

WSR 23-23-187

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed November 22, 2023, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-031.

Title of Rule and Other Identifying Information: Private schools.

Hearing Location(s): On January 18, 2024, at 2:00 [p.m.], at Billings Conference Room, Office of the Superintendent of Public Instruction (OSPI) Building, 600 Washington Street S.E., Olympia, WA 98504. Remote option Zoom call <https://us02web.zoom.us/j/86996162015>.

Date of Intended Adoption: February 15, 2024.

Submit Written Comments to: Jacki Verd, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by February 1, 2024.

Assistance for Persons with Disabilities: Contact Jacki Verd, phone 360-725-6025, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by January 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules help to implement SB [ESSB] 5515 and SB [E2SSB] 5315, from the 2023 legislative session. SB [ESSB] 5515—Protecting children from child abuse and neglect, concerns new regulation for private residential schools, including private boarding schools approved as private schools by the state board of education (SBE). Section 3 of the bill, codified at RCW 26.44.210, defines "Residential private school," and the proposed rule adopts the same definition.

SB [E2SSB] 5315—Concerning nonpublic agencies operating special education programs for students with disabilities, enacts additional requirements for organizations authorized by OSPI to provide special education services through contracts with school districts. These organizations include some private schools approved by SBE. Section 5 of the bill, codified at RCW 28A.155.245, requires SBE to notify OSPI of any unresolved concerns, deficiencies, or deviations related to a private school authorized by OSPI under RCW 28A.300.690 that is also approved by SBE under chapter 28A.195.RCW. The proposed rule implements this requirement.

In addition to aligning rules with the new requirements of the legislation, the proposed rule clarifies rule language, removes outdated language, and updates rules to align with current practice. Specifically, the proposed rule:

- Clarifies, in alignment with previous guidance, that "Washington state certificated teacher, administrator, or superintendent" means an educator that holds particular certificates and that a "Non-Washington state certificated teacher" means a person that does not hold any of those certificates but who meets certain other requirements.
- Clarifies that SBE may suspend or rescind approval if a school fails to verify that the school maintains certain conditions for approval.
- Adds a reference to an online complaint form to align the rules with current practice.
- Removes outdated language that permitted an exception to the physical facilities requirement and applied only during the 2020-21 school year.

Reasons Supporting Proposal: The proposal updates rules to align with the new legislation, clarifies rule language, removes outdated language, and updates rules to align with current practice.

Statutory Authority for Adoption: RCW 28A.195.040.

Statute Being Implemented: Section 5 of E2SSB 5315, codified at RCW 28A.155.245; and section 3 codified at RCW 28A.300.690. Also section 3 of ESSB 5515, codified at RCW 74.14.325, and section 2 codified at RCW 26.44.210.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

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. RCW 34.05.328 does not apply to SBE (RCW 34.05.328 (5)(a)(i)). The proposed rules clarify language without changing its effect, incorporate by reference state statutes without material change, or relate only to internal government operations that are not subject to violation by a nongovernment party.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2023
Randy Spaulding
Executive Director

OTS-4993.1

AMENDATORY SECTION (Amending WSR 22-07-048, filed 3/14/22, effective 4/14/22)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Private school" means a nonpublic school or nonpublic school district approved by the state board of education pursuant to RCW 28A.305.130, and chapter 28A.195 RCW and in accordance with the minimum standards for approval as prescribed in this chapter.

(2)(a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health, and other applicable health requirements for private schools set by federal, state, or local health authorities.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) "Washington state certificated teacher, administrator, or superintendent" or "certified person" in this chapter means an educator holding a residency, professional, initial, continuing, or standard certificate under WAC 181-79A-142(1); or a first peoples' language, culture, and oral tribal traditions certificate under WAC 181-78A-700.

(6) (a) "Non-Washington state certificated teacher" means a person who does not ((have a Washington state certification consistent with WAC 181-79A-030(2),)) hold a residency, professional, initial, continuing, or standard certificate under WAC 181-79A-142(1); or a first peoples' language, culture, and oral tribal traditions certificate under WAC 181-78A-700 but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

~~((6))~~ (7) "Business day" means a weekday, excluding weekends, state holidays, and state closures unless otherwise specified.

~~((7))~~ (8) "Filing" means the process by which a document is officially delivered to a state board of education staff member. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified state board of education staff member;

(b) By sending the document by email and first class mail to the specified state board of education email address and state board of education's office address on its website; or

(c) By submitting an initial or annual application and certification of compliance as required in WAC 180-90-130 or 180-90-160.

Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the state board of education.

~~((8))~~ (9) "Executive director" means the executive director of the state board of education.

~~((9))~~ (10) "SBE private school officer" means the person designated by the executive director to administer the state board of education's private school program.

~~((10))~~ (11) "SBE representative" means the person designated by the executive director to administer the state board of education's private school program or another SBE staff person, and may be represented by an assistant attorney general.

~~((11))~~ (12) "Hearing officer" means the person designated by the executive director, in consultation with the SBE executive commit-

tee, to conduct a brief administrative proceeding or a summary suspension hearing on the loss of private school approval.

~~((12))~~ (13) "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 both email, and by either 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.

~~((13))~~ (14) "Loss of approval" means either a suspension or rescission of a private school's approval by the state board of education. Suspension is for a set period of time or until specified conditions are met and rescission is permanent until a new application for approval is granted.

~~((14))~~ (15) "School" means and includes each building, facility, and location, including online program components, where any portions of a kindergarten and grades one through 12 program of education and related activities are conducted for two or more children by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

~~((15))~~ (16) "Residential private school," per RCW 26.44.210, means a nonpublic school or nonpublic school district subject to approval by the state board of education pursuant to RCW 28A.305.011 and chapter 28A.195 RCW that provides sleeping and living facilities or residential accommodations for enrolled students.

(17) "Summary suspension" means the immediate, temporary suspension of a private school's approval in an administrative procedure.

~~((16))~~ (18) "Threat to health or safety" means the physical facilities, personnel, or practices of the school do not meet reasonable health requirements or reasonable fire safety requirements; or failure to meet the requirements or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW.

~~((17))~~ (19) "School or district administrator" means administrative or executive authority of private schools or private school districts. The terms "head of school," "principal," or "superintendent" may also be used in rule or application materials to refer to the administrative or executive authority of the private school or private school district.

~~((18))~~ (20) "Review committee" means a committee of three to five SBE members identified by the SBE chair who will conduct reviews of initial decisions of brief adjudicative proceedings pursuant to WAC 180-90-143.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-139 Approval action by SBE. The state board of education shall take one of the following actions:

(1) If no deviations are found, the state board of education shall grant full approval.

(2) If minor deviations are found and the private school has resolved the deviations, the state board of education shall grant full approval.

(3) If major deviations are found and the private school in its narrative report provides satisfactory assurance of compliance by the commencement of the annual school term, the state board of education shall grant full approval.

(4) If major deviations are found and the private school in its narrative report, supplemented by direct testimony to the state board of education, demonstrates it is not practical to correct such major deviations prior to the commencement of the annual school term but establishes to the satisfaction of the state board of education its ability to correct such deviation as soon as is practical, the state board of education shall grant such private school provisional approval for the period of time the state board of education determines is necessary to correct the major deviation but no longer than one year.

(5) If unacceptable deviations are found or if the private school fails to comply with timely corrective conditions within subsection (2), (3), or (4) of this section for minor or major deviations, state board of education approval shall be denied or rescinded.

(6) If any unresolved concerns, deficiencies, or deviations are found and the private school is an entity authorized by the superintendent of public instruction to provide a program of special education and related services for students with disabilities under RCW 28A.300.690, the state board of education will notify the office of the superintendent of public instruction of the unresolved concerns, deficiencies, or deviations.

AMENDATORY SECTION (Amending WSR 22-07-048, filed 3/14/22, effective 4/14/22)

WAC 180-90-141 Loss of private school approval. The state board of education may suspend or rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

~~((a) For the 2020-21 school year, schools that implement an on-line education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and~~

~~(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.))~~

(2) Failure to provide verification that the approved private school maintains teaching staff ~~((have a valid))~~ with appropriate Washington state ~~((teaching certificate or meet the provisions of WAC 180-90-112(5))~~ certification or otherwise meet the requirements of WAC 180-90-160 (1)(c).

(3) Failure to provide verification that the school maintains physical facilities ~~((of the school))~~ that meet all reasonable health requirements and all reasonable fire safety requirements.

(4) Failure to meet any of the requirements or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-170 Complaints against private schools. (1) Complaints about an approved private school may be made in writing to the state board of education and may be made through an online form available on the state board of education's website.

(2) If a complaint against a private school is received, the state board of education will:

(a) Notify the complainant that the communication was received;

(b) Notify the school of the complaint, provide a copy of the complaint if requested, and provide an opportunity for the school to respond. All correspondence will conform to state and federal student privacy laws; and

(c) Review the complaint and the school's response and may take appropriate action it deems necessary. Any action taken by the state board of education will be limited to authority pursuant to chapter 28A.195 RCW and the rules promulgated thereunder.

(3) The record of the complaint, the response and any action taken will be retained according to the record retention schedule established by the office of the secretary of state for the state board of education.

(4) The state board of education will follow the process described in subsections (2) and (3) of this section if complaints are relayed to the state board of education by other state agencies regarding a private school, including the office of the superintendent of public instruction regarding private schools authorized to provide special education and related services for students with disabilities under RCW 28A.300.690, and by the department of children, youth, and families concerning residential private schools under RCW 26.44.210.