

Chapter 182-32 WAC

APPEALS PRACTICES AND PROCEDURES

WAC

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PART I

GENERAL PROVISIONS

WAC 182-32-010 Purpose. This chapter describes the general rules and procedures that apply to the health care authority's brief adjudicative proceedings and formal administrative hearings for the school employees benefits board (SEBB) program.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-010, filed 12/14/18, effective 1/14/19.]

WAC 182-32-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Appellant" means a person who requests a review by the SEBB appeals unit or a formal administrative hearing about the action of the SEBB organization, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and holidays.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term contracted vendor includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, either a school employees benefits board (SEBB) organization, contracted vendor, or the SEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to SEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as

provided in the salary reduction plan pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability or supplemental short-term disability paid for by the employee.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items. Documents include evidence needed to verify eligibility for SEBB benefits and complete the enrollment process.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-060.

"Employer-paid coverage" means SEBB insurance coverage for which an employer contribution is made by a SEBB organization for school employees eligible in WAC 182-31-060.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, review officer, or hearing officer. A document is considered filed when it is received by the health care authority or its designee.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.479.

"HCA hearing representative" means a person who is authorized to represent the SEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical, dental, or any combination of these coverages, developed by the school employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or
- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Life insurance" for eligible school employees includes any basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the school employees benefits board (SEBB) organization, as well as supplemental life insurance and supplemental AD&D insurance offered to and paid for by school employees for themselves and their dependents.

"LTD insurance" or "long-term disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability insurance offered to and paid for by the school employee.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Review officer or officers" means one or more delegates from the director that consider appeals relating to the administration of SEBB benefits by the SEBB program.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program (DCAP), medical flexible spending arrangement (FSA), or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefit board.

"SEBB" means the school employees benefits board established in RCW 41.05.740.

"SEBB benefits" means one or more insurance coverages or other employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040), and eligible dependents (as described in WAC 182-31-140).

"State registered domestic partner," has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-020, filed 12/14/18, effective 1/14/19.]

WAC 182-32-055 Mailing address changes. (1) During the appeal process, if the appellant's mailing address changes, the appellant must notify the school employees benefits board (SEBB) appeals unit as soon as possible.

(2) If the appellant does not notify the SEBB appeals unit of a change in the appellant's mailing address and the SEBB appeals unit continues to serve notices and other important documents to the appellant's last known mailing address, the documents will be deemed served on the appellant.

(3) This requirement to provide notice of an address change is in addition to WAC 182-30-075 that require a subscriber to update their address with the SEBB appeals unit.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-055, filed 12/14/18, effective 1/14/19.]

WAC 182-32-058 Service or serve. (1) When the rules in this chapter or in other school employees benefits board (SEBB) program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives as described in this chapter. In this section, requirements for service or delivery by a party apply also when service is required by the presiding officer or review officer or officers, or hearing officer.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this chapter to accomplish service. A party may serve someone by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;
- (c) Fax;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

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(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer, review officer or officers, or hearing officer's office, or when required by law.

(4) Service is complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;
- (c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;
- (d) Fax produces proof of transmission;
- (e) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (f) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

- (a) A signed affidavit or certificate of mailing;
- (b) The certified mail receipt signed by the person who received the parcel;
- (c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;
- (d) Proof of fax transmission.
- (6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-32-3130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-058, filed 12/14/18, effective 1/14/19.]

WAC 182-32-064 Applicable rules and laws. A presiding officer, review officer or officers, or hearing officer must first apply the applicable school employees benefits board (SEBB) program rules adopted in the Washington Administrative Code (WAC). If no SEBB program rule applies, the presiding officer, review officer or officers, or hearing officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-32-130, and court decisions.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-064, filed 12/14/18, effective 1/14/19.]

WAC 182-32-066 Burden of proof, standard of proof, and presumptions. (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer, review officer or officers, or hearing officer that a position is correct based on the standard of proof.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal administrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and school employees benefits board (SEBB) organizations are presumed to have properly per-

formed their duties and acted as described in the law, unless substantial evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-066, filed 12/14/18, effective 1/14/19.]

WAC 182-32-120 Computation of time. (1) In computing any period of time prescribed by this chapter, the day of the event from which the time begins to run is not included. (For example, if an initial order is served on Friday and the party has twenty-one days to request a review, start counting the days with Saturday.)

(2) Except as provided in subsection (3) of this section, the last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, in which case the period extends to the end of the next business day.

(3) When the period of time prescribed or allowed is less than ten days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(4) The deadline is 5:00 p.m. on the last day of the computed period.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-120, filed 12/14/18, effective 1/14/19.]

WAC 182-32-130 Index of significant decisions. (1) A final decision may be relied upon, used, or cited as precedent by a party if the final order has been indexed in the authority's index of significant decisions in accordance with RCW 34.05.473 (1)(b).

(2) An index of significant decisions is available to the public on the health care authority's (HCA) web site. As decisions are indexed they will be available on the web site.

(3) A final decision published in the index of significant decisions may be removed from the index when:

(a) A published decision entered by the court of appeals or the supreme court reverses an indexed final decision; or

(b) HCA determines that the indexed final decision is no longer precedential due to changes in statute, rule, or policy.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-130, filed 12/14/18, effective 1/14/19.]

PART II

BRIEF ADJUDICATIVE PROCEEDINGS

WAC 182-32-2000 Brief adjudicative proceedings. Pursuant to RCW 34.05.482, the authority will use brief adjudicative proceedings for issues identified in this chapter when doing so would not violate law, or when protection of the public interest does not require the authority to give notice and an opportunity to participate to persons other than the parties, or the issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479 which govern formal administrative hearings.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2000, filed 12/14/18, effective 1/14/19.]

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WAC 182-32-2005 Record—Brief adjudicative proceeding. The record in a brief adjudicative proceeding consists of any documents regarding the matter, considered or prepared by the presiding officer for the brief adjudicative proceeding or by the review officer or officers for any review. The authority's record does not have to constitute the exclusive basis for agency action, unless otherwise required by law.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2005, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2010 Appealing a decision regarding eligibility, enrollment, premium payments, premium surcharges, or the administration of school employees benefits board (SEBB) benefits. (1) Any current or former school employee of a school employees benefits board (SEBB) organization or their dependent aggrieved by a decision made by the SEBB organization with regard to SEBB eligibility, enrollment, or premium surcharges may appeal that decision to the SEBB organization by the process outlined in WAC 182-32-2020.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to SEBB insurance coverage, as described in SEBB rules and policies. Enrollment decisions address the application for SEBB benefits as described in SEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any subscriber or dependent aggrieved by a decision made by the SEBB program with regard to SEBB eligibility, enrollment, premium payments, or premium surcharges may appeal that decision to the SEBB appeals unit by the process described in WAC 182-32-2030.

(3) Any enrollee aggrieved by a decision regarding the administration of a health plan, life insurance, disability insurance, or property and casualty insurance may appeal that decision by following the appeal provisions of those plans, with the exception of:

(a) Enrollment decisions;

(b) Premium payment decisions other than life insurance premium payment decisions; and

(c) Eligibility decisions.

(4) Any school employee aggrieved by a decision regarding the administration of a benefit offered under the salary reduction plan may appeal that decision by the process described in WAC 182-32-2050.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2010, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2020 Appealing a decision made by a school employees benefits board (SEBB) organization about eligibility, premium surcharge, or enrollment in benefits. (1) An eligibility, premium surcharge, or enrollment decision made by a school employees benefits board (SEBB) organization may be appealed by submitting a written request for administrative review to the SEBB organization. The SEBB organization must receive the request for administrative review no later than thirty days after the date of the denial notice. The contents of the request for adminis-

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trative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the request for administrative review, the SEBB organization shall perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization shall render a written decision within thirty days of receiving the written request for administrative review. The written decision shall be sent to the school employee or school employee's dependent who submitted the request for administrative review and must include description of the appeal rights. The SEBB organization shall also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within thirty days of receiving the written request for administrative review, the request for administrative review may be considered denied and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(c) The SEBB organization may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the SEBB organization or errors made by the SEBB organization.

(2) Any current or former school employee or school employee's dependent who disagrees with the SEBB organization's decision in response to a request for administrative review, as described in subsection (1) of this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the SEBB organization's written decision on the request for administrative review. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request and provide the requested documentation and information. The SEBB organization will also send a copy of the documentation and information to the employee, former employee, or the employee's dependent.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal the SEBB organization's written decision within thirty days by following the process in subsection (2) of this section, the SEBB organization's prior decision becomes the health care authority's final decision.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2020, filed 12/14/18, effective 1/14/19.]

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WAC 182-32-2030 Appealing a school employees benefits board (SEBB) program decision regarding eligibility, enrollment, premium payments, and premium surcharges. (1) A decision made by the school employees benefits board (SEBB) program regarding eligibility, enrollment, premium payments, or premium surcharges may be appealed by submitting a request to the SEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(2) The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(3) The request for a brief adjudicative proceeding from a current or former school employee or school employee's dependent must be received by the SEBB appeals unit no later than thirty days after the date of the denial notice.

(4) The request for a brief adjudicative proceeding from a self-pay enrollee or dependent of self-pay enrollee must be received by the SEBB appeals unit no later than sixty days after the date of the denial notice.

(5) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(6) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(7) Failing to timely request a brief adjudicative proceeding to appeal a decision made under this section within applicable time frames described in subsections (3) and (4) of this section, will result in the prior decision becoming the authority's final decision without further action.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2030, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan? (1) Any school employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the salary reduction plan may appeal that decision by submitting a written request for administrative review to their school employees benefits board (SEBB) organization. The SEBB organization must receive the written request for administrative review no later than thirty days after the date of the decision resulting in denial. The contents of the written request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the written request for administrative review, the SEBB organization shall perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization shall render a written decision within thirty days of receiving the written request for administrative review. The written decision shall be sent to the school employee who submitted the written request for review and must include a description of appeal rights. The SEBB organization shall also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within thirty days of receiving the written request for administrative review, the request for administrative review may be consid-

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ered denied and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(2) Any school employee who disagrees with the SEBB organization's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the SEBB organization's written decision on the request for administrative review. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request. The SEBB organization will also send a copy of the documentation and information to the school employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the SEBB organization's prior written decision becomes the authority's final decision without further action by the authority.

(3) Any school employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the HCA contracted vendor by following the appeal process of that contracted vendor.

(a) Any school employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the medical FSA and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the SEBB appeals unit. The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the contracted vendor's prior written decision becomes the health care authority (HCA) final decision.

(4) Any school employee aggrieved by a decision regarding the administration of the premium payment plan

offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the HCA by submitting a written request to the SEBB appeals unit for a brief adjudicative proceeding.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than thirty days after the date of the denial notice by the SEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The SEBB appeals unit shall notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding to appeal a decision made under this section within thirty days by following the process described in this subsection, the SEBB program's written decision becomes the authority's final decision.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2050, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2070 What should a written request for administrative review and a request for brief adjudicative proceeding contain? A written request for administrative review of the school employees benefits board (SEBB) organization's decision and a request for brief adjudicative proceeding should contain:

(1) The name and mailing address of the party requesting an administrative review or the brief adjudicative proceeding;

(2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed and clarifying what is believed to be unlawful or in error;

(5) A statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered;

(7) The type of relief sought; and

(8) The signature of the appealing party or the appealing party's representative.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2070, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2080 Who can appeal or represent a party in a brief adjudicative proceeding? (1) The appellant may act as their own representative or may choose to be represented by another person, except employees of the health care authority (HCA) or HCA's authorized agents.

(2) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the non-attorney representative must provide the school employees benefits board (SEBB) appeals unit and other parties with a

signed, written consent permitting release to the nonattorney representative of the appellant's personal health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state representing the appellant must file a written notice of appearance containing the attorney's name, address, and telephone number with the presiding officer's office and serve all parties with the notice. In cases involving confidential information, the attorney must provide the SEBB appeals unit and other parties with a signed, written consent permitting release to the attorney of the appellant's personal health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the presiding officer or review officer or officer's office and serve all parties with the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2080, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2085 Continuances. The presiding officer, review officer or officers may grant in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on its own motion. The continuance may be up to thirty calendar days.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2085, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2090 Initial order. Unless a continuance has been granted, within ten days after the school employees benefits board (SEBB) appeals unit receives a request for a brief adjudicative proceeding, the presiding officer shall render a written initial order that addresses the issue or issues raised by the appellant in their appeal. The presiding officer shall serve a copy of the initial order on all parties and the initial order shall contain information on how the appellant may request review of the initial order.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2090, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding.

(1) An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, SEBB program decision, or a decision made by SEBB program contracted vendor, may request review of the initial order by the authority. The appellant must file a written request for review of the initial order or make an oral request for review of the initial order with the SEBB appeals unit within twenty-one days after service of the initial order. The written request for review of the initial order must be provided using the contact information included in the initial order. If the appellant fails to request review of the initial order within twenty-one days, the order becomes the final order without further action by the authority.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more review officers designated by the director of the authority.

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(3) If the appellant have not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own motion, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2100, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order.

(1) The appellant may withdraw the request for a brief adjudicative proceeding or review of an initial order for any reason, and at any time, by contacting the school employees benefits board (SEBB) appeals unit. The SEBB appeals unit will present the withdrawal request to the presiding officer or review officer or officers.

(2) The request for withdrawal must be made in writing.

(3) After a withdrawal request is received, the presiding officer or review officer or officers must enter and serve a written order dismissing the appeal.

(4) If an appellant withdraws a request for a brief adjudicative proceeding or review of an initial order, the appellant may not reinstate the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2105, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2110 Final order. (1) A final order issued by the review officer or officers will be issued in writing and include a brief statement of the reasons for the decision.

(2) The final order must be rendered and served within twenty days of the date of the initial order or of the date the request for review of the initial order was received by the SEBB appeals unit, whichever is later.

(3) The final order will include a notice that reconsideration and judicial review may be available.

(4) A request for review of the initial order is deemed denied if the authority does not issue a final order within twenty days after the request for review of the initial order is filed.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2110, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2120 Request for reconsideration. (1) A request for reconsideration asks the review officer or officers to reconsider the final order because the party believes the review officer or officers made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the review officer or officers who entered the final order.

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(4) If a party files a request for reconsideration:

(a) The review officer or officers must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must send copies of the request to all other parties; and

(c) Within five business days of receiving a request for reconsideration, the review officer or officers must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the review officer or officers no later than seven business days after the service date of the review officer or officers' notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the review officer or officers may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) Unless the request for reconsideration is denied as untimely filed under subsection (4)(a) of this section, the same review officer or officers who entered the final order, if reasonably available, will also consider the request as well as any responses received.

(8) The decision on the request for reconsideration must be in the form of a written order denying the request, granting the request in whole or in part and issuing a new written final order, or granting the petition and setting the matter for further hearing.

(9) If the review officer or officers do not send an order on the request for reconsideration within twenty calendar days of the date of the notice described in subsection (4)(c) of this section, the request is deemed denied.

(10) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a petition for reconsideration is not required before requesting judicial review.

(11) An order denying a request for reconsideration is not subject to judicial review.

(12) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced at the hearing or before the ruling on a dispositive motion.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2120, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2130 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The school employees benefits board (SEBB) program may not request judicial review.

(3) The appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2130, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2140 Presiding officer—Designation and authority. The designation of a presiding officer shall be consistent with the requirements of RCW 34.05.485 and the presiding officer shall not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(1) The presiding officer will decide the issue based on the information provided by the parties during the presiding officer's review of the appeal.

(2) A presiding officer is limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(3) A presiding officer may not decide that a rule is invalid or unenforceable.

(4) In addition to the record, the presiding officer may employ the authority's expertise as a basis for the decision.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2140, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2150 Review officer or officers—Designation and authority. (1) The designation of a review officer or officers shall be consistent with the requirements of RCW 34.05.491 and the review officer or officers shall not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(2) The review officer or officers shall review the initial order and the record to determine if the initial order was correctly decided.

(3) The review officer or officers will issue a final order that will either:

- (a) Affirm the initial order in whole or in part; or
- (b) Reverse the initial order in whole or in part; or
- (c) Refer the matter for a formal administrative hearing;

or

- (d) Remand to the presiding officer in whole or in part.

(4) A review officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A review officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the review officer or officers may employ the authority expertise as a basis for the decision.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2150, filed 12/14/18, effective 1/14/19.]

WAC 182-32-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing. (1) The presiding officer or the review officer or officers, in their sole discretion, may convert a brief adjudicative proceeding to a formal administrative hearing at any time on motion by the subscriber or enrollee or their representative, the authority, or on the presiding officer or review officer or officers' own motion.

(2) The presiding or review officer or officers must convert the brief adjudicative proceeding to a formal administrative hearing when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the authority to give notice and an opportunity to participate to persons other than the parties, or when the issues and interests involved in the controversy warrant the use of the procedures or RCW 34.05.413 through 34.05.479 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director may become the hearing officer or may designate a replacement hearing officer to conduct the formal administrative hearing upon notice to the subscriber or enrollee and the authority.

(4) When a brief adjudicative proceeding is converted to a formal administrative hearing, WAC 182-32-010 through 182-32-130 and WAC 182-32-3000 through 182-32-3200 apply to the formal administrative hearing.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2160, filed 12/14/18, effective 1/14/19.]

PART III

FORMAL ADMINISTRATIVE HEARINGS

WAC 182-32-3000 Formal administrative hearings.

(1) When a brief adjudicative proceeding is converted to a formal administrative hearing consistent with WAC 182-32-3160, the director designates a hearing officer to conduct the formal administrative hearing.

(2) Formal administrative hearings are conducted consistent with the Administrative Procedure Act, RCW 34.05.413 through 34.05.479.

(3) Part III describes the general rules and procedures that apply to school employees benefits board (SEBB) benefits formal administrative hearings.

(a) This Part III supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules of procedure in chapter 10-08 WAC. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the authority in SEBB benefits formal administrative hearings. Other procedural rules adopted in chapters 182-30, 182-31, and 182-32 WAC are supplementary to the model rules of procedure.

(b) In the case of a conflict between the model rules of procedure and this Part III, the procedural rules adopted in this Part III shall govern.

(c) If there is a conflict between this Part III and specific SEBB program rules, the specific SEBB program rules pre-

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vail. SEBB program rules are found in chapters 182-30 and 182-31 WAC.

(d) Nothing in this Part III is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3000, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3005 Record—Formal administrative hearings. The record in a formal administrative hearing consists of the official documentation of the hearing process. The record includes, but is not limited to, recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3005, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3010 Requirements to appear and represent a party in the formal administrative hearing process. (1) All parties must provide the hearing officer and all other parties with their name, address, and telephone number.

(2) The appellant may act as their own representative or have another person represent them, except employees of the health care authority (HCA) or HCA's authorized agents.

(3) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the hearing officer and all other parties with the representative's name, address, and telephone number. In cases involving confidential information, the non-attorney representative must provide the HCA hearing representative with a signed, written consent permitting release to the nonattorney representative of personal health information protected by state or federal law.

(4) An attorney admitted to practice law in Washington state, who wishes to represent the appellant, must file a written notice of appearance containing the attorney's name, address, and telephone number with the hearing officer's office and serve all parties with the notice. In cases involving confidential information, the attorney representative must provide the HCA hearing representative with a signed, written consent permitting release to the attorney representative of the appellant's personal health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the hearing officer's office and serve all parties with the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3010, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3015 Hearing officers—Assignment, motions of prejudice, and disqualification. (1) **Assignment:** A hearing officer will be assigned at least five business days before a hearing. A party may ask which hearing officer is assigned to a hearing by contacting the hearing officer's office listed on the notice of hearing. If requested by a party, the hearing officer's office must send the name of the

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assigned hearing officer to all parties, by electronic mail or in writing, at least five business days before the scheduled hearing date.

(2) **Motion of prejudice:** Any party requesting a different hearing officer may file a written motion of prejudice against the hearing officer assigned to the matter before the hearing officer rules on a discretionary issue in the case, admits evidence, or takes testimony.

(a) A motion of prejudice must include a declaration stating that a party does not believe the hearing officer can hear the case fairly. Service of copies of the motion must also be made to all parties listed on the notice of hearing.

(b) Any party's first motion of prejudice will be automatically granted. Any subsequent motion of prejudice made by a party may be granted or denied at the discretion of the hearing officer no later than seven days after receiving the motion.

(c) A party may make an oral motion of prejudice at the beginning of a hearing before the hearing officer rules on a discretionary issue in the matter, admits evidence, or takes testimony if:

(i) The hearing officer was not assigned at least five business days before the date of the hearing; or

(ii) The hearing officer was changed within five business days of the date of the hearing.

(3) **Disqualification:** A hearing officer may be disqualified from presiding over a hearing for bias, prejudice, conflict of interest, or ex parte contact with a party to the hearing.

(a) Any party may file a petition to disqualify a hearing officer as described in RCW 34.05.425. A petition to disqualify must be in writing and service promptly made to all parties and the hearing officer upon discovering facts of possible grounds for disqualification.

(b) The hearing officer whose disqualification is requested will determine whether to grant or deny the petition in a written order, stating facts and reasons for the determination. The officer must serve the order no later than seven days after receiving the petition for disqualification.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3015, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3030 Authority of the hearing officer.

(1) A hearing officer must hear and decide the issues de novo (anew) based on the evidence and oral or written arguments presented during a formal administrative hearing and admitted into the record.

(2) A hearing officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules.

(3) A hearing officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a formal administrative hearing, the hearing officer may allow argument only to preserve the record for judicial review.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3030, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3080 Time requirements for service of notices made by the hearing officer. (1) The hearing officer or their designee must serve a notice of a formal administra-

tive hearing to all parties and their representatives at least twenty-one calendar days before the hearing date. The parties may agree to, but the hearing officer cannot impose, a shorter notice period.

(2) If a prehearing conference or dispositive motion hearing is scheduled, the hearing officer must serve a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The hearing officer may change any scheduled formal administrative hearing into a prehearing conference or dispositive motion hearing and provide less than seven business days' notice of the prehearing conference or dispositive motion hearing; and

(b) The hearing officer may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether to grant a continuance.

(3) The hearing officer must reschedule a formal administrative hearing if necessary to comply with the notice requirements in this chapter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3080, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3090 Formal administrative hearing location. (1) A hearing officer must be present at all hearings. Hearings may be held either in person or telephonically.

(a) A telephonic hearing is where all parties and the hearing officer are present by telephone.

(b) An in-person hearing is where the appellant appears face-to-face with the hearing officer. The other parties can choose to appear either in person or by telephone, but cannot be ordered to appear in person.

(2) Whether a hearing is held in person or telephonically, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(3) If a hearing is originally scheduled to be held in-person, the appellant may ask the hearing officer to change the in-person hearing to a telephonic hearing. Once a telephonic hearing begins, the hearing officer may stop, reschedule, and change the telephonic hearing to an in-person hearing if any party makes such a request.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3090, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3100 Rescheduling and continuances for formal administrative hearings. (1) Any party may request the hearing officer to reschedule a formal administrative hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The hearing officer must reschedule the formal administrative hearing under circumstances identified in this subsection if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a formal administrative hearing either orally or in writing.

(a) In each formal administrative hearing, the hearing officer must grant each party's first request for a continuance. The continuance may be up to thirty calendar days.

(b) The hearing officer may grant each party up to one additional continuance of up to thirty calendar days because of extraordinary circumstances established at a proceeding.

(c) After granting a continuance, the hearing officer or their designee must:

(i) Immediately telephone all other parties to inform them the hearing was continued; and

(ii) Serve an order of continuance on the parties no later than fourteen days before the new hearing date. All orders of continuance must provide a new deadline for filing documents with the hearing officer. The new filing deadline can be no less than ten calendar days prior to the new formal administrative hearing date. If the continuance is granted pursuant to (b) of this subsection, then the order of continuance must also include findings of fact that state with specificity the extraordinary circumstances for which the hearing officer granted the continuance.

(3) Regardless of whether a party has been granted a continuance as described in subsection (1) of this section, the hearing officer must grant a continuance if a new material issue is raised during the formal administrative hearing and a party requests a continuance.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3100, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3110 Prehearing conferences. (1) A prehearing conference is a formal proceeding conducted on the record by a hearing officer to prepare for a formal administrative hearing.

(a) The hearing officer must record a prehearing conference using audio recording equipment.

(b) The hearing officer may conduct a prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties.

(2) Any party can request a prehearing conference. The hearing officer must grant each party's first request for a prehearing conference if it is filed with the hearing officer at least seven business days before the next scheduled hearing date. The hearing officer may grant requests for additional prehearing conferences.

(3) The appellant must attend or participate in any scheduled prehearing conference. If the appellant does not attend or participate in a scheduled prehearing conference, the hearing officer will enter an order of default dismissing the matter.

(4) During a prehearing conference the parties and the hearing officer may:

(a) Identify the issue or issues to be decided;

(b) Agree to the date, time, and place of any requested or necessary hearing or hearings;

(c) Identify accommodation and safety issues; or

(d) Establish a schedule for:

(i) The exchange and filing of briefs;

(ii) Providing a list of proposed witnesses;

(iii) Providing exhibit lists; and

(iv) Providing proposed exhibits before the hearing.

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(5) After the prehearing conference ends, the hearing officer must enter a written order that recites the action taken at the prehearing conference, a case schedule outlining hearing dates and deadlines for exchanging witness lists and exhibits, and any other agreements reached by the parties.

(6) The hearing officer must serve the prehearing order to the parties at least fourteen calendar days before the next scheduled hearing.

(7) A party may object to the prehearing order by filing an objection with the hearing officer in writing no later than ten days after the service date of the order. The hearing officer must serve a written ruling on the objection.

(8) If no objection is made to the prehearing order, the order determines how the case will be conducted by the hearing officer, including whether a hearing will be in person or held by telephone conference, unless the hearing officer enters an amended prehearing conference order.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3110, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3120 Dispositive motions. (1) A dispositive motion could dispose of one or all the issues in a formal administrative hearing, such as a motion to dismiss or motion for summary judgment.

(2) To request a dispositive motion hearing a party must file a written dispositive motion with the hearing officer and serve a copy of the motion to all other parties. The hearing officer may also set a dispositive motion hearing, and request briefing from the parties, to address any possible dispositive issues the hearing officer believes must be addressed before the hearing.

(3) The deadline to file a timely dispositive motion shall be ten calendar days before the scheduled hearing.

(4) Upon receiving a dispositive motion, a hearing officer:

(a) Must convert the scheduled hearing to a dispositive motion hearing when:

(i) The dispositive motion is timely filed with the hearing officer at least ten calendar days before the date of the hearing; and

(ii) The party filing the dispositive motion has not previously filed a dispositive motion.

(b) May schedule a dispositive motion hearing in all instances other than described in (a) of this subsection.

(5) The hearing officer may conduct the dispositive motion hearing in person or by telephone conference. For dispositive motion hearings scheduled to be held in person, the health care authority (HCA) hearing representative may choose to attend and participate in person or by telephone conference call.

(6) The party requesting the dispositive motion hearing must attend and participate in the dispositive motion hearing in person or by telephone. If the party requesting the motion hearing does not attend and participate in the dispositive motion hearing, the hearing officer will enter an order of default.

(7) During a dispositive motion hearing, the hearing officer can only consider the filed dispositive motions, any response to the motions, evidence submitted to support or oppose the motions, and argument on the motions. Prior to

rescheduling any necessary hearings, the hearing officer must serve a written order on the dispositive motions.

(8) The hearing officer must serve the written order on the dispositive motions to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review as described in WAC 182-32-2120 and 182-32-2130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3120, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3130 Subpoenas. (1) Hearing officers, the health care authority (HCA) hearing representative, and attorneys for the parties may prepare subpoenas as described in Washington state civil rule 45, unless otherwise prohibited by law. Any party may request the hearing officer prepare a subpoena on their behalf.

(2) The hearing officer may schedule a prehearing conference to decide whether to issue a subpoena.

(3) If a party requests the hearing officer prepare a subpoena on its behalf, the party is responsible for:

- (a) Service of the subpoena; and
- (b) Any costs associated with:
 - (i) Compliance with the subpoena; and
 - (ii) Witness fees as described in RCW 34.05.446(7).

(4) Service of a subpoena must be made by a person who is at least eighteen years old and not a party to the hearing. Service of the subpoena is complete when the person serving the subpoena:

- (a) Gives the person or entity named in the subpoena a copy of the subpoena; or
- (b) Leaves a copy of the subpoena with a person over the age of eighteen at the residence or place of business of the person or entity named in the subpoena.

(5) To prove service of a subpoena on a witness, the person serving the subpoena must file with the hearing officer's office a signed, written, and dated statement that includes:

- (a) The name of the person to whom service of the subpoena occurred;
- (b) The date of the service of the subpoena occurred;
- (c) The address where the service of the subpoena occurred; and

(d) The name, age, and address of the person who provided service of the subpoena.

(6) A party may request the hearing officer quash (set aside) or change a subpoena request at any time before the deadline given in the subpoena.

(7) A hearing officer may quash (set aside) or change a subpoena if it is unreasonable.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3130, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3140 Orders of dismissal—Reinstating a formal administrative hearing after an order of dismissal. (1) An order of dismissal is an order from the hearing officer ending the matter. The order is entered because the party who made the appeal withdrew from the proceeding, the appellant is no longer aggrieved, the hearing officer granted a dispositive motion dismissing the matter, or the

hearing officer entered an order of default because the party who made the appeal failed to attend or refused to participate in a prehearing conference or the formal administrative hearing.

(2) The order of dismissal becomes a final order if no party files a request to vacate the order as described in subsections (3) through (7) of this section.

(3) If the hearing officer enters and serves an order dismissing the formal administrative hearing, the appellant may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the hearing officer must schedule and serve notice of a prehearing conference as described in WAC 182-32-3080. At the prehearing conference, the party asking that the order of dismissal be vacated has the burden to show good cause according to subsection (8) of this section for an order of dismissal to be vacated and the matter to be reinstated.

(4) The request to vacate an order of dismissal must be filed with the hearing officer and the other parties. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated.

(5) The request to vacate an order of dismissal must be filed with the hearing officer no later than twenty-one calendar days after the date the order of dismissal was entered. If no request is received within that deadline, the dismissal order becomes a final order and the final order will stand.

(6) If the hearing officer finds good cause, as described in subsection (8) of this section, for the order of dismissal to be vacated, the hearing officer must enter and serve a written order to the parties setting forth the findings of fact, conclusions of law, and reinstatement of the matter.

(7) If the order of dismissal is vacated, the hearing officer will conduct a formal administrative hearing at which the parties may present argument and evidence about issues raised in the original appeal. The formal administrative hearing may occur immediately following the prehearing conference on the request to vacate only if agreed to by the parties and the hearing officer, otherwise a formal administrative hearing date must be scheduled by the hearing officer.

(8) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action using the provisions of superior court civil rule 60 as a guideline. This good cause exception applies only to this chapter. This good cause exception does not apply to any other chapter or chapters in Title 182 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3140, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3160 Withdrawing a formal administrative hearing. (1) The appellant may withdraw a formal administrative hearing for any reason, and at any time, by contacting the health care authority (HCA) hearing representative who will coordinate the withdrawal with the hearing officer.

(2) The request for withdrawal must generally be made in writing. An oral withdrawal by the appellant is permitted during a formal administrative hearing when both the hearing officer and HCA hearing representative are present.

(3) After a withdrawal request is received, the hearing officer must cancel any scheduled hearings and enter and serve a written order dismissing the case.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3160, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3170 Final order deadline—Required information. (1) Within ninety days after the formal administrative hearing record is closed, the hearing officer shall serve a final order that shall be the final decision of the authority. The hearing officer shall serve a copy of the final order to all parties.

(2) The hearing officer must include the following information in the written final order:

- (a) Identify the order as a final order of the school employees benefits board (SEBB) program;
- (b) List the name and docket number of the case and the names of all parties and representatives;
- (c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;
- (d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;
- (e) State the law that applies to the dispute;
- (f) Apply the law to the facts of the case in the conclusions of law;
- (g) Discuss the reasons for the decision based on the facts and the law;
- (h) State the result and remedy ordered; and
- (i) Include any other information required by law or program rules.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3170, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3180 Request for reconsideration and response—Process. (1) A request for reconsideration asks the hearing officer to reconsider the final order because the party believes the hearing officer made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the hearing officer who entered the final order.

(4) If a party files a request for reconsideration:

- (a) The hearing officer must receive the request for reconsideration on or before the tenth business day after the service date of the final order;
- (b) The party filing the request must serve copies of the request on to all other parties; and
- (c) Within five business days of receiving a request for reconsideration, the hearing officer must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(12/14/18)

(a) Responses to a request for reconsideration must be received by the hearing officer no later than seven business days after the service date of the hearing officer's notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the hearing officer may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced at the hearing or before the ruling on a dispositive motion.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3180, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3190 Decisions on requests for reconsideration. (1) Unless the request for reconsideration is denied as untimely filed under WAC 182-32-3180, the same hearing officer who entered the final order, if reasonably available, will also dispose of the request as well as any responses received.

(2) The decision on the request for reconsideration must be in the form of a written order denying or granting the request in whole or in part and issuing a new written final order.

(3) If the hearing officer does not send an order on the request for reconsideration within twenty calendar days of the date of the notice described in WAC 182-32-2120, the request is deemed denied.

(4) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a request for reconsideration is not required before requesting judicial review.

(5) An order denying a request for reconsideration is not subject to judicial review.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3190, filed 12/14/18, effective 1/14/19.]

WAC 182-32-3200 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The school employees benefits board (SEBB) program may not request judicial review.

(3) The appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3200, filed 12/14/18, effective 1/14/19.]