use tax see WAC 458-20-178.

The Consumer Use Tax Return may be obtained by calling the department's telephone information center at 360-705-6705. The return may also be obtained from the department's website at dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales. Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, bees, or other insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, sugar, pollen patties, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers. For purposes of this rule, "seed" does not include seeds or propagative portions of plants used to grow cannabis.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mite, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.**

(A) **Example 1.** Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricultural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a copy of her reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax applies to her purchases of poultry feed, as the poultry is raised to produce eggs for Sue's personal consumption.

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

(C) **Example 3.** Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers must pay for the seed (~~whether or not~~) regardless of whether the crop meets the specified standard. The transfer of the possession of the seed to each farmer is a wholesale sale, provided Seed Co. obtains a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from that farmer.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (7)(i) and (9) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and con-

tainers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales (~~(taxes)~~) tax. Thus, sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property who is unable to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than 50 percent.

If a buyer makes a purchase for dual purposes and does not give a copy of their reseller permit for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. For additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction see WAC 458-20-102.

(i) **Potential deferred sales tax liability.** If the buyer gives a copy of its reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to (b) of this subsection, WAC 458-20-102 and 458-20-178 for more information regarding deferred sales tax and use tax.

(ii) **Example 4.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than 50 percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may provide a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins that the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. For information regarding the taxability of fruit packing by cooperative marketing as-

sociations and independent dealers acting as agents for others in the sales of fruit and produce see WAC 458-20-214.

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales and use taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. These exemptions are commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. For more information on the M&E exemption see WAC 458-20-13601.

(8) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. (~~Effective July 1, 2015,~~) Bee pollination services provided to farmers by eligible apiarists also qualify for the exemption provided by RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to (b) of this subsection for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced on the seller's own land or on land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. For more information about the small business B&O tax credit see WAC 458-20-104.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. In addition, farmers that manufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value of the products manufactured. For more information about the litter tax see chapter 82.19 RCW and WAC 458-20-243.

Example 5. RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it sells apples at retail. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from retail sales tax because the apples are sold as a food product for human consumption. Refer to subsection (9)(d) of this rule for more information about the retail sales tax exemption applicable to sales of food products for human consumption.

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to

any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits), respectively, for more information about the manufacturing B&O tax and the MATC.

(i) **Manufacturing fresh fruits and vegetables.** RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables. For purposes of this rule, "fruits" and "vegetables" (~~does~~) do not include cannabis.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also eligible for this exemption. A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state.

(A) A person claiming the exemption must file a complete annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4266 is scheduled to expire July 1, 2035, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) **Manufacturing dairy products.** RCW 82.04.4268 provides a B&O tax exemption to persons manufacturing dairy products, not including any cannabis-infused product (~~(, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135)~~). These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-products from the manufacturing of dairy products such as whey and casein.

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods out of Washington state in the ordinary course of business and, until July 1, 2025, to purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product in Washington state. Unlike the exemption for certain wholesale sales of fresh fruits or vegetables (see (b) (i) of this subsection), the exemption for sales of qualifying dairy products does not require that the sales be made at wholesale.

A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state, or the goods were sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product in Washington state.

(A) A person claiming the exemption must file a complete annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4268 is (~~generally~~) scheduled to expire July 1, 2035, at which time the preferential B&O tax rate under RCW 82.04.260 will apply. The exemption for sales of dairy products to purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product in Washington state expires July 1, 2025.

(c) **Raising cattle for wholesale sale.** RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale provided that the cattle are held for at least 60 days prior to the sale. Persons who hold cattle for fewer than 60 days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

Example 6. A feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if it held the cattle for at least 60 days while they were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than 60 days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, several other B&O tax exemptions available to farmers are discussed in this subsection.

(i) **Growing, raising, or producing agricultural products owned by other persons.** RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

Example 7. A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle for at least 60 days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least 60 days while the cattle are prepared for market. (See (c) of this subsection.)

(ii) **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

(iii) **Sales of hatching eggs or poultry.** RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(9) **Retail sales tax and use tax exemptions.** This subsection provides information about (~~a number of~~) several retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. Refer to subsection (10) of this rule for additional information regarding exemption certificates.

(a) **Pollen.** RCW 82.08.0277 and 82.12.0273 exempt the sale and use of pollen from retail sales and use taxes.

(b) **Semen.** RCW 82.08.0272 and 82.12.0267 exempt the sale and use of semen used in the artificial insemination of livestock from retail sales and use taxes.

(c) **Feed for livestock at public livestock markets.** RCW 82.08.0296 and 82.12.0296 exempt the sale and use of feed to be consumed by livestock at a public livestock market from retail sales and use taxes.

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption from retail sales and use taxes. These exemptions also apply to the sale or use of livestock for personal consumption as food. For more information about food products that qualify for this exemption see WAC 458-20-244.

(e) **Auction sales of farm property.** RCW 82.08.0257 and 82.12.0258 exempt from retail sales and use taxes tangible personal property, including household goods, which has been used in conducting a farm activity, if the property is purchased from a farmer, as defined in RCW 82.04.213, at an auction sale held or conducted by an auctioneer on a farm. (~~Effective June 12, 2014,~~) These exemptions do not apply to personal property used by a person in the production of cannabis.

(f) **Poultry.** RCW 82.08.0267 and 82.12.0262 exempt from retail sales and use taxes the sale and use of poultry used in the production for sale of poultry or poultry products.

Example 8. A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (8)(d)(iii) of this rule.)

(g) **Leases of irrigation equipment.** RCW 82.08.0288 and 82.12.0283 exempt the lease or use of irrigation equipment from retail sales and use taxes, (~~but only~~) if:

(i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part;

(iv) (~~Effective June 12, 2014,~~) The irrigation equipment is not used in the production of cannabis; and

(v) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land.

(h) **Beef and dairy cattle.** RCW 82.08.0259 and 82.12.0261 exempt the sale and use of beef and dairy cattle, to be used by a farmer in producing an agricultural product, from retail sales and use taxes.

Example 9. John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. John's sales of beef and dairy cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in (d) of this subsection, or the exemption for sales of livestock for breeding purposes described in this subsection (9)(i) of this rule.

(i) **Livestock for breeding purposes.** RCW 82.08.0259 and 82.12.0261 exempt the sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association from retail sales and use taxes.

Example 10. ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not

required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives and retains a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** RCW 82.08.920 and 82.12.920 exempt from retail sales and use taxes the sale to and use of bedding materials by farmers to accumulate and facilitate the removal of chicken manure, provided the farmer is raising chickens that are sold as agricultural products.

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example 11.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells them to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax (~~(as long as)~~) if Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for (~~its~~) their records.

The exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** RCW 82.08.910 and 82.12.910 exempt from retail sales and use taxes the sale to and use of propane or natural gas by farmers to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products.

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(ii) **Example 12.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax (~~(as long as)~~) if Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for (~~its~~) their records.

The exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example 13.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) **Diesel, biodiesel, and aircraft fuel for farm fuel users.** RCW 82.08.865 and 82.12.865 exempt from retail sales and use taxes the sale and use of diesel fuel, biodiesel fuel, and aircraft fuel, to farm fuel users for agricultural purposes. The exemptions apply to a fuel blend if all (~~of~~) the component fuels of the blend would other-

wise be exempt if the component fuels were sold as separate products. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for ~~(its)~~ their records.

(i) The exemptions apply to nonhighway uses for production of agricultural products and for providing horticultural services to farmers. Horticultural services include:

- (A) Soil preparation services;
- (B) Crop cultivation services;
- (C) Crop harvesting services.

(ii) The exemptions do not apply to uses other than for agricultural purposes. Agricultural purposes do not include:

- (A) Heating space for human habitation or water for human consumption; or
- (B) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(m) **Nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide retail sales and use tax exemptions for the sale to or use by eligible persons of:

- (i) Qualifying livestock nutrient management equipment;
- (ii) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and
- (iii) Labor and services rendered in respect to repairing, cleaning, altering, or improving qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities ~~((in the course of))~~ while repairing, cleaning, altering, or improving such facilities.

(iv) Nonqualifying labor and services. This subsection (9)(m)(iii) of this rule does not include the sale of or charge made for labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities, or tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing qualifying livestock nutrient management facilities.

(v) Nutrient management plan must be certified or approved. The exemptions provided by RCW 82.08.890 and 82.12.890 apply to sales made after the livestock nutrient management plan is:

- (A) Certified under chapter 90.64 RCW;
- (B) Approved as part of the permit issued under chapter 90.48 RCW; or
- (C) Approved by a conservation district and who qualifies for the exemption provided under RCW 82.08.855. A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions should be completed and provided to the seller. In lieu of the exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.

(vi) **Definitions. For the purpose of these exemptions, the following definitions apply:**

(A) **"Animal feeding operation"** means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

- Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

- Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(B) **"Conservation district"** means a subdivision of state government organized under chapter 89.08 RCW.

(C) **"Eligible person"** means a person:

- Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; or

- Who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or

- Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

(D) **"Handling and treatment of livestock manure"** means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(E) **"Permit"** means either a state waste discharge permit or a National Pollutant Discharge Elimination System permit, or both.

(F) **"Qualifying livestock nutrient management equipment"** means the tangible personal property listed below for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for the same equipment:

- Aerators
- Agitators
- Augers
- Conveyers
- Gutter cleaners
- Hard-hose reel traveler irrigation systems
- Lagoon and pond liners and floating covers
- Loaders
- Manure composting devices
- Manure spreaders
- Manure tank wagons
- Manure vacuum tanks
- Poultry house cleaners
- Poultry house flame sterilizers
- Poultry house washers
- Poultry litter saver machines
- Pipes
- Pumps
- Scrapers
- Separators
- Slurry injectors and hoses
- Wheelbarrows, shovels, and pitchforks.

(G) "**Qualifying livestock nutrient management facilities**" means the exclusive use in the handling and treatment of livestock manure of the facilities listed below:

Flush systems

Lagoons

Liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks

Structures used solely for dry storage of manure, including roofed stacking facilities.

(n) **Anaerobic digesters (effective July 1, 2018).**

(i) RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons:

(A) In respect to equipment necessary to process biogas from a landfill into marketable coproducts including, but not limited to, biogas conditioning, compression, and electrical generation equipment, or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving equipment necessary to process biogas from a landfill into marketable coproducts; and

(B) Establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. Anaerobic digester means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment.

(ii) **Records retention and exemption certificate.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(o) (i) **Anaerobic digesters (effective until January 1, 2029).** RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily (more than 50 percent measured by volume or weight) to treat livestock manure. Anaerobic digester is a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

(ii) **Records retention and exemption certificate.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files.

See subsection (10) of this rule for where to find an exemption certificate.

(p) **Animal pharmaceuticals.** RCW 82.08.880 and 82.12.880 exempt from retail sales and use taxes the sale of and use of certain animal pharmaceuticals when sold to, or used by, farmers or veterinarians. To qualify for the exemption, the animal pharmaceutical must be administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale. In addition, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

(i) **Who is a veterinarian?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "*Green Book*." The USDA maintains a list of approved biotechnology products called the "*Veterinary Biologics Product Catalogue*." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example 17.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA.

(iv) **What type of animal must the pharmaceutical be administered to?** As explained above, the exemptions are limited to the sale and use of animal pharmaceuticals administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. The conditions under which a farmer may purchase and use tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase and use feed at wholesale. Both types of purchases and uses require that the particular product be sold to or used by a farmer (or a veterinarian in the case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** For purposes of the exemptions, the following is a nonexclusive list of examples of animals that are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

(A) Horses, cattle, or other livestock raised by a farmer for sale;

(B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;

(C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;

(D) Horses raised by a farmer for the purpose of producing foals for sale;

(E) Sheep raised by a farmer for the purpose of producing wool for sale; and

(F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** For purposes of the exemptions, the following nonexclusive list of examples do not qualify because the animals are not being raised for the purpose of producing an agricultural product for sale:

(A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;

(B) Sheep and other livestock raised as pets;

(C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and

(D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some future time the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales and uses of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemptions, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales and uses of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) qualify for the exemption.

(q) **Replacement parts for qualifying farm machinery and equipment.** RCW 82.08.855 and 82.12.855 exempt from retail sales and use taxes sales to and uses by eligible farmers of replacement parts for qualifying farm machinery and equipment. Also included are: Labor and services rendered during the installation of repair parts; and labor and services rendered during repair as long as no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of the qualifying equipment other than replacement parts.

(i) **The following definitions apply to this subsection:**

(A) "Eligible farmer" as defined in RCW 82.08.855(4).

(B) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products, and ~~((effective July 1, 2015,))~~ providing bee pollination services, or both.

(C) "Qualifying farm machinery and equipment" does not include:

- Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles and other farm implements. "Farm implements" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

- Aircraft;

- Hand tools and hand-powered tools; and

- Property with a useful life of less than one year.

(D) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment. Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined here or making repairs as described above in (p) of this subsection.

(ii) **Records retention and exemption certificate.**

Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Sellers making tax-exempt sales must obtain, and retain in its files, a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from the farmer. In lieu of the exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(r) Goods and services purchased by eligible farmers (effective July 1, 2024). RCW 82.08.702 and 82.12.702 provide a retail sales and use tax exemption for the purchase and use of goods and services by an eligible farmer.

(i) An "eligible farmer" means a farmer performing custom farming services or farm management services, as those terms are defined in RCW 82.04.758.

(ii) The exemption is in the form of a remittance (refund).

(A) An eligible farmer claiming the state and local retail sales or use tax exemption must first pay all applicable state and local retail sales or use taxes on all qualifying purchases.

(B) The eligible farmer may then file a refund application with the department for the previously paid retail sales or use tax that qualifies for the exemption.

(C) The refund application must specify and separately identify the amount of the exempted state and local retail sales and use taxes claimed and the qualifying purchases for which the exemption is claimed. The refund application must also contain the following supporting information and documentation:

(I) The claimant's name, address, telephone number, and tax reporting account number (UBI);

(II) The taxable period of the refund claim;

(III) The amount of the refund claim;

(IV) Purchase information that identifies the date of purchase, purchase price, location of purchase, and the amount of retail sales or use tax paid; and

(V) A copy of purchase receipts.

(D) The application for this remittance is titled "Application for Refund or Credit" and is available on the department's website at dor.wa.gov.

(iii) The exemption is limited to \$10,000 per eligible farmer and must be claimed prior to January 1, 2030. Refund applications received after December 31, 2029, are not eligible for the exemption. The \$10,000 limit applies to the combined retail sales and use tax paid on eligible purchases.

(10) **Sales tax exemption certificates.** As indicated in subsection (9) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. A person claiming an exemption must keep records necessary for the department to verify eligibility for each claimed exemption. A

person claiming an exemption under subsection (9) of this rule may complete and use the department's Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's website at dor.wa.gov for the exemption certificate. In lieu of an exemption certificate, a seller may capture the relevant data elements as provided under the streamlined sales and use tax agreement as allowed under RCW 82.08.050. Sellers must retain a copy of the exemption certificate or the data elements in their files. Without proper documentation, sellers are liable for payment of the retail sales tax on sales claimed as exempt.

WSR 25-02-097
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed December 30, 2024, 1:46 p.m., effective January 30, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The licensing division is amending WAC 110-300-0331 Prohibited behavior, discipline, and physical removal of children, 110-301-0331 Prohibited behavior, discipline, and physical removal of children, and 110-302-0331 Prohibited behavior, discipline, and physical removal of children.

These WAC are being amended because the language of the WAC does not clearly forbid child care providers from harming children. This rule requires an immediate and permanent change to the WAC chapters to protect children from harm.

Citation of Rules Affected by this Order: Amending WAC 110-300-0331, 110-301-0331, and 110-302-0331.

Statutory Authority for Adoption: Chapter 42.56 RCW; RCW 43.215.070, 43.215.201, 43.216.055, 43.216.065, and 43.216.742.

Adopted under notice filed as WSR 24-22-108 on November 4, 2024, and 24-23-100 on November 20, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 30, 2024.

Brenda Villarreal
Rules Coordinator

OTS-6099.1

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0331 Prohibited behavior((7)) and discipline, and physical ((removal)) separation of children. (1) An early learning provider ((must take steps to prevent and, once aware of, must not tolerate)), staff member, or household member is prohibited from using the following behaviors and discipline of children:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ~~((Prevent))~~ Sexual abuse, pursuant to RCW 26.44.020;

~~((g) Preventing a child from or ((punish))~~ punishing a child for exercising religious rights; ~~((or~~

~~(g) Anyone to:~~

~~((i) Restrict))~~ (h) Restricting a child's breathing;

~~((ii) Bind or restrict))~~ (i) Binding or restricting a child's movement unless permitted under WAC 110-300-0335;

~~((iii) Tape))~~ (j) Taping a child's nose, mouth, or other body part;

~~((iv) Deprive))~~ (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

~~((v) Force))~~ (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

~~((vi) Interfere))~~ (m) Interfering with a child's ability to take care of ((his or her)) their own hygiene and toileting needs;

~~((vii) Use))~~ (n) Using toilet learning or training methods that punish, demean, or humiliate a child;

~~((viii) Withhold))~~ (o) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for ((himself or herself)) themselves;

~~((ix) Expose))~~ (p) Exposing a child to extreme temperatures as punishment;

~~((x) Demand))~~ (q) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

~~((xi) Place))~~ (r) Placing the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

~~((xii) Use))~~ (s) Using high chairs, car seats, or other confining space or equipment to punish a child or restrict movement.

(2) An early learning provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) An early learning provider may separate a preschool age or school age child from other children when that child needs to regain control of ~~((him or herself))~~ themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, center director, assistant director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, an early learning provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of ~~((his or her))~~ their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If an early learning provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, center director, assistant director, program supervisor, lead teacher, or an assistant teacher may physically ~~((remove))~~ separate the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or ~~((removing))~~ separating the child. Physical ~~((removal))~~ separation of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk ~~((him or her))~~ the child away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and ~~((remove him or her))~~ separate the child to a quiet place where the child cannot hurt themselves or others.

OTS-5990.1

AMENDATORY SECTION (Amending WSR 21-10-035, filed 4/27/21, effective 6/1/21)

WAC 110-301-0331 Prohibited behavior~~((7))~~ and discipline, and physical ~~((removal))~~ separation of children. (1) A school-age provider ~~((must take steps to prevent and, once aware of, must not tolerate))~~ is prohibited from using the following behaviors and discipline of children:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ~~((Prevent))~~ Sexual abuse, pursuant to RCW 26.44.020;

~~((g))~~ Preventing a child from or ~~((punish))~~ punishing a child for exercising religious rights; ~~((or~~

~~((g))~~ Anyone to:

~~((i))~~ Restrict)) (h) Restricting a child's breathing;

~~((ii))~~ Bind or restrict)) (i) Binding or restricting a child's movement unless permitted under WAC 110-301-0335;

~~((iii))~~ Tape)) (j) Taping a child's nose, mouth, or other body part;

~~((iv) Deprive)~~ (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

~~((v) Force)~~ (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

~~((vi) Interfere)~~ (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

~~((vii) Withhold)~~ (n) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

~~((viii) Expose)~~ (o) Exposing a child to extreme temperatures as punishment;

~~((ix) Demand)~~ (p) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

~~((x) Place)~~ (q) Placing the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

~~((xi) Use)~~ (r) Using a confining space or equipment to punish a child or restrict movement.

(2) A school-age provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) A school-age provider may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, program director, site director, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, a school-age provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If a school-age provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, program director, site director, lead teacher, or an assistant teacher may ~~((physically remove))~~ separate the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child.

OTS-5958.2

AMENDATORY SECTION (Amending WSR 23-10-059, filed 5/1/23, effective 6/1/23)

WAC 110-302-0331 Prohibited behavior(~~(7)~~) and discipline, and physical (~~(removal)~~) separation of children. (1) ONB providers (~~(must take steps to prevent and, once aware of, must not tolerate)~~) are prohibited from using the following behaviors and discipline of children:

- (a) Profanity, obscene language, "put downs," or cultural or racial slurs;
 - (b) Angry or hostile interactions;
 - (c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;
 - (d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;
 - (e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;
 - (f) (~~(Prevent)~~) Sexual abuse, pursuant to RCW 26.44.020;
 - (g) Preventing a child from or (~~(punish)~~) punishing a child for exercising religious rights; (~~(or~~
 - ~~(g) Anyone to:~~
 - ~~(i) Restrict)~~) (h) Restricting a child's breathing;
 - ~~((ii) Bind or restrict)~~) (i) Binding or restricting a child's movement unless permitted under WAC 110-302-0335;
 - ~~((iii) Tape)~~) (j) Taping a child's nose, mouth, or other body part;
 - ~~((iv) Deprive)~~) (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;
 - ~~((v) Force)~~) (l) Forcing a child to ingest something as punishment such as hot sauce or soap;
 - ~~((vi) Interfere)~~) (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;
 - ~~((vii) Use)~~) (n) Using toilet learning or training methods that punish, demean, or humiliate a child;
 - ~~((viii) Withhold)~~) (o) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;
 - ~~((ix) Expose)~~) (p) Exposing a child to extreme temperatures as punishment;
 - ~~((x) Demand)~~) (q) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;
 - ~~((xi) Place)~~) (r) Placing the separated child in a closet, bathroom, locked room, out of visual range in an approved tent, cabin, yurt or other structure; or in an unlicensed space; and
 - ~~((xii) Use)~~) (s) Using confining space or equipment to punish a child or restrict movement.
- (2) ONB providers must supervise to protect children from the harmful acts of other children. ONB providers must immediately intervene when they become aware that a child or children are teasing,

fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) ONB providers may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, director, program director, assistant director, site director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, ONB providers must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If ONB providers follow all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, director, program director, assistant director, site director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical (~~removal~~) separation of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk them away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and (~~remove~~) separate them to a quiet place where the child cannot hurt themselves or others.