

# Chapter 392-190 WAC

## EQUAL EDUCATIONAL OPPORTUNITY—UNLAWFUL DISCRIMINATION PROHIBITED

### WAC

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**WAC 392-190-005 Purpose—Elimination of unlawful discrimination in public schools.** The purpose of this chapter is to establish rules and regulations which implement chapters 28A.640 and 28A.642 RCW. The referenced enactments prohibit discrimination on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, 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 in Washington public schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities

Act, and Titles VI and VII of the Civil Rights Act of 1964 similarly prohibit discrimination based on sex, race, creed, religion, color, national origin, and disability, in federally assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by federal civil rights authorities and in some aspects extend beyond those authorities. Accordingly, compliance with relevant federal civil rights law should constitute compliance with those similar substantive areas treated in this chapter, but school districts should be aware that compliance with federal civil rights laws alone may not constitute compliance with this chapter.

In accordance with chapters 28A.640 and 28A.642 RCW, it is unlawful for any public school district to discriminate on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal with regard to any activity conducted by or on behalf of a school district including, but not limited to, preschool, adult education, community education and vocational-technical program activities.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020, 11-09-024, § 392-190-005, filed 4/13/11, effective 5/14/11. Statutory Authority: 1990 c 33, 90-16-002 (Order 18), § 392-190-005, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 34.05.220 [(1)](a), 89-23-001 (Order 15), § 392-190-005, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-005, filed 5/17/76.]

**WAC 392-190-010 Counseling and guidance services—Career opportunities—Internal procedures.** (1) No school district shall engage in discrimination against any person on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in the counseling or guidance of students in grades K-12.

(2) Each school district must devise and use materials, orientation programs, and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. School districts must encourage students to explore subjects and activities not traditional for their sex.

(3) Each school district which uses testing and other materials for counseling students must not use different materials for students based on their sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. A school district may use different materials for students on the basis of their sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal if:

(a) Such different materials cover the same occupations and interest areas; and

(b) The use of such different materials is demonstrated to be essential to eliminate bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(4) Each school district must develop and use internal procedures for ensuring that all tests and appraisal instruments related to guidance counseling, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(5) If a school district concludes that the use of such instruments, materials, or programs results in a substantially disproportionate number of students who are members of one of the groups identified in WAC 392-190-005 to be placed in any particular course of study or classification, the school district must take such immediate action as is necessary to assure that such disproportion is not the result of discrimination in the instrument, material, or its application.

(6) Where a school district finds that a particular class contains a substantially disproportionate number of students who are members of any one of the groups identified in WAC 392-190-005, the district must take such immediate action as is necessary to assure that such disproportion is not the result of discrimination on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement by counselors.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-010, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-010, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-010, filed 7/9/80; Order 6-76, § 392-190-010, filed 5/17/76.]

**WAC 392-190-015 Counseling and guidance—Sex discrimination—Duty of certificated and classroom personnel—Coordination of effort.** (1) All certificated and classroom personnel must encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "nontraditional" occupations for men and women. All certificated and classroom personnel within each local school district must have access to an educational staff associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel must comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-015, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-015, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-015, filed 5/17/76.]

**WAC 392-190-020 In-service training—Bias awareness.** Each school district must, where appropriate, include sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal, bias awareness and elimination training sessions in such in-service training programs as are conducted or provided for certificated and/or classroom personnel.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-020, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-020, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-020, filed 5/17/76.]

**WAC 392-190-025 Recreational and athletic activities.** No person shall, on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal, be excluded from participation in, be denied the benefits of, or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district, and no school district shall provide any such athletics or recreational activity separately on such basis.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-025, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-025, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-025, filed 5/17/76.]

**WAC 392-190-026 Recreational and athletic—Sex discrimination—Equal opportunities—Separate teams.** (1) Sports teams and programs offered by a school district must be equally open to participation by qualified members of both sexes. For sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if:

(a) It can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice; and

(b) At the same time, a test of substantial equality between the two programs has been met.

(2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" must be determined by considering factors including, but not limited to, the following:

(a) The relationship between the skill and compensation of coaching staffs;

(b) The size of their budgets;

(c) The quality of competition and game schedule;

(d) Uniforms;

(e) Equipment and facilities; and

(f) Sufficient numbers of participants to warrant separate teams.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-026, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-030 General—Recreational and athletic activities—Sex discrimination—Equal opportunity factors considered.** Each school district must evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of superintendent of public instruction upon receipt of a complaint pursuant to WAC 392-190-075, must consider several factors, including but not limited to the following where provided by a school district:

(1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;

(4) Transportation and per diem allowances, if any;

(5) The opportunity to receive coaching and academic tutoring;

(6) The assignment and compensation of coaches, tutors, and game officials;

(7) The provision of medical and training facilities and services including the availability of insurance;

(8) The provision of housing, laundry, and dining facilities and services, if any; and

(9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

(4/13/11)

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-030, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-030, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-030, filed 5/17/76.]

**WAC 392-190-035 Recreational and athletic activities—Elementary and secondary level.** (1) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) must provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) must provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-035, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-035, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-035, filed 7/9/80; Order 6-76, § 392-190-035, filed 5/17/76.]

**WAC 392-190-040 Recreational and athletic activities—Sex discrimination—Student interest—Required survey instrument.** (1) The superintendent of public instruction must develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument must be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted. The results of the survey must be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section must be administered at least once every three years within each school district. School districts may modify or amend the content of the survey instrument if the district deems it necessary to clarify and assist in the evaluation of student interest. If a school district intends to modify or amend the instrument, the district must provide the office of superintendent of public instruction with a copy of the proposal for approval prior to its administration.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-040, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-040, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-040, filed 7/9/80; Order 6-76, § 392-190-040, filed 5/17/76.]

**WAC 392-190-045 Recreational and athletic activities—Sex discrimination—Facilities.** A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes must provide comparable facilities for members of the opposite sex. Such facilities may be provided as either separate facilities or must be scheduled and used separately by members of each sex. This section shall not be interpreted to require the construction of additional facilities.

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[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-045, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-045, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-045, filed 7/9/80; Order 6-76, § 392-190-045, filed 5/17/76.]

**WAC 392-190-050 Course offerings—Generally—Separate sessions or groups—When permissible.** No school district shall provide any course or otherwise carry out any of its education programs or activities separately on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal or require or refuse participation therein by any of its students on such basis. This section shall not be construed to prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex. Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district must immediately implement appropriate standards which do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students in grades 7 through 12 if:

(a) It can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity; and

(b) At the same time, a test of substantial equality between the two classes or activities can be found to have been met;

(3) Separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality;

(4) Classes and/or activities which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex; and

(5) Classes, courses or placement of students based on the student's individual language skill development and/or based on the student's needs as identified in the student's individualized education program.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-050, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-050, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-050, filed 7/9/80; Order 6-76, § 392-190-050, filed 5/17/76.]

**WAC 392-190-055 Textbooks and instructional materials—Scope—Elimination of bias.** (1) It is the intent of this section to eliminate bias pertaining to sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service ani-

mal in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.320.230 must incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of bias pertaining to sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district must establish and maintain appropriate screening criteria designed to identify and eliminate bias pertaining to sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of trained dog guide or service animal in all textbooks and instructional materials including reference materials and audio-visual materials. Such selection criteria must be consistent with the selection criteria identified in chapter 392-204 WAC, as now or hereafter amended. One of the aids to identification of bias in instructional materials is the *Washington Models for the Evaluation of Bias Content in Instructional Materials* published by the superintendent of public instruction.

(4) In recognition of the fact that current instructional materials which contain bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the bias content thereof.

(5) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and contemporary literary works, periodicals and technical journals which, although they contain bias, are educationally necessary or advisable.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-055, filed 4/13/11, effective 5/14/11. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-190-055, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-055, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-055, filed 7/9/80; Order 6-76, § 392-190-055, filed 5/17/76.]

**WAC 392-190-056 Sexual harassment—Definitions.**

(1) As used in this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature between two or more individuals if:

(a) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(b) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(c) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

(2) For the purpose of this definition, sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

(3) School districts must be guided by federal and state case law in their interpretation of sexual harassment complaints and will need to determine sexual harassment on a case-by-case basis. Nothing in this chapter should be construed as diminishing or otherwise modifying an individual's right to bring an action under state or federal law alleging that the individual has been harmed by conduct or communication related to the individual's sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal that creates a hostile or abusive educational or workplace environment.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-056, filed 4/13/11, effective 5/14/11. Statutory Authority: 1994 c 213. 94-23-043 (Order 94-14), § 392-190-056, filed 11/10/94, effective 12/11/94.]

**WAC 392-190-057 Sexual harassment policy—Adoption date—Required criteria.** In order to eliminate sexual harassment in connection with any responsibility, function or activity within the jurisdiction of a school district, a sexual harassment policy must be adopted and implemented by each district no later than June 30, 1995. This policy must apply to all school district employees, volunteers, parents, and students, including but not limited to, conduct between students. This policy must incorporate the following criteria:

- (1) Definitions consistent with the categories in RCW 28A.640.020 (2)(f);
- (2) District and staff responsibilities;
- (3) Informal grievance procedures;
- (4) Grievance procedures consistent with WAC 392-190-065 through 392-190-075 of this chapter;
- (5) Investigative procedures and reasonable and prompt timelines;
- (6) Remedies available to victims of sexual harassment;
- (7) Disciplinary actions against violators which must conform with collective bargaining agreements and state and federal laws;
- (8) Reprisal, retaliation and false accusations prohibition;
- (9) Dissemination and implementation; and
- (10) Internal review.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-057, filed 4/13/11, effective 5/14/11. Statutory Authority: 1994 c 213. 94-23-043 (Order 94-14), § 392-190-057, filed 11/10/94, effective 12/11/94.]

**WAC 392-190-058 Sexual harassment—Procedures.** (1) School district policies on sexual harassment must be reviewed by the superintendent of public instruction considering the criteria established under WAC 392-190-057 as part of the monitoring process established in RCW 28A.640.030. The superintendent of public instruction must supply upon request sample sexual harassment policies to school districts.

(4/13/11)

(2) The school district's sexual harassment policy must be easily understood and conspicuously posted throughout each school building, and provided to each employee, volunteer and student.

(3) Reasonable efforts must be made to inform all students and their parents about the district's sexual harassment policy and procedures.

(4) A copy of the policy must appear in any publication of the school or school district setting forth the rules, regulations, procedures, and standards of conduct for the school or school district.

(5) Each school must develop a process for discussing the district's sexual harassment policy. The process must ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-058, filed 4/13/11, effective 5/14/11. Statutory Authority: 1994 c 213. 94-23-043 (Order 94-14), § 392-190-058, filed 11/10/94, effective 12/11/94.]

**WAC 392-190-059 Harassment, intimidation, and bullying prevention policy and procedure—Adoption date.** (1) By August 1, 2011, each school district must adopt or amend if necessary a harassment, intimidation, and bullying prevention policy and procedure as provided for in RCW 28A.300.285.

(2) When monitoring school districts' compliance with this chapter pursuant to WAC 392-190-076, the office of superintendent of public instruction will review such policies and procedures to ensure that they provide that students will not be harassed, intimidated, or bullied because of their sex, race, creed, religion, color, national origin, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(3) This section is not intended to limit the scope of RCW 28A.300.285.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-059, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-0591 Public school employment and contract practices—Nondiscrimination.** (1) No school district shall, on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, 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, exclude any person from participation in, deny any person the benefit of, or subject any person to discrimination in employment, recruitment, promotion or advancement, consideration or selection, whether full time or part time, in connection with employment by a school district.

(2) Each school district must make all employment decisions in a nondiscriminatory manner and shall not limit, segregate, or classify any person in any way which could adversely affect a person's employment opportunities or status on the basis of sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, 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.

(3) No school district shall enter into any contractual or other relationship that directly or indirectly has the effect of subjecting any person to discrimination in connection with employment on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, 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 including, but not limited to, relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees.

(4) No school district shall grant preferential treatment to applications for employment on the basis of enrollment at any education institution or entity which admits as students only or predominately individuals or groups on the basis of sex, race, color or national origin, if the giving of such preferences has the effect of discriminating on the basis of sex, race, color, or national origin.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-0591, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-0592 Public school employment—Affirmative action program.** (1) Each school district must develop and/or incorporate within any existing affirmative action employment program appropriate provisions which are consistent with the intent of chapters 28A.640 and 28A.642 RCW. Each school district's affirmative action employment program must include at least the following provisions respecting discrimination on the basis of sex:

- (a) Maintain credential requirements for all personnel;
- (b) Make no differentiation in pay scale;
- (c) Make no differentiation in the assignment of school duties except where such assignment would involve duty areas or situations such as, but not limited to, shower rooms, where persons might be disrobed;
- (d) Provide the same opportunities for advancement;
- (e) Make no difference in conditions of employment including, but not limited to, hiring practices, leaves of absence, hours of employment and assignment of, or pay for, instructional and noninstructional duties; and
- (f) Such other provisions as may be required by the superintendent of public instruction designed to facilitate the effective achievement of all reasonable affirmative action goals and objectives in public school employment respecting the elimination of discrimination on the basis of sex.

(2) Notwithstanding the requirements of this chapter respecting discrimination on the basis of sex, each school district must develop and/or incorporate within any existing affirmative action employment program appropriate provisions to eliminate discrimination on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, 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.

(3) Each affirmative action employment program of a school district must be filed with the office of superintendent of public instruction.

(4) The board of directors of each school district must adopt and implement an affirmative action employment program required by this section as expeditiously as possible but in no event later than September 30, 2011.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-0592, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-060 Compliance—Local school district—Designation of responsible employee—Notification.** (1) The superintendent of each school district must immediately designate at least one employee who shall be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section shall also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district must, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the complaint and appeal procedure set forth in WAC 392-190-065, 392-190-070 and 392-190-075 as now or hereafter amended.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-060, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-060, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-060, filed 5/17/76.]

**WAC 392-190-065 Compliance—Complaint procedure—District superintendent.** (1) Anyone may file a complaint with a school district alleging that the district has violated this chapter. The complaint must be:

- (a) Written;
- (b) Signed by the complainant; and
- (c) Set forth specific acts, conditions, or circumstances alleged to violate this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter. Upon receipt of the complaint, the employee or employees designated pursuant to WAC 392-190-060 must investigate the allegations and effect a prompt resolution of the complaint.

(2) Following the completion of the investigation, the designated employee or employees must provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent must respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district, unless otherwise agreed to by the complainant.

(3) The response of the school district superintendent required by this section must include notice of the complainant's right to appeal to the school board, as set forth in WAC 392-190-070, and must identify where and to whom the appeal must be filed. The superintendent's response must also clearly state either:

(a) That the school district denies the allegations contained in the complaint received; or

(b) The reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district. Any such corrective measures deemed necessary must be instituted as expeditiously as possible but in no event later than thirty calendar days following the school district superintendent's mailing of a written response to the complainant required by this section, unless otherwise agreed to by the complainant.

(4) The complaint procedure required by this section must not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

(5) The school district and complainant may agree to resolve the complaint in lieu of an investigation.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-065, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-065, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-065, filed 5/17/76.]

**WAC 392-190-070 Compliance—Appeal procedure—Local school board.** (1) A complainant has a right to appeal the school district superintendent's response provided in WAC 392-190-065(2), to the school district board of directors. The appeal must be filed with the secretary of the school board on or before the tenth calendar day following the date upon which the complainant received the superintendent's response.

(2) In the event a school district superintendent fails to timely respond to a complaint communicated pursuant to WAC 392-190-065, a complainant has a right to an appeal to the board of directors. The appeal must be filed with the secretary of the school board on or before the tenth calendar day following the expiration of the response period provided by WAC 392-190-065(2).

(3) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth calendar day following the filing of the written notice of appeal, unless otherwise agreed to by the complainant and the school district superintendent, or for good cause. The complainant and the school district superintendent must be allowed to present such witnesses and testimony as the board deems relevant and material. Unless otherwise agreed to by the complainant and the school district superintendent, or for good cause, the board of directors must render a written decision on or before the tenth calendar day following the termination of the hearing, and must provide a copy to all parties involved. The written decision must include notice of the complainant's right to appeal to the superintendent of public instruction as set forth in WAC 392-190-075, and must identify where and to whom the appeal must be filed.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-070, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-070, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-070, filed 5/17/76.]

**WAC 392-190-075 Compliance—Contested case—Duty of the superintendent of public instruction.** (1) In the

(4/13/11)

event a complainant disagrees with the decision of a school district board of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. For purpose of hearing an appeal under this section, the superintendent of public instruction must conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal. Decisions in cases appealed pursuant to this section may be made by an administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority pursuant to RCW 28A.300.120.

(2) A notice of appeal must be received by the superintendent on or before the twentieth calendar day following the date upon which the complainant received written notice of the school board's decision. The notice is deemed received when the notice is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, to the superintendent of public instruction. The notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent shall be conducted de novo. The complainant/appellant must have the responsibility for prosecuting the appeal and the school district/respondent shall have the duty of defending the school district's decision or the portion of the decision appealed.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-075, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-075, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW 28A.85.020, 28A.85.030 and 28A.85.050. 80-09-017 (Order 80-26), § 392-190-075, filed 7/9/80; Order 6-76, § 392-190-075, filed 5/17/76.]

**WAC 392-190-076 Monitoring—Duty of the superintendent of public instruction.** (1) The office of superintendent of public instruction must monitor school districts' compliance with chapters 28A.640 and 28A.642 RCW and the rules and guidelines adopted in furtherance thereof.

(2) Procedures for monitoring school districts may include:

(a) Collection, review, and analysis of data and other information;

(b) Conduct of on-site visits and interviews; and

(c) Review of any compliance issues, including reviews by those agencies referenced in WAC 392-190-077.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-076, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-077 Monitoring results—Compliance.** (1) Following its monitoring of a school district pursuant to WAC 392-190-076, the office of superintendent of public instruction must notify districts of any findings of identified noncompliance with chapters 28A.640 and 28A.642 RCW and the rules and guidelines adopted in furtherance thereof. This notification of noncompliance must initiate a process of

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correction, verification, and validation to ensure that the non-compliance is corrected within a compliance period identified by the office of superintendent of public instruction. The compliance period must be no longer than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan is required. The school district will have thirty calendar days after its receipt of the notice of noncompliance to:

(a) Accept the findings contained in the notification of noncompliance; or

(b) Provide the office of superintendent of public instruction with supplemental information that may serve as a basis for amending the notification of noncompliance; or

(c) Provide any revisions to the proposed corrective action plan.

(2) If the school district provides the office of superintendent of public instruction with supplemental information, the office of superintendent of public instruction must respond to the school district with a final monitoring report within thirty calendar days after receipt of the supplemental information.

(3) If the school district does not timely address the identified noncompliance with corrective actions, the superintendent of public instruction may, at his or her discretion, undertake actions to ensure school district compliance. Such actions may include, but are not limited to, referring the school district to appropriate state or federal agencies empowered to order compliance with the law, or the initiation of an office of superintendent of public instruction complaint against the school district.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-077, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-078 Monitoring results—Complaints issued by superintendent of public instruction.** (1) In the event the office of superintendent of public instruction initiates a complaint against a school district, the superintendent of public instruction must send a copy of the complaint to the school district superintendent. The complaint must include written allegations of fact and proposed corrective actions. The school district must provide a written response to the complaint no later than twenty calendar days after the complaint is sent to the school district, unless otherwise agreed to, or for good cause.

(2) The school district's response to the superintendent of public instruction must clearly state either:

(a) That the school district denies the allegations contained in the complaint and the basis of such denial; or

(b) That the school district admits the allegations and proposes reasonable corrective action(s) deemed necessary to correct the violation.

(3) Upon review of the school district's response and all other relevant information, the superintendent of public instruction must make an independent determination as to whether the school district is in violation of chapters 28A.640, 28A.642 RCW, or the rules of this chapter.

(4) The superintendent of public instruction must issue a written decision to the school district that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. The superintendent of public

instruction may provide technical assistance necessary to resolve a complaint. All actions must be instituted as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-078, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-079 Complaints issued by superintendent of public instruction—Appeal procedure.** (1) A school district that desires to appeal the written decision of the superintendent of public instruction issued pursuant to WAC 392-190-078 may file an appeal with the superintendent of public instruction in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of the superintendent of public instruction in chapter 392-101 WAC. To initiate review under this section, a school district must file a written notice with the superintendent of public instruction within thirty calendar days following the date of receipt of the superintendent of public instruction's written decision.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction must conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-079, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-080 Compliance—Violations—Permissible sanctions.** In the event a school district is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter 34.05 RCW, impose an appropriate sanction or institute appropriate corrective measures including, but not limited to:

(1) The termination of all or part of state apportionment or categorical moneys to the offending school district;

(2) The termination of specified programs wherein such violation or violations are found to be flagrant in nature;

(3) The institution of a mandatory affirmative action program within the offending school district; and

(4) The placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the superintendent of public instruction.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-080, filed 4/13/11, effective 5/14/11. Statutory Authority: RCW 34.05.220 [(1)](a). 89-23-001 (Order 15), § 392-190-080, filed 11/2/89, effective 12/3/89; Order 6-76, § 392-190-080, filed 5/17/76.]

**WAC 392-190-081 Concurrent remedies—Other remedies.** (1) Except as provided in subsections (2) and (3) of this section, nothing in this chapter shall be construed as denying an aggrieved person from simultaneously pursuing other available administrative, civil or criminal remedies for an alleged violation of the law.



(2) A complaint made pursuant to WAC 392-190-065 or 392-190-075 will be held in abeyance during the pendency of any proceeding in state or federal court or before a local, state or federal agency in which the same claim or claims are at issue, whether under RCW 28A.640.040, 28A.642.040, or any other law.

(3) Where the complainant elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, in some circumstances, be binding on all or portions of the claims pending before other tribunals.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-081, filed 4/13/11, effective 5/14/11.]

**WAC 392-190-082 Informing citizens about complaint procedures.** The superintendent of public instruction must inform parents and other interested individuals about the complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities; and

(2) Conducting in-service training sessions on the complaint process through educational service districts or in statewide conferences.

[Statutory Authority: RCW 28A.642.020 and 28A.640.020. 11-09-024, § 392-190-082, filed 4/13/11, effective 5/14/11.]