

WSR 21-05-040

PROPOSED RULES

SEATTLE COLLEGES

[Filed February 11, 2021, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-018.

Title of Rule and Other Identifying Information: Required and emergency medical leaves of absence.

Hearing Location(s): On March 31, 2021, at 9:00 - 10:00 a.m., Zoom - virtual.

Date of Intended Adoption: April 8, 2021.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122, email jennie.chen@seattlecolleges.edu, fax 206-934-3894, by March 29, 2021.

Assistance for Persons with Disabilities: Contact Jennie Chen, phone 206-934-3873, email jennie.chen@seattlecolleges.edu, by March 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule addresses a need for the colleges to issue medical withdrawals to students who exhibit self-harm and cannot otherwise be accommodated through the interactive process while attending college.

Reasons Supporting Proposal: The Department of Education's Office for Civil Rights recommends that colleges separate emergency medical leave procedures from the disciplinary procedures.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Seattle colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kurt Buttleman, Siegal Center, 206-934-4111.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The district is not one of the enumerated agencies listed in RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

February 3, 2021

Kurt Buttleman

Vice Chancellor for Academic
and Student Success

OTS-1528.2

Chapter 132F-126 WAC
REQUIRED AND EMERGENCY MEDICAL LEAVES OF ABSENCE

NEW SECTION

WAC 132F-126-001 Purpose. The vice presidents of student services may, after a careful and collaborative review, place a student on mandatory medical leave of absence in accordance with the procedures set forth in this chapter. This process is only considered in rare situations when other options have been utilized and considered. A mandatory leave of absence is not the preferred option when addressing students' health, welfare, and safety. Any assessment or action taken under this policy will be based on legitimate safety concerns and not based on speculation, stereotypes, or generalizations about individuals with disabilities.

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NEW SECTION**WAC 132F-126-010 Issuing a required medical leave of absence.**

(1) The vice president of student services, or the vice president's designee, (hereinafter collectively referred to as the "vice president") may require a student to take a medical leave of absence if a student has a physical illness or a mental, emotional, or psychological condition and as a result of the condition:

(a) Is engaging in, or is threatening to engage in, behavior that poses a significant danger of causing substantial harm to the health, safety, or welfare of the student or others;

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student or others and the behavior continues, or there is a risk that the behavior will continue, posing a significant danger of causing substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) In determining whether to require a student to take a medical leave of absence, the vice president may consult with a qualified medical, health and/or public safety professional and, where possible, other persons to assess the student's ability to function in the academic environment.

(3) Prior to the vice president requiring a student to take a medical leave of absence, the student shall be provided an opportunity to present information about his or her circumstances, where reasonably possible, to the vice president. A student waives their opportunity to provide information if he or she is unwilling or unable to meet with the vice president upon request.

(4) The vice president shall issue the required medical leave of absence in writing to the student. The written notice shall include the effective date of the leave, the reasons for requiring the leave, the conditions for reenrollment, and any restrictions imposed on the student's access to the campus or college-sponsored activities.

(5) The required medical leave of absence shall be effective twenty-one days after it is served on the student, unless the student files an appeal.

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NEW SECTION

WAC 132F-126-020 Appealing a required medical leave of absence.

A student may appeal the vice president's decision imposing a required medical leave of absence to the medical leave of absence review board (review board). The appeal must be filed in writing with the vice president of student services within twenty days of service of the vice president's decision. Service of the vice president's decision shall be complete upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

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NEW SECTION

WAC 132F-126-030 Hearing an appeal of a required medical leave of absence. (1) Upon receipt of a timely appeal by a student of the vice president's decision imposing a required medical leave of absence, the vice president of student services, or the vice president's designee, shall convene the review board to hear the appeal. The review board may:

(a) Affirm the vice president's decision;

(b) Affirm the vice president's decision but alter the disposition from imposition of a required medical leave of absence to conditional enrollment under specified directives; or

(c) Reverse the vice president's decision allowing the student to remain enrolled without restriction.

(2) The review board's decision shall be in writing and served on the student within seven business days of the hearing. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) The review board shall be composed of at least three members drawn from a pool of academic deans and staff members not reporting to the vice president who have been identified by the president. The president shall select one of the members to act as the chair at the hearing.

(4) The vice president shall notify the student in writing of the time, date, and location of the hearing.

(5) The review board shall conduct the hearing according to the Administrative Procedure Act, chapter 34.05 RCW.

(6) The chair of the review board may order the hearing closed to public observation as necessary to protect from disclosure medical or educational records held to be confidential under state or federal law.

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NEW SECTION

WAC 132F-126-040 President's review and final college order.

(1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the review board's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argument, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) Within ninety days following the later of the conclusion of the hearing or the review board's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the review board, or enter a final order in the matter. The president shall have all of the decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify the review board's decision.

(5) The president's final order shall include, or incorporate by reference to the review board's initial order, all matters required by RCW 34.05.461, and in accordance with RCW 34.05.464. It shall also include notice to the respondent of his/her right to seek judicial review under RCW 34.05.510 et seq.

(6) Copies of the final order shall be served on the respondent, the vice president, any legal counsel who have appeared, and the review board's chair.

(7) The decision of the president shall be the final district action in the matter.

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NEW SECTION

WAC 132F-126-050 Emergency medical leave of absence. (1) The vice president may immediately require a student to take an emergency

medical leave of absence if the student has a medical, mental, emotional, or psychological condition and as a result of the condition:

(a) The student is engaging in, or threatening to engage in, behavior that poses a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior imminently and substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) A decision by the vice president requiring a student to take an emergency medical leave of absence shall be in writing and served on the student. The decision shall set forth the reasons for requiring the leave and, as appropriate, any restrictions imposed on the student's access to the campus or college-sponsored activities. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) A student subject to an emergency medical leave of absence shall be provided a hearing before a presiding officer appointed by the college president to review the vice president's decision. The hearing shall occur within three business days of the student being served with the vice president's decision imposing the emergency medical leave of absence unless a student elects to waive his or her right to a hearing. Except as otherwise provided herein, the process for conducting the emergency medical leave hearing shall be pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(4) An emergency medical leave of absence shall take effect immediately and remain in effect until the review board or president reinstate the student. The vice president may at any time decide to reinstate the student under an emergency medical leave when the vice president determines that the reasons for the emergency medical leave of absence no longer exist.

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NEW SECTION

WAC 132F-126-060 Returning from a required or emergency leave of absence. (1) A student wishing to be considered for reenrollment to the college shall submit an application for reenrollment to the vice president at least one month prior to the start of the quarter in which the student wishes to reenroll. The student shall provide appropriate documentation with any conditions for reenrollment set forth in the vice president's decision. If a student files an appeal of the vice president's decision, and the conditions for reenrollment are modified by the review board, the student shall provide evidence that

the conditions set forth in the review board's order have been met. A student must also meet all other admission or enrollment requirements of the college for reenrollment.

(2) The vice president shall consult with a qualified medical professional and, where possible, other persons to assess the student's ability to function in the academic environment prior to determining if the student may reenroll.

(3) The vice president shall notify the student in writing of the decision and the conditions associated with the approval or denial for reenrollment.

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