

WSR 21-13-010
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 4, 2021, 2:29 p.m., effective June 4, 2021, 2:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule revision provides some necessary accommodations for youth reengagement programs as a result of the ongoing coronavirus (COVID-19) pandemic. First, the emergency rule provides necessary clarification regarding acceptable "face-to-face" engagements when a reengagement program is being administered in remote learning environments made necessary by the global COVID-19 pandemic. Second, the rule extends the reengagement programs apportionment count date for the month of September 2020 to allow schools to claim apportionment for students unable to enroll and begin school until later in the month due to the impact of the pandemic and wildfires. Third, the rule removes some "prior month" requirements for October 2020 apportionment to address the impact caused by late student enrollment and participation in September 2020 due to the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 392-700-015 and 392-700-160.

Statutory Authority for Adoption: RCW 28A.175.100.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Students being served through reengagement programs under chapter 392-700 WAC must still be able to receive educational services, including the face-to-face interaction time required under WAC 392-700-015, as school districts begin the school year by offering remote learning due to the global COVID-19 pandemic. Because face-to-face, in-person interaction is not feasible for all students participating in remote learning, this emergency rule amendment is necessary to ensure students will be able to access services through different means of contact in the 2020-21 school year. The office of superintendent of public instruction (OSPI) is initiating rule making to make this change permanent through the remainder of the school year. The pandemic and wildfire season also created situations where students were unable to enroll or participate until later in September. OSPI's school apportionment rules have been modified for the traditional learning environment to allow for later enrollment and participation for this month. This emergency rule revision aligns with those rules and removes the impacts that late enrollment would create to October enrollment apportionment. On September 16, 2020, OSPI initiated permanent rule making to amend the rule for the remainder of the 2020-21 school year.

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 2, 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: June 4, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2253.3

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month. For the 2020-21 school year, face-to-face interaction means reciprocal communication happening in real time through in-person, telephone, email, instant messaging, interactive video communication, or other means of digital communication, and in addition to the weekly status check.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"College level class"** is a class provided by a college that is one hundred level or above.

(7) **"Consortium"** means a regional group of organizations that consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden.

(8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For September 2020, the count day is any day of that month. For the remaining months, the count day is the first instructional day.

(11) **"Credential"** is identified as one of the following:

- (a) High school diploma; or
- (b) Associate degree.

(12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

(a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.

(b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

(c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.

(d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

(13) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) **"Indicator of academic progress"** means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

- (a) Earns at minimum a 0.25 high school credit;
- (b) Earns at minimum a whole college credit;
- (c) Receives a college certificate after completion of a college program requiring at least forty hours of instruction;
- (d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;
- (e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;
- (f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;
- (g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

(h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

(i) Successfully completes college readiness course work with documentation of competency attainment;

(j) Successfully completes job search and job retention course work with documentation of competency attainment;

(k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

(m) Successfully completes an English as a second language (ESL) class;

(n) Successfully completes an adult basic education (ABE) class;
or

(o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) "**Instructional staff**" means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(17) "**Letter of intent**" means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(18) "**Noninstructional staff**" is any person employed in a position that is not an instructional staff as defined under subsection (16) of this section.

(19) "**OSPI**" means the office of superintendent of public instruction.

(20) "**Program**" means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(21) "**School year**" is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) "**Scope of work**" means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(23) "**Resident district**" means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

(24) "**Weekly status check**" means individual communication from a designated program staff to a student. Weekly status check:

- (a) Can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication;
 - (b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;
 - (c) Must be documented; and
 - (d) Must occur at least once every week that has at least three days of instruction.
- (25) "**Tribal compact school**" means a school that is the subject of a state-tribal education compact operated according to the terms of its compact executed in accordance with RCW 28A.715.010.
- (26) "**Charter school**" means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

[Statutory Authority: RCW 28A.175.010, 28A.175.115. WSR 17-01-125, § 392-700-015, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 28A.175.100. WSR 15-15-115, § 392-700-015, filed 7/16/15, effective 8/16/15; WSR 14-22-073, § 392-700-015, filed 11/3/14, effective 12/4/14; WSR 13-13-005, § 392-700-015, filed 6/6/13, effective 7/7/13. Statutory Authority: RCW 28A.175.100 and 2010 c 20. WSR 11-17-045, § 392-700-015, filed 8/11/11, effective 9/11/11.]

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

- WAC 392-700-160 Reporting of student enrollment.** (1) For all programs, the following will apply when reporting student enrollment for each monthly count day:
- (a) Met all eligibility criteria pursuant to WAC 392-700-035;
 - (b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct-funded technical college;
 - (c) Enrolled in an approved program pursuant to WAC 392-700-042;
 - (d) For continuing students, met the attendance period requirement pursuant to WAC 392-700-015(3), except for the October 2020 count, where this requirement is waived;
 - (e) For continuing students, met the weekly status check requirement pursuant to WAC 392-700-015(24), except for the October 2020 count, where this requirement is waived;
 - (f) Has not withdrawn or been dropped from the program on or before the monthly count day;
 - (g) Is not enrolled in course work that has been reported by a college for postsecondary funding;
 - (h) Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;
 - (i) Is not enrolled in a high school class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;
 - (j) If concurrently enrolled in a special education, transitional bilingual instruction, skills center, or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136; and

(k) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress.

(a) Satisfactory progress is defined as the documented attainment of at least one indicator of academic progress identified in WAC 392-700-015(15).

(b) Continuing students and returning students who, after being claimed for state funding for three count days excluding the September count day, have not earned an indicator of academic progress cannot be claimed for state funding until an indicator of academic progress is earned.

(i) During this reporting funding exclusion period, the program may permit the student to continue to attend;

(ii) When the student achieves an indicator of academic progress, the student may be claimed for state funding on the following count day; and

(iii) Rules governing the calculation of the three count day period are:

(A) The September count day is excluded from the three count day period for the indicator of academic attainment. Students whose enrollment spans over the September count day have an additional month to earn an indicator of academic progress.

(B) The three count days may occur in two different school years, if the student is enrolled in consecutive school years; and

(C) The three count days are not limited to consecutive months, if there is a break in the student being claimed for state funding.

(3) For below one hundred level classes, student enrollment will be reported as 1.0 FTE on each monthly count day.

Enrollment in below one hundred level classes is limited to non-vocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

[Statutory Authority: RCW 28A.175.010, 28A.175.115. WSR 17-01-125, § 392-700-160, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 28A.175.100. WSR 15-15-115, § 392-700-160, filed 7/16/15, effec-

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