

## WSR 24-21-013

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 3, 2024, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-116.

Title of Rule and Other Identifying Information: WAC 182-507-0130 Refugee medical assistance (RMA), and 182-509-0001 Countable income for Washington apple health programs.

Hearing Location(s): On November 26, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_zumlUaSYRMWndscsc\\_AQA](https://us02web.zoom.us/webinar/register/WN_zumlUaSYRMWndscsc_AQA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than November 27, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning October 4, 2024, 8:00 a.m., by November 26, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by November 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-507-0130 and 182-509-0001 to update the income and resource eligibility standards for the refugee medical assistance program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Giovanni Delgado, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1919.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 3, 2024  
Wendy Barcus  
Rules Coordinator

OTS-5828.1

AMENDATORY SECTION (Amending WSR 22-21-072, filed 10/13/22, effective 11/13/22)

**WAC 182-507-0130 Refugee medical assistance (RMA).** (1) You are eligible for refugee medical assistance (RMA) if all the following conditions are met. You:

(a) Meet immigration status requirements of WAC 182-507-0135;

(b) Have countable resources below (~~(\$1,000)~~) \$2,000 on the date of application;

(c) Have countable income equal to or below 200 percent of the federal poverty level (FPL) on the date of application. The following income is not considered when determining eligibility for RMA:

(i) Resettlement cash payments made by the voluntary agency (VOLAG);

(ii) Income of a sponsor is not counted unless the sponsor is also part of your assistance unit; and

(iii) Income received after the date of application.

(d) Provide the name of the VOLAG which helped bring you to the United States so that the department of social and health services (DSHS) can promptly notify the VOLAG (or sponsor) about the medical application.

(2) If you receive refugee cash assistance (RCA) you are eligible for RMA (~~(as long as)~~) if you have countable resources below \$2,000 on the date of application and you are not otherwise eligible for another medicaid or ((a)) children's health care program as described in WAC 182-505-0210. You do not have to apply for or receive RCA in order to qualify for RMA.

(3) You are not eligible to receive RMA if you are:

(a) Already eligible for another medicaid or ((a)) children's health care program as described in WAC 182-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a DSHS-approved individual responsibility plan (IRP); or

(c) A nonrefugee spouse of a refugee.

(4) If approved for RMA, the agency or its designee issues an approval letter in both English and your primary language. The agency or its designee also sends a notice every time there are any changes or actions taken which affect your eligibility for RMA.

(5) You may be eligible for RMA coverage of medical expenses incurred during the three months prior to the first day of the month of the application. Eligibility determination will be made according to medicaid rules.

(6) If you are a victim of human trafficking you must provide the following documentation and meet the eligibility requirements in subsections (1) and (2) of this section to be eligible for RMA:

(a) Adults, 18 years of age or older, must provide the original certification letter from the United States Department of Health and Human Services (DHHS). No other documentation is needed. The eligibility period will be determined based on the entry date on your certification letter;

(b) A child victim under the age of 18 does not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements;

(c) A family member of a certified victim of human trafficking must have a T-2, T-3, T-4, or T-5 visa (derivative T-Visas), and the family member must meet eligibility requirements in subsections (1) and (2) of this section.

(7) The entry date for an asylee is the date that asylum status is granted. For example, you entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and were granted asylum on September 1, 2000. The date of entry is September 1, 2000, and that is the date used to establish eligibility for RMA.

(8) RMA certification period.

(a) RMA ends on either:

(i) The last day of the eighth month from the month the person entered the United States if they entered the United States on or before September 30, 2021. For example, if they entered the United States on September 30, 2021, they are eligible through April 30, 2022; or

(ii) The last day of the 12th month from the month the person entered the United States if they entered the United States on or after October 1, 2021. For example, if they entered the United States on October 25, 2021, they are eligible through September 30, 2022.

(b) You may receive RMA benefits for more months if you are in a category of persons for whom the federal Office of Refugee Resettlement has extended the eligibility period.

(9) If you are approved for RMA you are continuously eligible through the end of the initial RMA certification period, regardless of an increase in income.

(10) The agency, or its designee, determines eligibility for medicaid and other medical programs for your spouse when the spouse arrives in the United States. If the spouse is not eligible for medicaid due to your countable income, the spouse is still eligible for RMA under subsection (8) of this section.

(11) If you disagree with a decision or action taken on the case by the agency, or its designee, you have the right to request a review of the case action(s) or request an administrative hearing (see chapter 182-526 WAC). The request must be received by the agency, or its designee, within 90 days of the date of the decision or action.

## OTS-5829.1

AMENDATORY SECTION (Amending WSR 23-11-009, filed 5/4/23, effective 6/4/23)

**WAC 182-509-0001 Countable income for Washington apple health programs.** (1) For purposes of Washington apple health (~~((WAH))~~) program eligibility, a person's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program have been applied.

(2) A person's countable income may not exceed the income standard for the specific (~~(WAH)~~) Washington apple health program, unless

the program allows for those limits to be exceeded. Specific program standards are described below:

(a) For modified adjusted gross income (MAGI)-based programs described in WAC 182-503-0510, see WAC 182-505-0100 for the applicable program standard based on a percentage of the federal poverty level (FPL);

(b) For ((WAH)) Washington apple health SSI-related CN coverage, see WAC 182-512-0010;

(c) For ((WAH)) Washington apple health MN coverage, see WAC 182-519-0050;

(d) For ((WAH)) Washington apple health medicare savings programs, see WAC 182-517-0100;

(e) For ((WAH)) Washington apple health noninstitutional medical in an alternative living facility, see WAC 182-513-1205; and

(f) For ((WAH)) Washington apple health long-term care programs, see WAC 182-513-1315 and 182-513-1395.

(3) For the MAGI-based programs listed below, the agency or its designee determines eligibility based on the countable MAGI income of the members of the person's medical assistance unit as determined per WAC 182-506-0010:

(a) ((WAH)) Washington apple health for parents and caretaker relatives program as described in WAC 182-505-0240;

(b) ((WAH)) Washington apple health pregnancy program as described in WAC 182-505-0115;

(c) ((WAH)) Washington apple health for kids programs as described in WAC 182-505-0210 with the following exceptions:

(i) Newborn children born to a ((woman)) person who is eligible for ((WAH)) Washington apple health on the date of the newborn's birth, including a retroactive eligibility determination;

(ii) Children who are receiving SSI;

(iii) Children who are in foster care or receiving subsidized adoption services.

(d) ((WAH)) Washington apple health MAGI-based adult medical as described in WAC 182-505-0250; and

(e) ((WAH)) Washington apple health MAGI-based alien emergency medical as described in WAC 182-507-0110.

(4) For the following SSI-related ((WAH)) Washington apple health programs, unless the state has adopted more liberal rules, income rules for the SSI program are used to determine a person's countable income:

(a) ((WAH)) Washington apple health noninstitutional SSI-related CN or medically needy (MN) coverage described in chapters 182-511 and 182-512 WAC;

(b) ((WAH)) Washington apple health institutional SSI-related CN or MN long-term care or hospice coverage described in chapters 182-513 and 182-515 WAC;

(c) ((WAH)) Washington apple health alien emergency medical programs based on age 65 or older or disability described in chapter 182-507 WAC; and

(d) ((WAH)) Washington apple health medicare savings programs described in chapter 182-517 WAC.

(5) Anticipated nonrecurring lump sum payments received by an applicant or recipient of a ((WAH)) Washington apple health SSI-related medical program are counted as income in the month of receipt, subject to reporting requirements, with the exception of retroactive supplemental security income (SSI)/Social Security disability lump sum payments. See WAC 182-512-0300(4) and 182-512-0700 for more information.

(6) Countable income for the ((WAH)) Washington apple health refugee medical (RMA) program and ((WAH)) Washington apple health MN program for pregnant ((~~women~~)) people and children is determined as follows:

(a) The agency or its designee allows the following deductions from a ((~~person's~~)) household's gross earnings:

(i) ((~~Fifty~~)) The first \$500 of earnings and 50 percent of ((~~gross earned income~~)) the remaining earnings;

(ii) Actual work-related child and dependent care expenses, which are the person's responsibility; and

(iii) Court or administratively ordered current or back support paid to meet the needs of legal dependents.

(b) Only income actually contributed to ((~~an alien client~~)) a person from the ((~~alien's~~)) person's sponsor is countable unless the sponsor signs the affidavit of support I-864 or I-864A.

(c) Nonrecurring lump sum payments are counted as income in the month of receipt and as a resource if the person retains the payment after the month of receipt (resource limits do not apply to MN coverage for pregnant ((~~women~~)) people and children). For RMA, nonrecurring lump sum payments are counted as income if received in the month of application and not considered if received thereafter per WAC 182-507-0130.

(7) Countable income rules for other ((WAH)) Washington apple health programs that are not MAGI-based or SSI-related are described in the specific program rules listed in WAC 182-503-0510 (3)(c).

(8) Some ((WAH)) Washington apple health programs are not based on a person's or household's countable income but are based on a specific status or entitlement in federal rule. The rules for these deemed eligible ((WAH)) Washington apple health programs are described in WAC 182-503-0510(4).

## WSR 24-21-016

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 4, 2024, 7:59 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-050.

Title of Rule and Other Identifying Information: Birth Doulas; removing certification barriers to align rule with recent legislation. The department of health (DOH) is proposing amendments to WAC 246-835-040, to implement section 8 of 2SHB 1724 (chapter 425, Laws of 2023) to remove barriers to entering and remaining in the birth doula workforce and to shorten the credentialing process.

Hearing Location(s): On November 26, 2024, at 2:00 p.m., at the Washington State Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or via Zoom. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_9S43VRINTjaKZqaRJC BWQw](https://us02web.zoom.us/webinar/register/WN_9S43VRINTjaKZqaRJC BWQw). After registering, you will receive a confirmation email containing information about joining the webinar. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

Date of Intended Adoption: December 3, 2024.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, DOH, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, beginning the date and time of this filing, by November 26 at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, TTY 711, email [kimboi.shadduck@doh.wa.gov](mailto:kimboi.shadduck@doh.wa.gov), by November 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DOH is proposing amendments to WAC 246-835-040 to remove barriers to entering and remaining in the health care workforce, and to streamline and shorten the credentialing process for birth doulas. Specifically, the proposed amendments remove the requirement of completing 10 hours of continuing education (CE) for applicants who have been credentialed in a United States jurisdiction that has standards that are substantially equivalent Washington standards. Applicants who have been credentialed in another United States jurisdiction that does not have standards that are substantially equivalent must follow existing requirements for certification or apply for certification through the initial application process in WAC 246-835-030. The proposed changes implement section 8 of 2SHB 1724, codified as RCW 18.130.077.

Reasons Supporting Proposal: The intent of RCW 18.130.077 is to make disciplining authorities review and adjust credential requirements to remove barriers to entering and remaining in the health care workforce, and to streamline and shorten the credentialing process. The proposed amendments provide faster pathways to certification and ease the burden on applicants while still maintaining sufficient standards of training and care. Rule making is necessary to amend certification requirements in WAC 246-835-040 to create enforceable standards and comply with RCW 18.130.077.

Statutory Authority for Adoption: RCW 18.47.800 and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Statute Being Implemented: RCW 18.130.077.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt from a cost-benefit analysis under 34.05.328 (5)(b)(v) because the rule incorporates statutory requirements dictated by RCW 18.130.077. Additionally, portions of the rule are exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) and (iv) as they incorporate by reference existing Washington state law and rule without material change and clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Amendments are needed to comply with changes mandated by section 8 of 2SHB 1724 and the proposed amendments only affect certification. Proposed changes also clarify language of the rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2024  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

#### OTS-5539.4

AMENDATORY SECTION (Amending WSR 23-18-048, filed 8/30/23, effective 10/1/23)

**WAC 246-835-040 Applicants currently certified in other states or territories.** An initial applicant currently certified to practice as a birth doula in another state, the District of Columbia, or a territory of the United States may be (~~licensed~~) certified by endorsement. An applicant shall comply with the requirements for licensure as specified in chapters 18.47 RCW and 246-835 WAC and submit proof of:

(1) Current certification from another United States jurisdiction (~~;~~ and), if the applicant is certified in a United States jurisdiction that has substantially equivalent standards to Washington.

(2) For applicants who have been certified for at least two years in another United States jurisdiction (~~for at least two years, completion~~) that does not have substantially equivalent standards, the applicant must submit:

(a) Current certification from another United States jurisdiction; and

(b) Proof of 10 hours of continuing education within the two-year period immediately preceding (~~licensure~~) certification.

(3) For applicants who have been certified for less than two years in a United States jurisdiction that does not have substantially equivalent standards, the applicant may apply for certification through the application process in WAC 246-835-030.



WSR 24-21-017

PROPOSED RULES

SEATTLE COLLEGES

[Filed October 4, 2024, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-006.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Title IX Student code of conduct.

Hearing Location(s): On November 26, 2024, at 9:00 - 10:00 a.m., Zoom, virtual.

Date of Intended Adoption: December 24, 2024.

Submit Written Comments to: Lorine Hill, 1500 Harvard Avenue, Seattle, WA 98122, email compliance@seattlecolleges.edu.

Assistance for Persons with Disabilities: Contact Lorine Hill, phone 206-934-3873, TTY 711, email compliance@seattlecolleges.edu.

Reasons Supporting Proposal: To bring the Seattle Colleges' student conduct code, chapter 132F-121 WAC, into compliance with a new final rule issued by the United States Department of Education pursuant to its authority under Title IX of the Education Amendment of 1972 and to update other provisions of the student conduct code to reflect current issues and needs of the college district and its students.

Statutory Authority for Adoption: RCW 34.05.010(16), 28B.50.140(13).

Statute Being Implemented: WAC 132F-121-270, 132F-121-280, 132F-121-290, 132F-121-300, 132F-121-310, 132F-121-330, 132F-121-340, and 132F-121-350.

Rule is necessary because of federal law and federal court decision, United States Department of Education, Title IX of the Education Amendments of 1972.

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorine Hill, Siegel Center, 206-934-3873.

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

October 1, 2024

Lorine Hill

Interim Director of Compliance

OTS-5793.2

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

**WAC 132F-121-110 Student misconduct.** Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification.

(2) Sexual misconduct. Sexual misconduct includes sexual harassment, sexual intimidation, sexual violence, domestic violence, and dating violence. Sexual misconduct may also include acts of ~~((sexual))~~ sex-based harassment and sex discrimination prohibited under Title IX. See WAC 132F-121-280.

(a) ~~((Sexual))~~ Sex-based harassment is a form of ~~((sexual))~~ sex discrimination consisting of unwelcome, gender-based, verbal, written, electronic and/or physical conduct. ~~((Sexual))~~ Sex-based harassment does not need to be sexual in nature and can include offensive remarks about a person's gender. There are two types of ~~((sexual))~~ sex-based harassment:

(i) Hostile environment ~~((sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing))~~ is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the recipient's education program or activity.

(ii) Quid pro quo harassment ~~((occurs when an individual, in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors))~~ is an employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(b) Sexual exploitation. Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or take advantage of anyone other than the one being ex-

exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

- (i) Invading another person's sexual privacy;
- (ii) Prostituting another person;
- (iii) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;
- (iv) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;
- (v) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(vi) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(vii) Causing the nonconsensual indecent exposure of another person, as defined by subsection (21) of this section.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, incest, statutory rape, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact (fondling) is any (~~intentional~~) actual or attempted sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(d) Consent: Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(e) Domestic violence includes (~~asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma~~) physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal

property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.55.010.

~~(f) Dating violence means ((violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction))~~ physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

~~(g) Stalking is ((intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent))~~ engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(3) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct not otherwise protected by law, that is directed at a person because of their membership in a protected class and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication not otherwise protected by law.

(4) Academic dishonesty. Any act of course-related dishonesty including, but not limited to, cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Other dishonesty. Any other act of dishonesty related to district operations. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

(b) Tampering with an election conducted by or for district students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a district officer or employee.

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Bullying is unwelcome conduct, whether verbal, physical or otherwise, including "cyber" bullying that is objectively offensive and sufficiently severe, or persistent, and/or pervasive, that it has the effect of substantially limiting the ability of an individual to participate in or benefit from the colleges' educational and/or social programs, and/or student housing. Bullying behavior is conduct that is not otherwise protected by law. Bullying may be top-down, perpetuated by someone with greater positional power towards another with lesser positional power; bottom-up, perpetuated by someone with lesser positional power towards someone with greater positional power; or peer-to-peer. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as bullying.

(9) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.

~~(10) ((Stalking. Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated, or har-~~

assed, even if the perpetrator lacks such an intent.)) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for their safety or the safety of others; or

(b) Suffer substantial emotional distress.

(11) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

(12) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of their duties, or failure to properly identify oneself to such a person when requested to do so.

(13) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(14) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

(d) This prohibition does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(15) Hazing. Hazing includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(16) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college poli-

cies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

(17) Drugs.

(a) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) Other drugs. The use, possession, delivery, sale or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(18) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(19) Conduct which is disorderly, lewd, or obscene.

(20) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

(21) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(22) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including 25 feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(23) Theft or other misuse of computer time or other electronic information resources of the district. Such misuse includes but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the district's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the district's electronic information resources without authorization; or

(i) Failure to comply with the district's electronic use policy.

(24) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

(25) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(26) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(27) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(28) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

(29) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceeding for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(30) Attempting to commit any of the foregoing acts of misconduct or aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(31) Retaliation. Retaliation (~~(against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment)~~) means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the college from requiring an employee to provide aid, bene-



fit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-270 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence.** This supplemental ((procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Seattle Colleges' standard disciplinary procedures, WAC 132F-121-110 through 132F-121-260, these supplemental procedures shall take precedence. The Seattle Colleges may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair)) student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard student conduct code and procedure, WAC 132F-121-110 through 132F-121-260, these supplemental student conduct code and procedure shall take precedence.

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

**WAC 132F-121-280 ((Prohibited conduct under Title IX.)) Sex discrimination—Prohibited conduct and definitions.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Seattle Colleges may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of ((("sexual harassment.")) "sex discrimination."

For purposes of this supplemental procedure, ((("sexual harassment" encompasses the following conduct:

(1) Title IX quid pro quo harassment. Quid pro quo harassment occurs when a student in their capacity as an employee of the Seattle Colleges conditions the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.

(2) Title IX hostile environment. Unwelcome sexual or gender-based conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Seattle Colleges' educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

~~(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.~~

~~(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.~~

~~(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(i) The length of the relationship;~~

~~(ii) The type of relationship; and~~

~~(iii) The frequency of interaction between the persons involved in the relationship.~~

~~(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.) the following definitions apply.~~

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex discrimination." The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person

upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-290** ~~((Title IX jurisdiction.))~~ **Sex discrimination—Jurisdiction.** ~~((1))~~ This supplemental procedure applies only if the alleged misconduct ~~((÷~~

~~(a) Occurred in the United States;~~

~~(b) Occurred during a Seattle Colleges' educational program or activity; and~~

~~(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.~~

~~(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Seattle Colleges exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Seattle Colleges.~~

~~(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the Seattle Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Seattle Colleges' student conduct code, WAC 132F-121-110.~~

~~(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.) meets the definition of "sex discrimination" as that term is defined in WAC 132F-121-280 and occurs:~~

~~(1) On college premises;~~

~~(2) At or in connection with college programs or activities; or~~

~~(3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.~~

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-300 Sex discrimination—Dismissal and initiation of discipline.** ~~((1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

~~(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:~~

~~(a) Set forth the basis for Title IX jurisdiction;~~

~~(b) Identify the alleged Title IX violation(s);~~

~~(c) Set forth the facts underlying the allegation(s);~~

~~(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and~~

~~(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:~~

~~(i) The advisors will be responsible for questioning all witnesses on the party's behalf;~~

~~(ii) An advisor may be an attorney; and~~

~~(iii) The Seattle Colleges will appoint the party an advisor of the Seattle Colleges' choosing at no cost to the party, if the party fails to do so.~~

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.))~~ (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When a summary suspension is imposed pursuant to WAC 132F-121-250, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended finding and disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has de-

clined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-310 Sex discrimination—Prehearing procedure.**

~~((1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132F-121-180. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Seattle Colleges intends to offer the evidence at the hearing.)~~ (1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to



exercise any or all duties of the student conduct committee and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132F-121-180 as well as a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required to be provided in a prehearing notice pursuant to WAC 132F-121-180, the prehearing notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The

chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

**WAC 132F-121-330 Sex discrimination—Presentation of evidence.**

~~((The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:~~

~~(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.~~

~~(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.~~

~~(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:~~

~~(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or~~

~~(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.~~

~~(4) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.~~

~~(5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:~~

~~(a) Spousal/domestic partner privilege;~~  
~~(b) Attorney-client and attorney work product privileges;~~  
~~(c) Privileges applicable to members of the clergy and priests;~~  
~~(d) Privileges applicable to medical providers, mental health therapists, and counselors;~~  
~~(e) Privileges applicable to sexual assault and domestic violence advocates; and~~

~~(f) Other legal privileges identified in RCW 5.60.060.)~~ In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(1) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(2) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(3) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;  
(b) Attorney-client communications and attorney work product privilege;  
(c) Clergy privileges;  
(d) Medical or mental health providers and counselor privileges;  
(e) Sexual assault and domestic violence advocate privileges; and  
(f) Other legal privileges set forth in RCW 5.60.060 or federal law.

(4) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(5) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-340 Sex discrimination—Initial order.** ((1) In addition to complying with ~~WAC 132F-121-210~~ the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) ~~Identifies the allegations of sexual harassment;~~
- (b) ~~Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;~~
- (c) ~~Makes findings of fact supporting the determination of responsibility;~~
- (d) ~~Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;~~
- (e) ~~Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;~~
- (f) ~~Describes any disciplinary sanction or conditions imposed against the respondent, if any;~~
- (g) ~~Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Seattle Colleges' education programs or activities; and~~
- (h) ~~Describes the process for appealing the initial order to the Seattle Colleges' president.~~

(2) ~~The committee chair will serve the initial order on the parties simultaneously.)~~ In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 23-12-052, filed 6/1/23, effective 7/2/23)

**WAC 132F-121-350 Sex discrimination—Appeals.** ((1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the ap-

~~peal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.~~

~~(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.~~

~~(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.~~

~~(5) The president's office shall serve the final decision on the parties simultaneously.~~

~~(6) All administrative decisions reached through this process may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.) (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.~~

~~(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:~~

~~(a) Procedural irregularity that would change the outcome;~~

~~(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and~~

~~(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.~~

~~(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.~~

~~(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.~~

~~(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.~~

~~(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on all parties and the Title IX coordinator.~~

~~(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.~~

## WSR 24-21-019

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 4, 2024, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-117.

Title of Rule and Other Identifying Information: WAC 182-545-200  
Outpatient rehabilitation (occupational therapy, physical therapy, and  
speech therapy).

Hearing Location(s): On November 26, 2024, at 10:00 a.m. The  
health care authority (HCA) holds public hearings virtually without a  
physical meeting place. To attend the virtual public hearing, you must  
register in advance [https://us02web.zoom.us/webinar/register/  
WN\\_zumlUaSYRMWndscsc\\_AQA](https://us02web.zoom.us/webinar/register/WN_zumlUaSYRMWndscsc_AQA). If the link above opens with an error mes-  
sage, please try using a different browser. After registering, you  
will receive a confirmation email containing information about joining  
the public hearing.

Date of Intended Adoption: Not sooner than November 27, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box  
42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727,  
beginning October 7, 2024, 8:00 a.m., by November 26, 2024, by 11:59  
p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson,  
phone 360-725-1349, fax 360-586-9727, telecommunication relay service  
711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by November 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: HCA is amending WAC 182-545-200 to ex-  
pand payment criteria for occupational therapy. Specifically, HCA is  
amending subsection (4)(j)(iv) to change "age two or younger" to "age  
six or younger."

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen,  
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation  
and Enforcement: Dani Crawford, P.O. Box 45502, Olympia, WA  
98504-5502, 360-725-0983.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW  
34.05.328 does not apply to HCA rules unless requested by the joint  
administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule proposal updates the crite-  
ria under which the medicaid agency pays for a client's outpatient re-  
habilitation. This rule proposal does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2024  
Wendy Barcus  
Rules Coordinator

## OTS-5851.1

AMENDATORY SECTION (Amending WSR 24-14-044, filed 6/26/24, effective 7/27/24)

**WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy).** (1) The following health professionals may enroll with the medicaid agency, as defined in WAC 182-500-0010, to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible clients:

- (a) A psychiatrist;
- (b) A licensed occupational therapist;
- (c) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (d) A licensed physical therapist;
- (e) A physical therapist assistant supervised by a licensed physical therapist;
- (f) A licensed speech-language pathologist; and
- (g) A licensed optometrist to provide vision occupational therapy only.

(2) Clients covered by one of the Washington apple health programs listed in the table in WAC 182-501-0060 or receiving home health care services as described in chapter 182-551 WAC (subchapter II) are eligible to receive outpatient rehabilitation as described in this chapter.

(3) Clients enrolled in an agency-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through their agency-contracted MCO.

(4) The agency pays for outpatient rehabilitation when the services are:

- (a) Covered;
- (b) Medically necessary;
- (c) Within the scope of the eligible person's medical care program;
- (d) Ordered by:
  - (i) A physician, physician assistant (PA), or an advanced registered nurse practitioner (ARNP); or
  - (ii) An optometrist, if the ordered services are for occupational therapy only.

(e) Within currently accepted standards of evidence-based medical practice;

(f) Authorized, as required within this chapter, under chapters 182-501 and 182-502 WAC and the agency's published billing instructions;

- (g) Begun within 30 calendar days of the date ordered;
- (h) Provided by one of the health professionals listed in subsection (1) of this section;
- (i) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions; and
- (j) Provided as part of an outpatient treatment program:
  - (i) In an office or outpatient hospital setting;
  - (ii) In the home, by a home health agency as described in chapter 182-551 WAC;
  - (iii) In a neurodevelopmental center, as described in WAC 182-545-900;

(iv) For children with disabilities, age (~~two~~) six or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child; or

(v) When provided by licensed and certified behavioral health agencies as part of a mental health or substance use disorder treatment program.

(5) For eligible clients age 20 and younger, the agency covers unlimited outpatient rehabilitation.

(6) For clients age 21 and older, the agency covers a limited outpatient rehabilitation benefit.

(7) Outpatient rehabilitation services for clients age 21 and older must:

(a) Restore, improve, or maintain the person's level of function that has been lost due to a clinically documented condition; and

(b) Include an ongoing management plan for the client or the client's caregiver to support timely discharge and continued progress.

(8) For eligible clients age 21 and older, the agency limits coverage of outpatient rehabilitation as follows:

(a) Occupational therapy, per person, per year:

(i) Without authorization:

(A) For clients needing occupational therapy to treat physical conditions:

(I) One occupational therapy evaluation;

(II) One occupational therapy reevaluation at time of discharge;

and

(III) Twenty-four units of occupational therapy, which is approximately six hours; and

(B) For clients needing occupational therapy to treat behavioral health conditions:

(I) One occupational therapy evaluation;

(II) One occupational therapy reevaluation at time of discharge;

and

(III) Twenty-four units of occupational therapy, which is approximately six hours.

(ii) With expedited prior authorization, up to 24 additional units of occupational therapy to treat either the client's physical or behavioral health conditions may be available to continue treatment initiated under the original 24 units when the criteria below is met:

(A) To continue treatment of the original qualifying condition;

and

(B) The client's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Behavioral health conditions;

(III) Brain injury, which occurred within the past 24 months, with residual cognitive or functional deficits;

(IV) Burns - Second or third degree only;

(V) Cerebral vascular accident, which occurred within the past 24 months, with residual cognitive or functional deficits;

(VI) Lymphedema;

(VII) Major joint surgery - Partial or total replacement only;

(VIII) Muscular-skeletal disorders such as complex fractures that required surgical intervention, or surgery involving the spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(IX) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));



- (X) Reflex sympathetic dystrophy;
- (XI) Swallowing deficits due to injury or surgery to the face, head, or neck;
- (XII) Spinal cord injury that occurred within the past 24 months, resulting in paraplegia or quadriplegia; or
- (XIII) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.
- (b) Physical therapy, per person, per year:
  - (i) Without authorization:
    - (A) One physical therapy evaluation;
    - (B) One physical therapy reevaluation at time of discharge; and
    - (C) Twenty-four units of physical therapy, which is approximately six hours.
  - (ii) With expedited prior authorization, up to 24 additional units of physical therapy may be available to continue treatment initiated under the original 24 units when the criteria below is met:
    - (A) To continue treatment of the original qualifying condition; and
    - (B) The person's diagnosis is any of the following:
      - (I) Acute, open, or chronic nonhealing wounds;
      - (II) Brain injury, which occurred within the past 24 months, with residual functional deficits;
      - (III) Burns - Second or third degree only;
      - (IV) Cerebral vascular accident, which occurred within the past 24 months, with residual functional deficits;
      - (V) Lymphedema;
      - (VI) Major joint surgery - Partial or total replacement only;
      - (VII) Muscular-skeletal disorders such as complex fractures that required surgical intervention, or surgery involving the spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);
      - (VIII) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));
      - (IX) Reflex sympathetic dystrophy;
      - (X) Spinal cord injury, which occurred within the past 24 months, resulting in paraplegia or quadriplegia; or
      - (XI) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.
- (c) Speech therapy, per person, per year:
  - (i) Without authorization:
    - (A) One speech language pathology evaluation;
    - (B) One speech language pathology reevaluation at the time of discharge; and
    - (C) Six units of speech therapy, which is approximately six hours.
  - (ii) With expedited prior authorization, up to six additional units of speech therapy may be available to continue treatment initiated under the original six units when the criteria below is met:
    - (A) To continue treatment of the original qualifying condition; and
    - (B) The person's diagnosis is any of the following:
      - (I) Brain injury, which occurred within the past 24 months, with residual cognitive or functional deficits;
      - (II) Burns of internal organs such as nasal oral mucosa or upper airway;
      - (III) Burns of the face, head, and neck - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past 24 months, with residual functional deficits;

(V) Muscular-skeletal disorders such as complex fractures that require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;

(VI) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));

(VII) Speech deficit due to injury or surgery to the face, head, or neck;

(VIII) Speech deficit that requires a speech generating device;

(IX) Swallowing deficit due to injury or surgery to the face, head, or neck; or

(X) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(d) Durable medical equipment (DME) needs assessments, two per person, per year.

(e) Orthotics management and training of upper or lower extremities, or both, two program units, per person, per day.

(f) Orthotic or prosthetic use, two program units, per person, per year.

(g) Muscle testing, one procedure, per person, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.

(h) Wheelchair needs assessment, one per person, per year.

(9) For the purposes of this chapter:

(a) Each 15 minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(10) For expedited prior authorization (EPA):

(a) A provider must establish that:

(i) The person's condition meets the clinically appropriate EPA criteria outlined in this section; and

(ii) The services are expected to result in a reasonable improvement in the person's condition and achieve the person's therapeutic individual goal within 60 calendar days of initial treatment;

(b) The appropriate EPA number must be used when the provider bills the agency;

(c) Upon request, a provider must provide documentation to the agency showing how the person's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per person, per each therapy type.

(11) If the client does not meet the EPA clinical criteria in this section, the agency uses the process in WAC 182-501-0165 to consider prior authorization requests and approves services that are medically necessary.

(12) The agency evaluates limitation extension (LE) requests regarding scope, amount, duration, and frequency of covered health care services under WAC 182-501-0169. Providers may submit LE requests for additional units when:

(a) The criteria for an expedited prior authorization does not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) A new qualifying condition arises after the initial six visits are used.

(13) Duplicate services for outpatient rehabilitation are not allowed for the same person when both providers are performing the same or similar procedure(s).

(14) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(15) The agency does not reimburse a health care professional for outpatient rehabilitation performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

**WSR 24-21-043**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed October 8, 2024, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-02-034.

Title of Rule and Other Identifying Information: WAC 388-825-058  
What services does DDA authorize?, 388-825-082 What state-only funded services may DDA authorize?, 388-825-083 Is there a comprehensive list of waiver and state-only DDA services?, 388-828-9000 What is the individual and family services assessment?, 388-828-9140 How does DDA determine the amount of your individual and family service allocation?, 388-832-0001 What definitions apply to this chapter?, 388-832-0140 What services are available through the state-funded IFS program?, 388-832-0143 What is respite care?, 388-832-0170 What therapies may I receive?, 388-832-0185 What are environmental adaptations?, 388-832-0186 What are vehicle modifications?, 388-832-0200 What are specialized equipment and supplies?, 388-832-0215 What are specialized nutrition and specialized clothing?, 388-832-0235 What are copays for medical and therapeutic services?, 388-832-0250 What are transportation services?, 388-832-0265 What is training and counseling?, 388-832-0280 What is positive behavior support and consultation?, 388-832-0316 What is assistive technology?, 388-832-0317 What is community engagement?, 388-832-0318 What is remote support?, 388-832-0319 What is specialized habilitation?, 388-832-0321 What is staff and family consultation?, 388-832-0322 What is supported parenting?, 388-832-0333 What limits apply to state-funded IFS program services?, 388-832-0335 What is a one-time award?, 388-832-0355 What is an emergency service?, 388-832-0366 What limitations apply to emergency services?, 388-832-0367 What if the client or family situation requires more than ninety days of emergency service?, 388-832-0369 Do I need to have a DDD assessment before I receive an emergency service?, 388-832-0370 What are community service grants?, 388-832-0375 How does a proposal for a community service grant project qualify for funding?, 388-832-0470 What are my appeal rights under the state-funded individual and family services program?, 388-845-0220 What services are available under the community protection waiver?, 388-845-0500 What is positive behavior support and consultation?, 388-845-0505 Who is a qualified provider of positive behavior support and consultation?, and 388-845-0510 Are there limits to the positive behavior support and consultation you may receive?

Hearing Location(s): On December 10, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than December 11, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on October 23, 2024, by 5:00 p.m. on December 10, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on November 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is proposing amendments to sections from chapters 388-825, 388-828, 388-832, and 388-845 WAC. The purpose of this proposed rule making is to update lists of available services, their names, descriptions, limits, and qualified providers, and to increase the individual and family service (IFS) award amounts. These amendments also repeal sections about positive behavior support and consultation, which DDA no longer authorizes as of September 1, 2022.

Reasons Supporting Proposal: The proposed amendments may lead to client access to more types of services through the state-funded IFS program, and an increased IFS award.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.161.

Statute Being Implemented: RCW 71A.12.040.

Rule is necessary because of federal law, 42 U.S.C. 1396n(c).

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Leila Graves, P.O. Box 45310, Olympia, WA 98504-5310, 360-890-2127.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email chantelle.diaz@dshs.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DDA analyzed these draft amendments and concludes that they do not impose costs on small businesses. While some sections do establish service provider qualifications, the requirements do not require the provider to take an action that costs money, such as paying for a license, certification, or training.

October 1, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5022.5

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

**WAC 388-825-058 What services does DDA authorize?** (1) DDA authorizes the following paid services:

- (a) Adult day care.
- (b) Assistive technology.
- (c) Attendant care.
- (d) Bed bug extermination.
- (e) (~~Behavior support treatment team.~~
- (f)) Caregiver management.

((g)) (f) Child development services.  
 ((h)) (g) Child placing agency.  
 ((i)) (h) Community engagement.  
 ((j)) (i) Community inclusion.  
 ((k)) (j) Community transition (~~(or sustainability services)~~).  
 ((l)) (k) Community/recreational activities.  
 ((m)) (l) Copays for medical and therapeutic services.  
 ((n)) (m) County services.  
 ((o)) (n) Crisis stabilization.  
 ((p)) (o) Durable medical equipment.  
 ((q)) (p) Employment technical assistance add-on.  
 ((r)) (q) Environmental adaptations.  
 ((s)) (r) Equine therapy.  
 ((t)) (s) Excess medical costs not covered by another source.  
 ((u)) (t) Family and provider support.  
 ((v)) (u) Group supported employment.  
 ((w)) (v) Individual employment.  
 ((x)) (w) Music therapy.  
 ((y)) (x) Nonmedical equipment.  
 ((z)) (y) Nurse consultation.  
 ((a-a)) (z) Nurse delegation.  
 ((b-b)) (a) (a) Occupational therapy.  
 ((c-c)) (b) (b) Overnight planned respite for adults.  
 ((d-d)) (c) (c) Parent and sibling education.  
 ((e-e)) (d) (d) Peer mentoring.  
 ((f-f)) (e) (e) Personal emergency response system.  
 ((g-g)) (f) (f) Personal care.  
 ((h-h)) (g) (g) Person-centered plan facilitation.  
 ((i-i)) (h) (h) Physical therapy.  
 ((j-j) ~~(j) Plethysmograph.~~  
 ((k-k) ~~(k) Polygraph.)~~)  
 ((l-l) ~~(l) Positive behavior support.~~  
 ((m-m)) (i) (i) Private duty nursing.  
 ((n-n)) (j) (j) Recreational opportunities.  
 ((o-o)) (k) (k) Reentry community (~~(safety)~~) services program.  
 ((p-p)) (l) (l) Relief care.  
(m) (m) Remote support.  
 ((q-q)) (n) (n) Residential habilitation.  
 ((r-r)) (o) (o) Respite.  
 ((s-s)) (p) (p) Risk assessment.  
 ((t-t) ~~(t) Service animal services.~~  
 ((u-u)) (q) (q) Skilled nursing.  
 ((v-v)) (r) (r) Skills acquisition.  
 ((w-w)) (s) (s) Specialized clothing.  
 ((x-x)) (t) (t) Specialized evaluation and consultation.  
 ((y-y)) (u) (u) Specialized habilitation.  
 ((z-z)) (v) (v) Specialized habilitation-stabilization.  
 ((a-a-a)) (w) (w) Specialized equipment and supplies.  
 ((b-b-b)) (x) (x) Specialized nutrition.  
 ((c-c-c)) (y) (y) Speech therapy.  
 ((d-d-d)) (z) (z) Stabilization diversion bed.  
 ((e-e-e)) (a) (a) (a) Staff and family consultation.  
 ((f-f-f)) (b) (b) (b) (~~(Staff)~~) Stabilization-staff and family  
 consultation(~~(-stabilization)~~).  
 ((g-g-g)) (c) (c) (c) State supplementary payments.  
 ((h-h-h)) (d) (d) (d) Supported parenting.  
 ((i-i-i)) (e) (e) (e) Therapeutic adaptations.

- ~~((j)(j)(j) Training and counseling.))~~  
~~((k)(k)(k)) (f)(f)(f) Transition services.~~  
~~((l)(l)(l)) (g)(g)(g) Transportation.~~  
~~((m)(m)(m)) (h)(h)(h) Vehicle modifications.~~  
~~((n)(n)(n)) (i)(i)(i) Wellness education.~~

(2) This section does not include services directly provided by the department.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

**WAC 388-825-082 What state-only funded services may DDA authorize?** DDA may authorize state-only funded services as follows:

- (1) Adult day care.  
 (2) Attendant care, which provides respite care or personal care and is limited to persons who:  
 (a) Are not eligible for other DDA services that meet their needs; and  
 (b) Were receiving attendant care in March 2004.  
 (3) Child development services.  
 (4) Counseling and strategies for effectively relating to people or coping with situations and problems.  
 (5) Crisis stabilization.  
 (6) Emergency transitional support services.  
~~((5))~~ (7) Individual and family services under chapter 388-832 WAC.  
~~((6))~~ (8) Medical and dental services necessary for the health of the client that are not covered by medicaid or private insurance.  
~~((7))~~ (9) Medical insurance copays and costs exceeding other coverage.  
~~((8) Offender re-entry))~~ (10) Re-entry community ((safety)) services program ((services)).  
~~((9))~~ (11) Overnight planned respite services under chapter 388-829R WAC.  
~~((10) Parent training and counseling.))~~  
~~((11))~~ (12) PASRR services under chapter 388-834 WAC if you reside in a medicaid-certified home nursing facility but you do not qualify for medicaid.  
~~((12) Psychological counseling which provides specialized cognitive counseling and strategies for effectively relating to people or coping with situations and problems))~~ (13) Specialized treatment at a youth transitional care facility.  
~~((13))~~ (14) State supplementary payments under chapter 388-827 WAC.  
~~((14))~~ (15) Transportation reimbursement for ~~((an escort, which is a payment for))~~ someone other than the driver to provide one-on-one attention to the client being transported.  
~~((15))~~ (16) Waiver services under chapter 388-845 WAC if prior approval is received by the assistant secretary or designee.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

**WAC 388-828-9000 What is the individual and family services assessment?** The individual and family services assessment is ~~((an))~~ one algorithm ~~((in))~~ within the DDA assessment that determines an ~~((award))~~ allocation amount that you may receive if DDA has authorized you to receive individual and family services per ~~((chapter))~~ chapters 388-832 and 388-845 WAC.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

**WAC 388-828-9140 How does DDA determine the amount of your individual and family service ((award)) allocation?** DDA uses the following table to determine the amount of your individual and family services ~~((award))~~ allocation:

If your individual and family services score is:	The <del>((award))</del> <u>allocation</u> level will be	The amount of your <del>((award))</del> <u>allocation</u> is up to:
0 to 60	Not eligible	No <del>((Award))</del> <u>allocation</u>
61 to 240	Level 1	\$ <del>((1,200))</del> <u>1,560</u>
241 to 336	Level 2	\$ <del>((1,800))</del> <u>2,340</u>
337 to 527	Level 3	\$ <del>((2,400))</del> <u>3,120</u>
528 or more	Level 4	\$ <del>((3,600))</del> <u>4,680</u>

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0001 What definitions apply to this chapter?** The following definitions apply to this chapter:

"**Agency provider**" means a long-term care worker who works for a home care agency.

"**Allocation**" means needs-based funding available to a client and the client's family for a maximum of ~~((twelve))~~ 12 months.

"**Authorization**" means developmental disabilities administration (DDA) funding approval for a service identified in a client's person-centered service plan.

"**Caregiver**" means a person who provides formal (paid), informal (unpaid), or primary (paid or unpaid) support.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020~~((+3))~~ who also has been determined eligible to receive services from DDA under chapter 71A.16 RCW.

"**DDA**" means the developmental disabilities administration within the department of social and health services (DSHS).



"**Department**" means the department of social and health services (DSHS).

"**Family**" means ~~((a relative who lives with the client. A relative includes the client's))~~ one or more of the following relatives: spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"**Family home**" means the residence where the client and the client's family live.

"**Individual and family services contract**" means a contract between DDA and the family to reimburse the family for the purchase of goods and services.

"**Individual provider**" means an individual who is contracted with DDA to provide medicaid state plan personal care or medicaid waiver personal care, respite care, or attendant care services.

"**Person-centered service plan**" or "**PCSP**" is a document that ~~((authorizes DDA-paid services that meet))~~ identifies the client's goals and assessed health and welfare needs ((identified in the client's DDA assessment)). The person-centered service plan also indicates the paid services and natural supports that will assist the client to achieve their goals and address their assessed needs.

"**Primary caregiver**" means the person who provides the majority of a client's care and supervision.

"**Significant change**" means a change in a client's medical condition, caregiver status, behavior, living situation, or employment status.

"**State-funded**" means a service or program funded entirely with state dollars.

"**State supplementary payment**" or "**SSP**" means a state paid cash assistance program for certain DDA clients eligible for supplemental security income per chapter 388-827 WAC.

"**You**" means the client.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0140 What services are available through the state-funded IFS program?** You may receive any combination of the following services - up to your state-funded individual and family services (IFS) annual allocation - ~~((but only if))~~ when the service addresses a need identified in your person-centered service plan:

(1) ~~((Architectural modification under WAC 388-832-0185))~~ Assis-  
tive technology under WAC 388-832-0316;

(2) Community engagement under WAC 388-832-0317;

(3) Copays for medical and therapeutic services under WAC 388-832-0235;

(4) Environmental modification under WAC 388-832-0185;

~~((3))~~ (5) Excess medical costs not covered by another source under WAC 388-832-0165;

~~((4))~~ (6) Occupational therapy under WAC 388-832-0170;

~~((5))~~ (7) Parent and sibling education under WAC 388-832-0300;

~~((6))~~ (8) Physical therapy under WAC 388-832-0170;

~~((7) Positive behavior support and consultation under WAC 388-832-0280;)~~

~~((8))~~ (9) Recreational opportunities under WAC 388-832-0315;

- (10) Remote support under WAC 388-832-0318;  
~~((9))~~ (11) Respite care under WAC 388-832-0143;  
 (12) Specialized habilitation under WAC 388-832-0319;  
~~((10))~~ (13) Specialized (~~(medical)~~) equipment and supplies under WAC 388-832-0200;  
~~((11))~~ (14) Specialized nutrition and clothing under WAC 388-832-0215;  
~~((12))~~ (15) Speech, language, and communication therapy under WAC 388-832-0170;  
 (16) Staff and family consultation under WAC 388-832-0321;  
 (17) Supported parenting under WAC 388-832-0322;  
~~((13) Training and counseling under WAC 388-832-0265;))~~  
~~((14))~~ (18) Transportation under WAC 388-832-0250; and  
~~((15))~~ (19) Vehicle modifications under WAC 388-832-0186.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0143 What is respite care?** (1) Respite care is short-term, intermittent care to relieve a family member who is your primary (~~(, paid care provider)~~) caregiver.

(2) Respite care may be provided in the settings described in WAC 388-845-1610.

(3) Qualified providers of respite care are described in WAC 388-845-1615.

(4) Respite care is limited to:

(a) The limits under WAC 388-845-1620 (~~(apply)~~); and

(b) The amount of your state-funded individual and family services annual allocation.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0170 What therapies may I receive?** (1) The therapies you may receive include:

(a) Physical therapy;

(b) Occupational therapy; and

(c) Speech, hearing, and language therapy.

(2) To be a qualified provider of therapies, the provider must (~~(be)~~):

(a) ((A)) Be a certified, registered, or licensed therapist as required by law; (~~(and)~~)

(b) Hold a core provider agreement with the health care authority to provide therapeutic services; and

~~((b))~~ (c) Be contracted with the developmental disabilities administration (DDA) for the service they provide.

(3) The following limits apply to the therapies you may receive:

(a) DDA determines the amount of therapy services you will receive based on your assessed needs, annual allocation, and information received from your therapist and DDA may require a second opinion from a DDA-selected therapist;

(b) DDA does not pay for treatment that is experimental or investigational under WAC 182-531-0050; and

(c) Additional therapy may be authorized as a service only after you have ~~((exhausted))~~ accessed resources available to you ~~((under))~~ through medicaid, private health insurance, or ~~((school))~~ other resources.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0185 What are ~~((architectural modifications))~~ environmental adaptations?** (1) ~~((Architectural modifications))~~ Environmental adaptations are physical adaptations to your home to:

(a) Ensure the health, welfare, and safety of you, your caregiver, or both; or

(b) Enable you ~~((, who may otherwise require a more restrictive environment,))~~ to function with greater independence in your home and community.

(2) Examples of ~~((architectural modifications))~~ environmental adaptations include:

(a) Installing ramps and grab bars;

(b) Widening of doorways;

(c) Bathroom modifications;

(d) Installing electrical or plumbing systems necessary to accommodate the specialized ~~((medical))~~ equipment and supplies that are necessary for your welfare;

(e) Repairing damage to your residence as a result ~~((to))~~ of your disability up to the balance of your allocation; and

(f) ~~((Repairing architectural modifications))~~ If necessary for your safety ~~((,))~~ , repairs to a DDA-purchased environmental adaptation.

(3) The provider ~~((making architectural modifications))~~ completing environmental adaptations must be contracted with the developmental disabilities administration (DDA) and be a registered contractor under chapter 18.27 RCW.

(4) The following limits apply to ~~((architectural modifications))~~ environmental adaptations:

(a) Prior approval by the regional administrator or designee is required.

(b) ~~((Architectural modifications are excluded if they are of general utility without direct medical or remedial benefit to you, such as carpeting, linoleum, tile, hardwood flooring, decking, roof repair, air conditioning, and fencing for the yard.~~

~~((c))~~ An environmental adaptation must not add to the square footage of the home, convert nonliving space to living space, or create a new room.

~~((d))~~ (c) DDA requires evidence that you have ~~((exhausted))~~ accessed your private insurance, medicaid benefits, and benefits from the division of vocational rehabilitation (DVR) before authorizing ~~((architectural modifications))~~ an environmental adaptation.

~~((e))~~ (d) An environmental adaptation must be the most cost-effective modification as determined by DDA and based on a comparison of contractor bids as ~~((determined by DDA))~~ required under subsection (5) of this section.

~~((f))~~ (e) DDA may require an occupational therapist, physical therapist, or ~~((construction consultant))~~ other professional to review and recommend an ~~((appropriate architectural modification))~~ environ-

mental adaptation statement of work before you solicit bids or purchase ~~((architectural modifications))~~ an environmental adaptation.

~~((g))~~ (f) Deteriorated condition of the dwelling or other remodeling projects in progress in the dwelling may limit or prevent ~~((or limit some or all architectural modifications))~~ an environmental adaptation. ~~((at the discretion of DDA.))~~

~~((h))~~ (g) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent ~~((any architectural modifications))~~ an environmental adaptation. ~~((at the discretion of DDA.))~~

~~((i))~~ (h) Written consent from your landlord is required before starting any ~~((architectural adaptations))~~ environmental adaptation for a rental property. The landlord must not require removal of the ~~((architectural modification))~~ environmental adaptation at the end of your tenancy as a condition of the landlord approving the ~~((architectural modification))~~ environmental adaptation.

~~((j))~~ (i) Damage repairs are limited to the cost of restoration to original function. If the damage resulted from your behavior, the behavior must be addressed before the damages are repaired~~((+)).~~

~~((k))~~ (j) The following are excluded from ~~((architectural modifications))~~ environmental adaptations:

- (i) Repairs to personal property, such as furniture and appliances;
- (ii) Cosmetic improvements to the home;
- (iii) Deck construction or repairs;
- (iv) Fence construction or repairs; ((and))
- ~~((iii))~~ (v) Carpet installation or replacement((-)); and
- (vi) Other home improvements of general utility that have no direct medical or remedial benefit to the client, such as roof repair or air conditioner installation.

(5) An environmental adaptation must be supported by written bids from licensed contractors.

(a) For an adaptation that costs:

- (i) \$1,500 or less, one bid is required;
  - (ii) More than \$1,500 but equal to or less than \$5,000, two bids are required; or
  - (iii) More than \$5,000, three bids are required.
- (b) All bids must include:
- (i) The cost of all required permits and sales tax; and
  - (ii) An itemized list and clearly outlined scope of work.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0186 What are vehicle modifications?** ~~((What are vehicle modifications?))~~

(1) Vehicle modifications are physical adaptations or alterations to ~~((your))~~ a vehicle required in order to accommodate your unique needs, enable your full integration into the community, and ensure your health, welfare, and safety or the safety of a caregiver.((+))

~~((a) Ensure the health, welfare, and safety of you, your caregiver, or both; or~~

~~((b) Enable you, who may otherwise require a more restrictive environment, to function with greater independence in your home and community.))~~

(2) Examples of vehicle modifications include:

- ~~(a) ((Wheel chair lifts;~~
- ~~(b) Strap downs;~~
- ~~(c) Other access modifications; and~~
- ~~(d) Repairs and maintenance to vehicle modifications if necessary for your safety.)) Manual hitch-mounted carrier and hitch for all wheelchair types;~~
- (b) Wheelchair cover;
- (c) Wheelchair strap-downs;
- (d) Wheelchair ramp;
- (e) Accessible running boards and steps;
- (f) Assist poles and grab handles;
- (g) Power-activated carrier for all wheelchair types;
- (h) Permanently installed wheelchair ramps;
- (i) Repairs and maintenance to vehicular modifications as needed for client safety; and
- (j) Other access modifications.

(3) The provider making vehicle modifications must be ~~((a vehicle adaptive equipment vendor contracted with the developmental disabilities administration (DDA))~~ contracted with DDA as a specialized goods and services provider to provide this service.

(4) The following limits apply to vehicle modifications:

- (a) Prior approval by the regional administrator or designee is required.
- (b) DDA requires evidence that you have ~~((exhausted))~~ accessed your private insurance, medicaid benefits, and benefits from the division of vocational rehabilitation (DVR) before authorizing this service.
- (c) Vehicle modifications must be the most cost-effective modification based on a comparison of contractor bids as determined by DDA.
- (d) Clinical and support needs for vehicle modifications are limited to those identified in your DDA assessment and documented in your person-centered service plan.
- (e) Modifications will only be approved for a vehicle that serves as your primary means of transportation and is owned by you, your family, or both.
- (f) DDA requires your treating professional's written recommendation regarding your need for vehicle modifications. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.
- (g) DDA may require a second opinion from a DDA-selected provider.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0200 What are specialized ((medical)) equipment and supplies?** (1) Specialized ~~((medical))~~ equipment and supplies are items that help you:

- (a) Increase or maintain ability to perform activities of daily living; ~~((or))~~
- (b) Perceive, control, or communicate with the environment in which you live ~~((or))~~; or

(c) Improve daily functioning through sensory integration identified in a written therapeutic plan by the current treating professional.

~~(2) ((Specialized medical equipment and supplies may include durable and nondurable equipment that are specialized or adapted, and generally are not useful to a person in the absence of illness, injury, or disability))~~ Types of specialized equipment and supplies include:

(a) Durable medical equipment;

(b) Nondurable medical equipment designed to directly improve an activity of daily living or instrumental activity of daily living need; and

(c) Nonmedical, specialized equipment designed to directly assist a person in tasks affected by a functionally limiting disability.

(3) The developmental disabilities administration (DDA) may cover items and services necessary to maintain the proper functioning of the equipment and supplies.

(4) The provider of equipment and supplies must be ~~((an equipment supplier contracted with DDA or a))~~ a specialized equipment and supplies vendor, a purchasing goods and services vendor, or a parent who has a DDA contract for IFS reimbursement.

(5) The following limits apply to specialized ~~((medical))~~ equipment and supplies:

(a) Specialized ~~((medical))~~ equipment and supplies - except for incontinence supplies such as diapers, disposable pads, and wipes - require prior approval by the DDA regional administrator or designee.

(b) DDA may require a second opinion by a DDA-selected provider.

(c) Items reimbursed with state funds must be in addition to any specialized ~~((medical))~~ equipment and supplies furnished under medic-aid or private insurance.

(d) DDA does not cover medications or vitamins.

(e) DDA only covers specialized ~~((medical))~~ equipment and supplies that are:

(i) Of direct medical or remedial benefit to you; and

(ii) Necessary as a result of your disability.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0215 What are specialized nutrition and specialized clothing?** (1) Specialized nutrition is prepared food that constitutes ~~((fifty percent))~~ 50% or more of a person's caloric intake. Specialized nutrition must be recommended by a qualified professional, such as a licensed physician or registered dietician.

(2) Specialized clothing is nonrestrictive clothing adapted to your individual needs and related to your ~~((for a physical))~~ disability. Examples include weighted clothing, clothing designed for tactile defensiveness, or reinforced clothing. Specialized clothing must be recommended by a ~~((qualified professional, such as a podiatrist, physical therapist, or behavior specialist))~~ an appropriate health professional. This recommendation must take into account that the health professional has examined you, reviewed your medical records, and conducted an assessment.

(3) Prior approval by regional administrator or designee is required.

(4) DDA does not cover vitamins or supplements.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0235 What are copays for medical and therapeutic services?** (1) Copays are fixed fees that subscribers to a medical plan must pay to use specific medical or therapeutic services covered by the plan. These services must have been deemed medically necessary by your health care professional.

(2) Medical and therapeutic copays may be a reimbursable expense through a developmental disabilities administration (DDA) individual and family services family reimbursement contract.

(3) ~~((The copays must be for your medical or therapeutic needs.~~  
~~(4))~~) DDA does not cover vitamins or supplements.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0250 What are transportation services?** (1) Transportation services ~~((is))~~ are per diem or mileage reimbursement to a provider for your transportation.

(2) The developmental disabilities administration (DDA) may reimburse a provider for transportation services if:

(a) The transportation is to or from a state-funded individual and family services (IFS) program service;

(b) The transportation need is identified in your person-centered service plan (PCSP);

(c) The provider is not contracted to receive transportation reimbursement; and

(d) ~~((All))~~ No other transportation options ~~((have been exhausted))~~ are available.

(3) The provider of transportation services must be ~~((an individual))~~ a person or agency ~~((contracted))~~ with a DDA ~~((to provide transportation))~~ transportation services contract.

(4) Transportation services may be a reimbursable expense through a DDA contract.

(5) The following limits apply to transportation services:

(a) Transportation services does not cover the purchase or lease of a vehicle; and

(b) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(6) Per diem costs may be reimbursed, utilizing the state rate, ~~((to access medical services))~~ if you and one family member must travel over ~~((one hundred fifty))~~ 150 miles one way to access medical services.

(7) DDA may reimburse you for air ambulance costs due to an emergency - up to your state-funded IFS annual allocation - if you have ~~((exhausted))~~ accessed all other resources such as ~~((your))~~ private insurance and medicaid.

NEW SECTION

**WAC 388-832-0316 What is assistive technology?** (1) Assistive technology consists of items, equipment, or product systems, not related to a client's physical health, that are used to directly support the client to:

- (a) Increase, maintain, or improve functional capabilities;
- (b) Improve client safety; or
- (c) Increase social engagement in the community.

(2) Assistive technology also includes supports to directly assist the client to select, acquire, and use the technology.

(3) Assistive technology includes the following:

- (a) The evaluation of the client's needs, including a functional evaluation of the client in the client's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for the client and if appropriate, the client's family; and
- (f) Training or technical assistance for professionals, including people providing education and rehabilitation services, employers, or other people who provide services to, employ, or are otherwise involved in the assistive technology related life functions of people with disabilities.

(4) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in your person-centered service plan.

(5) DDA requires a professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

- (a) The professional has personal knowledge of and experience with the requested assistive technology; and
- (b) The professional has recently evaluated you, reviewed your medical records, and conducted an evaluation of the equipment and determined its effectiveness in meeting your identified need.

(6) If the technology is related to expressive or receptive communication or other complex support needs, the recommendation under subsection (5) of this section must be from a credentialed professional evaluating your needs within their scope of practice.

(7) Assistive technology requires prior approval by the DDA regional administrator or designee.

NEW SECTION

**WAC 388-832-0317 What is community engagement?** (1) Community engagement connects a client to activities, resources, events, and services in the community that the client is interested in exploring. It is intended to assist the client with fully accessing their community and reducing isolation.



(2) Community engagement is limited to the support needs identified in your DDA assessment and documented in your person-centered service plan.

(3) The dollar amount in your individual and family services annual allocation limits the amount of community engagement you may receive.

(4) Community engagement is limited to the community where you live.

#### NEW SECTION

**WAC 388-832-0318 What is remote support?** (1) Remote support is supervision, coaching, and consultation from a contracted remote support provider to a client from a distant location.

(2) The provider uses HIPAA-compliant technology and secure data storage to support the client to increase or maintain their independence and safety in their home and community when not engaged in other DDA-paid services or informal supports.

(3) Remote support includes equipment as needed to deliver the supervision, coaching, and consultation. Equipment may include one or more of the following components:

- (a) Motion-sensing system;
- (b) Radio frequency identification;
- (c) Video calling via assistive technology;
- (d) Live audio feed; and
- (e) Web-based monitoring systems.

(4) Remote support must never be used to restrict a client's access to their home, community, or to limit the client's bodily autonomy.

(5) Before DDA authorizes remote support, a backup plan must be established and documented in the client's person-centered service plan.

(6) The need for remote support must be identified in the client's person-centered service plan.

(7) Remote support cannot pay for internet, data plans, or wi-fi access.

(8) Remote support requires prior approval by the regional administrator or designee.

(9) The dollar amount in your individual and family services annual allocation limits the amount of remote support you may receive.

#### NEW SECTION

**WAC 388-832-0319 What is specialized habilitation?** (1) Specialized habilitation services provide community-based and individualized support to reach an identified habilitative goal in the person-centered service plan.

(2) Services must assist a client to learn or maintain skills in the following areas:

- (a) Self-empowerment;
- (b) Safety awareness;
- (c) Self-advocacy;

- (d) Interpersonal effectiveness and effective social communication;
  - (e) Coping strategies for everyday life changes; and
  - (f) Managing daily tasks and acquiring adaptive skills.
- (3) Specialized habilitation must promote inclusion in the community.
- (4) Specialized habilitation is limited to addressing a maximum of three goals at a time.
- (5) Specialized habilitation support needs must be identified in your DDA assessment and specialized habilitation must be documented in your person-centered service plan.
- (6) Specialized habilitation must not exceed your individual and family services annual allocation.

#### NEW SECTION

##### **WAC 388-832-0321 What is staff and family consultation? (1)**

Staff and family consultation is assistance to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation is consultation and guidance to a staff member or family member about one or more of the following:

- (a) Assistive technology safety;
- (b) Augmentative communication systems;
- (c) Basic and advanced instructional techniques;
- (d) Consultation with potential referral resources;
- (e) Diet and nutritional guidance;
- (f) Disability information and education;
- (g) Environmental consultation;
- (h) Health and medication monitoring to track and report to the healthcare provider;
- (i) Parenting skills;
- (j) Positioning and transfer; and
- (k) Strategies for effectively and therapeutically interacting with the client.

(3) To provide staff and family consultation, a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

- (a) Audiologist;
- (b) Certified American Sign Language instructor;
- (c) Certified dietician;
- (d) Counselor registered or certified in accordance with chapter 18.19 RCW;
- (e) DDA-contracted specialized habilitation provider;
- (f) Licensed practical nurse;
- (g) Marriage and family therapist;
- (h) Mental health counselor;
- (i) Nutritionist;
- (j) Occupational therapist;
- (k) Physical therapist;
- (l) Professional advocacy organization;
- (m) Psychiatrist;
- (n) Psychologist;

(o) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;

(p) Registered nurse;

(q) Sex offender treatment provider;

(r) Social worker;

(s) Speech-language pathologist; or

(t) Teacher certified under chapter 181-79A WAC.

(4) Staff and family consultation is limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(5) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation.

(6) The dollar amounts in your state-only individual and family services program allocation limit the amount of staff and family consultation you may receive.

(7) Individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been reportedly assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's DDA assessment and person-centered service plan; and

(ii) Addressed in the participant's behavior support plan or therapeutic plan.

(8) Staff and family consultation does not provide training or consultation necessary to meet a provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

#### NEW SECTION

**WAC 388-832-0322 What is supported parenting?** (1) Supported parenting services are professional services offered to clients who are parents or expectant parents.

(2) Services may include teaching, parent coaching, and other supportive strategies in areas critical to parenting, including child development, nutrition and health, safety, childcare, money management, time and household management, and housing.

(3) Supported parenting services are designed to build parental skills around the child's developmental domains of cognition, language, motor, social-emotional, and self-help.

(4) Clinical and support needs for supported parenting services are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(5) The dollar amount of your individual and family services annual allocation limits the amount of supported parenting services you are authorized to receive.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0333 What limits apply to state-funded IFS program services?** The following limits apply to the state-funded individual and family services (IFS) program:

- (1) State-funded IFS program services are limited to available funding.
- (2) A state-funded IFS program service must address an unmet need identified in your person-centered service plan (PCSP).
- (3) Any item reimbursed with state funds under the IFS program must not duplicate or replace items provided to you under private insurance or medicaid.
- (4) State-funded IFS program services are authorized only after you have requested and have been denied other resources (~~(available to you)~~) through private insurance, school, the division of vocational rehabilitation, child development services, medicaid, including personal care and community first choice, and other supports.
- (5) All state-funded IFS program service payments must be agreed to by you and the developmental disabilities administration (DDA) and documented in your PCSP.
- (6) To receive reimbursement for goods or services purchased for a DDA client, the purchaser must have ~~((a))~~ an individual and family services family reimbursement contract with DDA.
- (7) DDA does not pay for treatment that is experimental or investigational under WAC 182-531-0550.
- (8) DDA does not cover vitamins or supplements.
- (9) Your choice of qualified providers and services may be limited to the most cost-effective option that meets your assessed need.
- (10) ~~((Services must not be provided after a client's death.~~
- ~~((11))~~) DDA's authorization period begins when you have agreed to be in the state-funded IFS program and your PCSP is effective as described in chapter 388-845 WAC.
- ~~((12))~~) (11) If you have not accessed a state-funded IFS program service at least once per plan year, DDA will disenroll you from the state-funded IFS program and notify you of the change.
- ~~((13))~~) (12) The state-funded IFS program must not pay for psychological evaluations or testing, or DNA testing.
- ~~((14))~~) (13) You may receive state-funded IFS program services in a recognized out-of-state bordering city on the same basis as in-state services. Recognized bordering cities include:
  - (a) Coeur d'Alene, Moscow, Sandpoint, Priest River, and Lewiston, Idaho ~~((r))~~ i; and
  - (b) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria, Oregon.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0355 What is an emergency service?** (1) ~~((Emergency services are respite care, nursing services, or positive behavior support and consultation))~~ An emergency service is any service under WAC 388-825-058, except state supplementary payments, that DDA may authorize in response to a single incident, situation, or short-term crisis.

(2) You may be eligible for emergency services if ~~((you are age three or older, live with your family, and))~~:

~~((a) You lose your caregiver due to caregiver hospitalization or death;~~

~~(b) There are changes in your caregiver's mental or physical status resulting in your caregiver's inability to perform effectively for you; or~~

~~(c) There are significant changes in your emotional or physical condition that require emergency services.)~~

(a) You are not currently authorized for the state-funded individual and family services (IFS) program or a home and community-based services waiver;

(b) The need is critical to the health or safety of you or your caregiver; and

(c) You and your family have no other resource to meet the need or your resources do not cover all of the expense.

(3) ~~((The))~~ DDA must not authorize payment for a provider ~~((of the service you require to meet your emergent need must meet the))~~ unless the provider meets provider qualifications ~~((required to contract for that specific service under:))~~ for that service.

~~((a) WAC 388-832-0155 for respite;~~

~~(b) WAC 388-832-0285 for positive behavior support and consultation; and~~

~~(c) WAC 388-845-1705 for nursing.~~

~~(4) Funds are provided for a limited period not to exceed ninety days.~~

~~(5) All requests are reviewed and approved or denied by the regional administrator or designee.~~

~~(6) If you or a family situation requires more than ninety days of emergency services, the developmental disabilities administration (DDA) will review DDA services to determine if your need can be met through other services.)~~

~~((7))~~ (4) You may receive an emergency service before completing a DDA assessment, ((however the regional administrator or designee may request a DDA assessment for you at any time)) if it is a one-time service.

(5) The cost of your emergency services must not exceed the IFS level four annual allocation under WAC 388-828-9140.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

**WAC 388-832-0366 What limitations apply to emergency services?**

(1) Emergency services may be granted to ~~((individuals and families who are on the IFS waitlist and))~~ a client and their family if they have an emergent need.

(2) Funds are provided for a limited period not to exceed ~~((ninety))~~ 90 days.

(3) All requests are reviewed and approved or denied by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 18-14-002, filed 6/20/18, effective 7/21/18)

**WAC 388-832-0470 What are my appeal rights under the state-funded individual and family services program?** (1) You have the right to an administrative hearing under chapter 388-825 WAC.

(2) If the developmental disabilities administration (~~((DDA))~~) ends your state-funded individual and family services (~~((IFS))~~) program services, you will receive written notice of the decision explaining your administrative hearing rights.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0220 What services are available under the community protection waiver?** (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
Assistive technology Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy <del>((Positive behavior support and consultation))</del> Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies Specialized evaluation and consultation Speech, hearing, and language services Staff and family consultation Transportation	Determined by the person-centered service plan
EMPLOYMENT SERVICES: Individual technical assistance Supported employment	Limits determined by DDA assessment and employment status
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                  |   |
|------------------|---|
| WAC 388-825-083  | Is there a comprehensive list of waiver and state-only DDA services?                        |
| WAC 388-832-0265 | What is training and counseling?  |
| WAC 388-832-0280 | What is positive behavior support and consultation?   |
| WAC 388-832-0335 | What is a one-time award?   |
| WAC 388-832-0367 | What if the client or family situation requires more than ninety days of emergency service? |
| WAC 388-832-0369 | Do I need to have a DDD assessment before I receive an emergency service?                   |
| WAC 388-832-0370 | What are community service grants?  |
| WAC 388-832-0375 | How does a proposal for a community service grant project qualify for funding?              |
| WAC 388-845-0500 | What is positive behavior support and consultation?   |
| WAC 388-845-0505 | Who is a qualified provider of positive behavior support and consultation?                  |
| WAC 388-845-0510 | Are there limits to the positive behavior support and consultation you may receive?         |

## WSR 24-21-052

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed October 9, 2024, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-044.

Title of Rule and Other Identifying Information: WAC 192-04-100 Appeals—Petitions for hearing or petitions for review—Withdrawal and reinstatement of.

Hearing Location(s): On December 3, 2024, at 9:00 a.m., Zoom, <https://esd-wa-gov.zoom.us/j/88220574283?pwd=KvBrFunp2AatAk3FoP-wUG9IPPFabQ8.1>, Meeting ID 882 2057 4283, Passcode 963967; or call in +16469313860,,88220574283#,,,,\*963967# US.

Date of Intended Adoption: December 10, 2024.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by December 3, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email [Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov) [Teresa.eckstein@esd.wa.gov], by November 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Claimants and employers who have appealed a determination of the employment security department (department) may request to withdraw their appeal before their hearing occurs. Sometimes a claimant or employer may change their mind for some reason, such as not understanding the impact of withdrawing their appeal, and they may request to rescind the withdrawal of their appeal so that they can have a hearing. Although parties are currently able to make these requests and the office of administrative hearings adjudicates these requests, the department's rules do not set out a process or a standard of review for evaluating these requests. The department is updating WAC 192-04-100 to set out a process and a standard of review for parties wishing to request to reinstate their appeal or petition for hearing after withdrawing it.

Reasons Supporting Proposal: This rule making will clarify the process and standard of review for a claimant or employer who wishes to request to reinstate their appeal or petition for hearing after withdrawing it.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.042, 50.32.060, 34.05.220.

Statute Being Implemented: RCW 50.32.060.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Frazee, P.O. Box 9046, Olympia, Washington 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/rulemaking/>. This rule making is clarifying an appeal procedure that is already in place and



will not create any additional costs. This rule making concerns a procedure relating to agency hearings.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making clarifies an appeals process that already exists and does not impose any additional costs or requirements on small businesses or other parties.

Scope of exemption for rule proposal:

Is fully exempt.

October 9, 2024

Joy Adams, Director

Employment System Policy and Integrity

## OTS-5543.2

AMENDATORY SECTION (Amending WSR 89-24-030, filed 11/30/89, effective 1/1/90)

**WAC 192-04-100 Appeals—Petitions for hearing or petitions for review—Withdrawal and reinstatement of.** (1) Any interested party may withdraw (~~his or her~~) their appeal, petition for hearing, or petition for review at any time prior to a decision thereon, in which case the previous determination, redetermination, denial, order and notice of assessment or decision shall be final in accordance with the provisions of the Employment Security Act. Such withdrawal shall, however, be subject to the approval of the office of administrative hearings in the case of an appeal or petition for hearing, or of the commissioner in the case of a petition for review.

(2) After an order granting withdrawal of an appeal or an order granting withdrawal of a petition for hearing has been issued by the office of administrative hearings, a party may file a motion to reinstate appeal or motion to reinstate petition for hearing. The motion shall be filed with the office of administrative hearings. The motion may be granted for good cause shown.

(3) The following factors shall be considered in determining whether good cause exists under subsection (2) of this section:

(a) The length of time between the request for withdrawal and the motion to reinstate appeal or motion to reinstate petition and the reason for any delay;

(b) Any physical, mental, educational, or linguistic limitations of the moving party, including any lack of facility with the English language;

(c) Any mistake, inadvertence, surprise, excusable neglect, newly discovered information or evidence, or irregularity that led to the request to withdraw the appeal;

(d) Whether granting the motion will result in prejudice to other interested parties, including the department; and

(e) Any other factors relevant to the determination.

## WSR 24-21-053

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 9, 2024, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-134.

Title of Rule and Other Identifying Information: Chapter 182-115 WAC, Certified peer counselor; and chapter 182-116 WAC, Certified peer specialist.

Hearing Location(s): On November 26, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_zumlUaSYRMWndscsc\\_AQA](https://us02web.zoom.us/webinar/register/WN_zumlUaSYRMWndscsc_AQA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than November 27, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning October 8, 2024, 8:00 a.m., by November 26, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by November 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As authorized in 2SB [2SSB] 5555 (68th legislature, regular session), HCA is revising chapter 182-115 WAC as follows:

- Effective January 1, 2027, certified peer counselors will no longer be a payable provider type.
- Effective January 1, 2025, the authority will no longer provide certified peer counselor training.
- Effective January 1, 2027, the new profession of certified peer specialists will supersede certified peer counselors.
- WAC 182-115-0200, which addresses application, training, and examination of certified peer counselors, will be repealed.

HCA is also proposing new chapter 182-116 WAC, which addresses general provisions for peer specialists, as well as training and supervision requirements.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 71.24.920.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 71.24.920.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Maureen Bailey, P.O. Box 55543, Olympia, WA 98504-5534 [5543], 360-725-9997.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

October 9, 2024  
Wendy Barcus  
Rules Coordinator

#### OTS-5819.4

AMENDATORY SECTION (Amending WSR 22-05-059, filed 2/10/22, effective 3/13/22)

**WAC 182-115-0100 Certified peer counselors (~~—General~~).** (1) ~~((The authority recognizes a person as))~~ A certified peer counselor ~~((who can))~~ may provide medicaid-reimbursable peer counseling services ~~((when the person meets the requirements in WAC 182-115-0200))~~ through December 31, 2026.

(2) Effective January 1, 2025, the authority will no longer train people to qualify as certified peer counselors ~~((who provide services to people enrolled in medicaid must be)).~~

(3) Effective January 1, 2027, the profession of certified peer specialist, as defined in RCW 18.420.010, will supersede certified peer counselors who provide medicaid-reimbursable peer services.

(4) A certified peer counselor may provide medicaid-reimbursable services only under the clinical supervision of a mental health professional and/or substance use disorder professional who understands rehabilitation and recovery. The ~~((clinical))~~ approved supervisor's expertise should ~~((be aligned))~~ align with the needs of the populations served by the certified peer counselor.

~~((+3))~~ (5) Certified peer counselors ~~((must))~~ may provide services to people enrolled in medicaid ~~((under))~~ only when those services are provided in a licensed community behavioral health agency, as defined in WAC 246-341-0200 ~~((and certified under WAC 246-341-0724)).~~

#### NEW SECTION

**WAC 182-115-0300 Peer specialist supervisor training.** Only those people who are certified peer counselors or certified peer specialists may qualify to take the authority's training to become endorsed by the department of health as an approved supervisor.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-115-0200 Certified peer counselor—Application, training, examination, and authority approval.

**OTS-5820.1**

**Chapter 182-116 WAC  
CERTIFIED PEER SPECIALIST**

NEW SECTION

**WAC 182-116-0100 Certified peer specialist—General.** (1) A peer specialist certified by the department of health who provides medic-aid-reimbursable peer support services must meet the requirements in WAC 182-116-0200.

(2) Certified peer specialists who provide services to people enrolled in medicaid must practice:

(a) Under the clinical supervision of a behavioral health provider as defined in RCW 71.24.025 or a certified peer specialist supervisor as defined in RCW 18.420.010; and

(b) In a community behavioral health agency licensed, certified, or subject to an approved tribal attestation by the department of health.

NEW SECTION

**WAC 182-116-0200 Peer specialist—Application, training, examination, and authority approval.** (1) People applying with the authority to train and test to qualify as a peer specialist certified under the department of health must meet all of the following:

(a) Be age 18 or older;

(b) Attest on the authority's application that they self-identify as:

(i) A person with one or more years of recovery from a mental health condition, substance use disorder, or both; or

(ii) The parent or legal guardian of a child age 17 or younger who is receiving or has received behavioral health services.

(c) Pass the authority's educational courses and pass the required examination with a total score of 80 percent or higher.

(2) After a person passes the authority's examination, the authority issues a letter stating that the person qualifies to become a certified peer specialist through the department.

**WSR 24-21-076**  
**PROPOSED RULES**  
**SOUTHWEST CLEAN**  
**AIR AGENCY**

[Filed October 15, 2024, 9:39 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Southwest clean air agency (SWCAA) 400-025 Adoption of Federal Rules, existing rule section establishing an adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions, existing rule section containing definitions for words and phrases used throughout SWCAA 400.

SWCAA 400-045 Permit Application for Nonroad Engines, existing rule section identifying requirements for nonroad engine permit applications.

SWCAA 400-046 Application Review Process for Nonroad Engines, existing rule section identifying requirements for the processing and approval of nonroad engine permit applications.

SWCAA 400-070 General Requirements for Certain Source Categories, existing rule section containing minimum air emission standards and work practices for selected source categories.

SWCAA 400-072 Small Unit Notification for Selected Source Categories, existing rule section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of new source review for selected small source categories.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, existing rule section adopting by reference federal standards relating to hazardous air pollutant standards contained in 40 C.F.R. Parts 61, 63, and 65.

SWCAA 400-099 Per Capita Fees, existing rule section identifying the authority for, method of determination, and amount of SWCAA's per capita fee assessment for supplemental income.

SWCAA 400-100 Registration Requirements, existing rule section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-105 Records, Monitoring and Reporting, existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

SWCAA 400-115 Standards of Performance for New Sources, existing rule section adopting by reference federal standards for new sources contained in 40 C.F.R. Part 60.

SWCAA 400-171 Public Involvement, existing section identifying requirements for public notice of SWCAA actions, and the process by which public involvement is to be administered. This section also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques, existing rule section identifying presumptive requirements for new exhaust stack installations, and describes the procedure by which the maximum creditable stack height is to be determined.

SWCAA 400 Appendix C—Federal Standards Adopted by Reference, existing rule section containing informational lists of all federal regulations adopted by reference pursuant to SWCAA 400-075 and 400-115.

Hearing Location(s): On December 30, 2024, at 6:00 p.m., virtual online hearing. Contact SWCAA to register for online hearing.

Date of Intended Adoption: January 2, 2025.

Submit Written Comments to: Wess Safford, 5101 N.E. 82nd Avenue, Suite 102, Vancouver, WA 98662, email wess@swcleanair.org, fax 360-576-0925, by December 30, 2024.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 ext. 110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-025 Adoption of Federal Rules, the proposed rule changes update the adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions, the proposed rule changes add a definition for "hazardous air pollutant" and revise the definition for "nonroad engine."

SWCAA 400-045 Permit Application for Nonroad Engines, the proposed rule changes revise stationary engine exceptions.

SWCAA 400-046 Application Review Process for Nonroad Engines, the proposed rule changes remove the 40 C.F.R. 89 reference in SWCAA 400-046 (2)(c) and recordkeeping requirements for engine location in SWCAA 400-046(7).

SWCAA 400-070 General Requirements for Certain Source Categories, the proposed rule changes update the federal regulation citation in SWCAA 400-070 (6)(c).

SWCAA 400-072 Emission Standards for Selected Small Source Categories, the proposed rule changes revise complaint reporting sections for consistency (business vs. calendar days), clarify the definition of heater in SWCAA 400-072 (5)(b), add a maximum combined horsepower limit to SWCAA 400-072 (5)(c), modify emergency use recordkeeping requirement in SWCAA 400-072 (5)(c), remove setback requirement from SWCAA 400-072 (5)(d), and make administrative edits.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, the proposed rule changes add a reference to the Administrator of the Environmental Protection Agency (EPA) in SWCAA 400-075 (5)(b).

SWCAA 400-099 Per Capita Fees, the proposed rule changes revise RCW citations from 70.94 to 70A.15.

SWCAA 400-100 Registration Requirements, the proposed rule changes clarify the applicability of registration requirements.

SWCAA 400-105 Records, Monitoring and Reporting, the proposed rule changes add "hazardous air pollutants" to the list of pollutants in SWCAA 400-105(1) and remove the Federal Clean Air Act Section 112 citation.

SWCAA 400-115 Standards of Performance for New Sources, the proposed rule changes update the list of new source performance standards adoption exceptions.

SWCAA 400-171 Public Involvement, the proposed rule changes clarify synthetic minor applicability and website publication of public notice.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques, the proposed rule changes revise SWCAA 400-200(1) applicability to exclude domestic hot water units.

SWCAA 400 Appendix C—Federal Standards Adopted by Reference, the proposed rule changes update the informational list of adopted federal regulations.

Reasons Supporting Proposal: The proposed changes are necessary to support SWCAA's implementation of the Washington State Clean Air Act and associated federal standards.

Statutory Authority for Adoption: RCW 70A.15.2040(1).

Statute Being Implemented: RCW 70A.15.2040(1).

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 5101 N.E. 82nd Avenue, Suite 102, Vancouver, WA 98662, 360-574-3058 ext. 126; Implementation: Clint Lamoreaux, 5101 N.E., 82nd Avenue, Suite 102, Vancouver, WA 98662, 360-574-3058 ext. 131; and Enforcement: Bryan Smith, 5101 N.E. 82nd Avenue, Suite 102, Vancouver, WA 98662, 360-574-3058 ext. 122.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70A.15.2040(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

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

Is exempt under RCW 70A.15.2040(1).

Explanation of exemptions: Pursuant to RCW 70A.15.2040(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 15, 2024

Uri Papish

Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 24-23 issue of the Register.



**WSR 24-21-082**  
**PROPOSED RULES**  
**COMMUNITY COLLEGES**  
**OF SPOKANE**

[Filed October 16, 2024, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-035.

Title of Rule and Other Identifying Information: Supplemental Title IX student conduct procedures, amending WAC 132Q-10-600, 132Q-10-601, 132Q-10-602, 132Q-10-603, 132Q-10-604, 132Q-10-606, 132Q-10-607 and 132Q-10-608; and repealing WAC 132Q-10-605.

Hearing Location(s): On December 17, 2024, at 8:30 a.m., at 3410 West Whistalks Way, Spokane, WA.

Date of Intended Adoption: December 17, 2024.

Submit Written Comments to: Patrick McEachern, 3410 West Whistalks Way, Spokane, WA 99224-5204, email Patrick.McEachern@sfcc.spokane.edu, 509-533-3514, beginning October 16, 2024, by December 13, 2024.

Assistance for Persons with Disabilities: Contact Patrick McEachern, phone 509-533-3514, TTY 1-800-833-6384, email Patrick.McEachern@sfcc.spokane.edu, by December 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the Community Colleges of Spokane's (colleges) student conduct code into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule under Title IX. The rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment, with a deadline of August 1, 2024. The colleges previously approved these updates to the student conduct code through emergency rule-making procedures, which are limited in duration. The colleges now seek to formally adopt the rules to remain compliant with the requirements of Title IX. Agencies not in compliance are at risk of losing federal funding.

Statutory Authority for Adoption: RCW 28B.50.140; chapter 34.05 RCW.

Statute Being Implemented: Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), as implemented through 34 C.F.R. § 106.

Rule is necessary because of federal law, 20 U.S.C. § 1681.

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dr. Kevin Brockbank, 501 North Riverpoint Boulevard, Spokane, WA 99217-6000, 509-434-5006.

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

A cost-benefit analysis is not required under RCW 34.05.328. The colleges are not required to complete a cost-benefit analysis by the terms of RCW 34.05.328.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: This rule making is being adopted to comply with federal statute and regulations, Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), as implemented through 34 C.F.R. § 106. These federal regulations were updated on April 19, 2024, and institutions of higher education were required to come into compliance by August 1, 2024. Failure to adopt this rule making to keep the agency in compliance with Title IX could result in the loss of federal funding.

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The proposed rules are necessary to remain compliant with federal statute and regulation (as indicated above), and address the student code of conduct, including hearings for alleged violations of the student conduct code.

Scope of exemption for rule proposal:  
Is fully exempt.

October 16, 2024  
John O'Rourke  
Rules Coordinator

### OTS-5663.1

AMENDATORY SECTION (Amending WSR 22-12-002, filed 5/19/22, effective 6/19/22)

**WAC 132Q-10-600 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence.** This supplemental student conduct code and procedure applies to allegations of (~~sexual harassment~~) sex discrimination for incidents occurring on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. (~~The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.~~)

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

**WAC 132Q-10-601 ~~Sex discrimination—Prohibited conduct ((under Title IX)) and definitions.~~** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Community Colleges of Spokane may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "~~(sexual harassment)~~ sex discrimination."

For purposes of this supplemental procedure, ("~~sexual harassment~~" encompasses the following conduct:

~~(1) Quid pro quo harassment. A Community Colleges of Spokane employee conditioning the provision of an aid, benefit, or service of the Community Colleges of Spokane on an individual's participation in unwelcome sexual conduct.~~

~~(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Community Colleges of Spokane's educational programs or activities, or employment.~~

~~(3) Sexual assault. Sexual assault includes the following conduct:~~

~~(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.~~

~~(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.~~

~~(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

- ~~(i) The length of the relationship;~~  
~~(ii) The type of relationship; and~~  
~~(iii) The frequency of interaction between the persons involved in the relationship.~~

~~(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.)~~ the following definitions apply:

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;  
(II) The type of relationship; and  
(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjust-

ments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class or work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

**WAC 132Q-10-602 ((Title IX)) Sex discrimination jurisdiction.**

~~((1))~~ This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132Q-10-601 and occurs:

~~((a) Occurred in the United States;~~

~~(b) Occurred during a Community Colleges of Spokane educational program or activity; and~~

~~(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.~~

~~(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Community Colleges of Spokane exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Community Colleges of Spokane.~~

~~(3) Proceedings under this supplemental procedure must be dismissed if one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Upon receipt of the formal complaint, the Title IX coordinator shall make an initial inquiry into whether Title IX jurisdiction extends to the complaint. If the Title IX coordinator determines there is no Title IX jurisdiction, the Title IX coordinator will issue a notice of dismissal in whole or part explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.~~

~~(4) After receipt of the investigation report, if the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503))~~

(1) On college premises;

(2) At or in connection with college programs or activities; or  
(3) Off college premises, if in the judgment of the college, the  
conduct has an adverse impact on the college community, the pursuit of  
its objectives, or the ability of a student or staff to participate in  
the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

**WAC 1320-10-603 Sex discrimination—Dismissal and initiation of discipline.** ((1) Upon receiving the Title IX investigation report from the Title IX coordinator or designee, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

~~(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct administrative panel and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:~~

- ~~(a) Set forth the basis for Title IX jurisdiction;~~
- ~~(b) Identify the alleged Title IX violation(s);~~
- ~~(c) Set forth the facts underlying the allegation(s);~~
- ~~(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and~~
- ~~(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:~~
  - ~~(i) The advisors will be responsible for questioning all witnesses on the party's behalf;~~
  - ~~(ii) An advisor may be an attorney; and~~
  - ~~(iii) The Community Colleges of Spokane will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.~~

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.)~~ (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When interim suspension or other restriction proceedings are conducted under WAC 1320-10-320, the complainant shall be notified that an interim suspension has been imposed on the same day that the



interim suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the interim suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct administrative panel.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct administrative panel.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

**WAC 132Q-10-604 ~~Sex discrimination—Prehearing procedure.~~** ((+1))

~~Upon receiving the disciplinary notice, the chair of the student conduct administrative panel will send a hearing notice to all parties, in compliance with WAC 132Q-10-315. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Community Colleges of Spokane intends to offer the evidence at the hearing.)~~ (1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct administrative panel must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct administrative panel and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132Q-10-315, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4) (b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are

not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required by WAC 1320-10-315, the prehearing notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but is not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

**WAC 132Q-10-606 Sex discrimination—Presentation of evidence.**

~~((The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:~~

~~(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.~~

~~(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.~~

~~(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:~~

~~(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or~~

~~(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.~~

~~(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.~~

~~(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:~~

~~(a) Spousal/domestic partner privilege;~~

~~(b) Attorney-client and attorney work product privileges;~~

~~(c) Privileges applicable to members of the clergy and priests;~~

~~(d) Privileges applicable to medical providers, mental health therapists, and counselors;~~

~~(e) Privileges applicable to sexual assault and domestic violence advocates; and~~

~~(f) Other legal privileges identified in RCW 5.60.060.)~~ In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(1) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(2) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(3) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client communications and attorney work product privilege;
- (c) Clergy privileges;
- (d) Medical or mental health providers and counselor privileges;
- (e) Sexual assault and domestic violence advocate privileges; and
- (f) Other legal privileges set forth in RCW 5.60.060 or federal law.

(4) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(5) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

**WAC 132Q-10-607 ~~Sex discrimination—Initial order.~~** (1) ~~((In addition to complying))~~ The student conduct administrative panel will comply with WAC 132Q-10-330 ~~((, the student conduct administrative panel will be responsible for conferring and drafting an initial order that:~~

- ~~(a) Identifies the allegations of sexual harassment;~~
- ~~(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;~~
- ~~(c) Makes findings of fact supporting the determination of responsibility;~~
- ~~(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;~~
- ~~(e) Contains a statement of, and rationale for, the student conduct administrative panel's determination of responsibility for each allegation;~~
- ~~(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;~~
- ~~(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to~~

~~the Community Colleges of Spokane's education programs or activities; and~~

~~(h) Describes the process for appealing initial orders from Spokane Community College to Spokane Falls Community College's vice president of student affairs or initial orders from Spokane Falls Community College to the vice president of student services).~~

~~(2) ((The committee chair will serve the initial order on the parties simultaneously.)) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.~~

AMENDATORY SECTION (Amending WSR 22-12-002, filed 5/19/22, effective 6/19/22)

**WAC 132Q-10-608 Sex discrimination—Appeals.** ~~((1) All parties, including the student conduct officer in their capacity as a representative of the college shall have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the appropriate vice president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.~~

~~(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.~~

~~(3) Upon receiving a timely appeal, the appropriately identified vice president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the appropriate vice president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the appropriate vice president shall serve copies of the responses to the other parties.~~

~~(4) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the appropriate vice president's office.~~

~~(5) The appropriate vice president or their delegate, based on their review of parties' submission and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and if amended set for the new disciplinary sanctions and conditions.~~

~~(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.~~

~~(7) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of~~

~~chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.)~~ (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final. For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal as the appeal authority. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal as the appeal authority.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct administrative panel and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132Q-10-605            Rights of parties.

**WSR 24-21-090**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed October 17, 2024, 8:43 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 24-11-143.

Title of Rule and Other Identifying Information: Wildfire smoke; chapters 296-820 and 296-307 WAC, Part G-1.

Hearing Location(s): On December 4, 2024, at 11:00 a.m, virtual and telephonic hearing <https://lni-wa-gov.zoom.us/j/81996990236?pwd=uA7VoXaaTEJfbh8q941tcMgTtVefHD.1>; or join by phone (audio only) 253-205-0468 or 253-215-8782, Hearing ID 819 9699 0236, Passcode 1280939316. A prehearing overview will begin at 10:30 a.m. The hearing will start at 11:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 4, 2025.

Submit Written Comments to: Cynthia Ireland, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email [Cynthia.Ireland@lni.wa.gov](mailto:Cynthia.Ireland@lni.wa.gov), fax 360-902-5619, beginning October 18, 2024, at 8:00 a.m., by December 11, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cynthia Ireland, phone 360-791-5048, fax 360-902-5619, email [Cynthia.Ireland@lni.wa.gov](mailto:Cynthia.Ireland@lni.wa.gov), by November 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language was originally filed as a CR-105, WSR 24-11-143. L&I received a timely objection to that expedited rule making filing requiring L&I to file a CR-102 and engage in the standard rule-making process under the Administrative Procedure Act.

This proposed rule making is to update the air quality index (AQI) values referenced in the wildfire smoke rules to reflect changes the Environmental Protection Agency (EPA) made to the AQI that became effective on May 6, 2024. Employers are allowed to use the approximate corresponding AQI values for the ease of compliance with the requirements in the rules; this ensures that the regulated community will be able to comply with the rule requirements when using data sources that do not display the hourly PM<sub>2.5</sub> concentrations.

In 2023, L&I completed rule making on the hazards of wildfire smoke exposure to outdoor workers. The primary pollutant in wildfire smoke is harmful fine particles, referred to as PM<sub>2.5</sub>. The wildfire smoke rules require employers to implement protective measures based on the current concentration of PM<sub>2.5</sub> measured in micrograms per cubic meter (µg/m<sub>3</sub>). The AQI is a unitless index created by the EPA to communicate air quality conditions to the public. While the rules are based on hourly average PM<sub>2.5</sub> concentrations, they reference the corresponding AQI for workers and employers who choose to use the AQI to determine the amount of smoke in the air.

**PROPOSED CHANGES:**

- Update references to the AQI values throughout chapter 296-820 WAC and WAC 296-307-09805 through 296-307-09860 to align with recent EPA updates. This includes adding AQI values to a level previously considered "Beyond the AQI" by the EPA.



- Add language identifying a new PM<sub>2.5</sub> web application developed by L&I as an approved source for identifying current PM<sub>2.5</sub> concentration.
- Makes housekeeping changes and minor updates to the appendices found in both chapters to reflect EPA revisions, including updating the equation for calculating the AQI (nonmandatory).

This proposed rule making updates the references to the corresponding AQI based on EPA's recent revisions to the AQI which were published in the Federal Register on March 6, 2024, and went into effect on May 6, 2024, adds an option for checking PM<sub>2.5</sub>, and makes other housekeeping changes to align with the EPA changes.

Reasons Supporting Proposal: During the course of the multiyear rule-making project, completed in 2023, L&I became aware that EPA was working to update the AQI breakpoints, which would change the AQI values referenced in the wildfire smoke rules. Throughout stakeholdering, L&I communicated that if EPA made updates to the AQI, L&I would update the wildfire smoke rules to ensure the regulated community has accurate information. This proposed rule making updates L&I's current wildfire smoke rule to correctly reflect the recent revisions to the AQI.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the rule making is proposing to adopt language without material change based on federal regulations, or, as referenced by Washington state law, national consensus codes that generally establish industry standards. The proposed rule also corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

October 17, 2024  
Joel Sacks  
Director

OTS-5290.3

**Part G-1**  
**Outdoor Heat Exposure and Wildfire Smoke**

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09805 Purpose and scope.** WAC 296-307-09805 through 296-307-09860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, (~~Safety standards for firefighters~~) Safety standards for firefighters.

(4) Workers performing prescribed burns.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09810 Definitions.** (1) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM<sub>2.5</sub>. References to the AQI used throughout WAC 296-307-09805 through 296-307-09860 means the "NowCast AQI for PM<sub>2.5</sub>."

((Note: The EPA has proposed revisions to the AQI.<sup>1</sup> DOSH will revisit chapter 296-820 WAC, and WAC 296-307-098 Wildfire smoke, if the proposed changes are adopted.))

(2) **Current PM<sub>2.5</sub>.** The concentration of PM<sub>2.5</sub> for the most current hour available, calculated using an hourly average of PM<sub>2.5</sub> data.

Note: The NowCast AQI as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM<sub>2.5</sub>.

(3) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(4) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(5) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(6) **NowCast.** The method used by the EPA and the Washington state department of ecology to approximate the air quality for the most current hour available by using a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(7) **PM<sub>2.5</sub>.** Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter (µg/m<sup>3</sup>).

(8) **Wildfire smoke.** PM<sub>2.5</sub> which includes emissions from planned and unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gases and particulates. Fine particulates such as PM<sub>2.5</sub> are the primary pollutant of public and occupational health concern in wildfire smoke.

(9) **Wildlands.** Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

((1 Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>))

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09815 Identification of harmful exposures.** The employer must determine the current PM<sub>2.5</sub> for worksites covered by WAC 296-307-09805 through 296-307-09860 periodically as needed. The employer may use any of the following methods to determine employee exposures such that they are able to comply with the requirements in WAC 296-307-09805 through 296-307-09860:

(1) Check PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> from any of the following:

(a) Washington department of ecology website;

(b) Air Quality WA mobile app;

(c) Washington department of labor and industries PM<sub>2.5</sub> Air Quality Monitoring Map;

(d) Washington smoke information website;

~~((d))~~ (e) U.S. EPA Fire and Smoke Map;

~~((e))~~ (f) U.S. EPA AirNow website;

~~((f))~~ (g) U.S. EPA AirNow mobile app;

~~((g))~~ (h) U.S. Forest Service AirFire website; or

~~((h))~~ (i) Local clean air agency website.

(2) Obtain PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> directly from the Washington state department of ecology, U.S. EPA, U.S. EPA Enviro-Flash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM<sub>2.5</sub> levels at the work location in accordance with WAC 296-307-09845.

The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to comply with this section:

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> <u>72</u>
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((301))</del> <u>351</u>
500.4 µg/m <sup>3</sup>	<del>((500))</del> <u>849</u>
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

- Notes:
- The current PM<sub>2.5</sub> is updated hourly.
  - Employers are not responsible for tracking employee exposures outside of working hours.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09820 Hazard communication.** For any worksite covered by WAC 296-307-09805 through 296-307-09860, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

(1) The hazard communication system must include procedures for:

(a) Informing employees when the current PM<sub>2.5</sub> as identified in WAC 296-307-09815, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

(i) When at least two consecutive current PM<sub>2.5</sub> readings are 20.5 µg/m<sup>3</sup> (AQI ~~((69))~~ 72) or more;

(ii) 35.5 µg/m<sup>3</sup> (AQI 101) or more;

(iii) 250.5 µg/m<sup>3</sup> (AQI ~~((301))~~ 351) or more;

(iv) 500.4 µg/m<sup>3</sup> (AQI ~~((500))~~ 849) or more; and

(v) 555 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 957) or more.

(b) Enabling and encouraging employees to inform the employer of:

(i) Worsening air quality;

(ii) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-307-09805 through 296-307-09860; and

(iii) Any symptoms that may potentially be related to wildfire smoke exposure including, but not limited to:

(A) Respiratory:

- Cough;

- Difficulty breathing;
  - Wheezing;
  - Shortness of breath, particularly when accompanied by greater use of accessory muscles;
  - Asthma attack;
  - Runny nose;
  - Sore throat;
  - Sinus pain or pressure; or
  - Phlegm.
- (B) Cardiovascular:
- Chest pain or discomfort;
  - Fast or irregular heartbeat;
  - Feeling weak, light-headed, faint, or dizzy; or
  - Pain or discomfort in the jaw, neck, or back.
- (C) Symptoms concerning for a stroke:
- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
  - Sudden severe headache with no known cause.
- (D) Headache; scratchy or irritated eyes; fatigue or tiredness.
- (2) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a current PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (AQI (~~69~~) 72) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:
- (a) The health effects and symptoms of wildfire smoke exposure;
  - (b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;
  - (c) The right to obtain medical attention without fear of reprisal;
  - (d) The requirements of WAC 296-307-09805 through 296-307-09860;
  - (e) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815;
  - (f) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>;
  - (g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;
  - (h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;
  - (i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
  - (j) How to properly put on, use, and maintain the respirators provided by the employer.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09825 Information and training.** The employer must provide all workers with information and training regarding wildfire smoke before work that exposes the worker to a current PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more. Training must be provided at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the following information found in WAC 296-307-09850, Appendix A:

(a) The health effects and symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;

(c) The right to obtain medical attention without fear of reprisal;

(d) The requirements of WAC 296-307-09805 through 296-307-09860;

(e) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815;

(f) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>;

(g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(j) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to current PM<sub>2.5</sub> levels that are 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-09805 through 296-307-09860;

(b) The procedures the supervisor must follow if an employee exhibits symptoms of wildfire smoke exposure; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, or other appropriate level of care, if necessary.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09830 Exposure symptom response.** (1) Employers must allow employees who display any symptoms that may potentially be related to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against

affected employees for seeking such medical attention, or following medical advice.

(2) Employers must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(a) Symptoms requiring immediate medical attention include, but are not limited to:

- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks;
- Chest pain or symptoms concerning for heart attack;
- Nausea or vomiting;
- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
- Sudden confusion, trouble speaking, or difficulty understanding speech;
- Sudden trouble seeing in one or both eyes;
- Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
- Sudden severe headache with no known cause.

(b) Except as required under subsection (3) of this section, while medical attention is being arranged or where medical attention is not necessary, employers must take steps to reduce or eliminate continued exposure to wildfire smoke as appropriate to employee symptoms; intensity of exposure; and exposure controls in place, including respiratory protections in place.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (AQI (~~301~~) 351) or more, employers must ensure workers experiencing symptoms requiring immediate medical attention, including those described under subsection (2)(a) of this section, be moved to a location that ensures sufficient clean air such as:

- (a) A location where the current PM<sub>2.5</sub> is less than 20.5 µg/m<sup>3</sup>; or
- (b) An enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

(4) Employers must have effective provisions made in advance for prompt medical attention of employees who display symptoms of wildfire smoke exposure.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09835 Exposure controls.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (AQI (~~69~~) 72) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

- (a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;
- (b) Providing portable HEPA filters in enclosed areas;
- (c) Relocating work to a location with a lower ambient air concentration of PM<sub>2.5</sub>;

- (d) Changing work schedules to a time with a lower ambient air concentration of PM<sub>2.5</sub>;
  - (e) Avoiding or reducing work that creates additional exposures to dust, fumes, or smoke;
  - (f) Reducing work intensity; and
  - (g) Providing additional rest periods.
- (4) WAC 296-307-09835 is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-307-09805 (1) or (2).

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09840 Respiratory protection.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (~~((AQI-69))~~) to 35.4 µg/m<sup>3</sup> (AQI 72 to 100), the employer is encouraged to provide N95 filtering-facepiece respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (~~((AQI-101))~~) to 250.4 µg/m<sup>3</sup> (AQI ~~((300))~~ 101 to 350), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

- (a) Directly distribute to each exposed employee; or
- (b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (~~((AQI-301))~~) to 500.3 µg/m<sup>3</sup> (AQI ~~((499))~~ 351 to 848), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Required use of respiratory protection.

(a) Where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (~~((AQI-500))~~) to 554.9 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 849 to 957), employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, except as provided in (b) of this subsection. The employer must provide and require to be worn one of the following respirators:

- (i) N95 filtering-facepiece respirator;
- (ii) Half-facepiece air-purifying respirator equipped with P100 filters; or
- (iii) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-307-60205 *Select and provide appropriate respirators*.

(b) This subsection does not apply to employees exposed to PM<sub>2.5</sub> for a total of 15 minutes or less during a 24-hour period.

(5) Where the current PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 957) or more, employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622,



Respirators. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

- (a) Loose-fitting powered air-purifying respirator;
- (b) Full-facepiece air-purifying respirator;
- (c) Full-facepiece powered air-purifying respirator; or
- (d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-307-60205 *Select and provide appropriate respirators*, such that the PM<sub>2.5</sub> levels inside the respirator are less than 55.5 µg/m<sup>3</sup> (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-307-09825 in lieu of the advisory information in Table 2 of WAC 296-307-59805 *Make sure voluntary use of respirators is safe*, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering-facepiece respirators must not be cleaned, repaired, or shared. Dispose of and replace any filtering-facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

Notes:

- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, is required if the employer chooses to require respirator use.
- For voluntary use of filtering-facepiece respirators, such as N95 respirators, some of the requirements of WAC 296-307-594 through 296-307-622, *Respirators*, such as fit-testing and medical evaluations, do not apply.
- Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering-facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from WAC 296-307-594 through 296-307-622, *Respirators*, such as medical evaluations and establishing a respiratory protection program.
- For voluntary or required use of loose-fitting powered air-purifying respirators, some of the requirements of WAC 296-307-594 through 296-307-622, *Respirators*, do not apply, such as fit-testing and requiring workers to be clean-shaven.
- During emergency response, required use of respirators must be implemented to the extent feasible.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory).** (1) **The health effects and symptoms of wildfire smoke:**

(a) Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The EPA has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system. In addition, particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. It can also cause difficulty breathing, reduced lung function, wheezing, bronchitis, worsening of asthma, heart failure, and early death.

(b) Wildfire smoke can harm your health even if you cannot see or smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider

taking action to reduce your exposure to smoke whenever the rule's protections are in effect, whether or not you have symptoms. Watch for symptoms as an additional indication to reduce exposure to smoke, and reduce work intensity.

This appendix reviews many wildfire smoke symptoms, but not every possible symptom may be mentioned, and it is a good idea to talk to your doctor or other health care provider before being exposed to wildfire smoke to have a plan for protecting yourself, including what symptoms to watch out for and how to reduce your exposure. This is especially important if you have any medical conditions; are pregnant; or have questions about the health effects or symptoms of wildfire smoke exposure.

(c) The wildfire smoke rule has additional requirements in WAC 296-307-09830 when workers experience symptoms requiring immediate medical attention. When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing such symptoms be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3). Symptoms requiring immediate medical attention include, but are not limited to:

- Symptoms concerning for a heart attack, such as:
  - Chest pain or discomfort;
  - Feeling weak, light-headed, faint, or dizzy;
  - Pain or discomfort in the jaw, neck, or back;
  - Pain or discomfort in one or both arms or shoulders;
  - Shortness of breath, especially if accompanied by chest discomfort;
- Symptoms concerning for a stroke, such as:
  - Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination;
  - Sudden severe headache with no known cause;
- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks; or
- Nausea or vomiting.

(d) In addition to symptoms that under this rule require immediate medical attention, wildfire smoke can also cause other symptoms, many of which are described below. Even if a symptom is not mentioned here, you have the right under the wildfire smoke rule to seek medical attention or follow medical advice if you develop any symptoms you think may potentially be related to wildfire smoke exposure, regardless of their severity.

Regardless of whether a symptom is serious enough to require immediate medical attention, employers covered by the wildfire smoke rule are required by WAC 296-307-09830(4) to have effective provisions made in advance for prompt medical attention of employees displaying symptoms of wildfire smoke exposure.

If you develop a symptom, you should follow the advice of your doctor or health care provider, and seek medical attention if necessary. Your employer must not retaliate against you for seeking medical attention or following medical advice you have been given.

In addition to the symptoms requiring immediate medical attention according to WAC 296-307-09830, all of the following symptoms are also potentially related to wildfire smoke exposure. They may also require medical attention:

- Respiratory:
  - Cough;
  - Runny or irritated nose;
  - Sore throat;
  - Sinus pain or pressure;
  - Phlegm.
- Fast or irregular heartbeat;
- Headache;
- Scratchy or irritated eyes; or
- Fatigue or tiredness.

(e) Developing wildfire smoke symptoms, even mild ones, indicates you are being overexposed to the smoke and should report your symptoms to your employer. In response, according to WAC 296-307-09830 your employer must permit you to follow medical advice you have been given, seek medical attention if necessary, and must take appropriate steps to reduce your exposure. This may include providing you with access to clean air according to WAC 296-307-09830(3) (your employer must ensure access to clean air when the current PM<sub>2.5</sub> is greater than 250.5 µg/m<sup>3</sup>); helping you use respiratory protection; or taking other steps to control your exposure.

(f) Sensitive groups:

L&I and the Washington state department of health consider all outdoor workers as a sensitive group at higher risk of experiencing adverse health effects from wildfire smoke exposure<sup>(1)</sup>.<sup>1</sup>

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers<sup>(1)</sup>.<sup>1</sup> Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke.

Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, or flu; or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heartbeat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be worsened by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

<sup>1</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf?uid=64384c71c8715](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715)

**(2) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure:**

Watch for symptoms of wildfire smoke exposure as a sign to reduce exposure. The particulate matter in wildfire smoke can harm your health, even at lower levels of exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical attention for employees who are experiencing symptoms of wildfire smoke exposure.

Do not ignore your symptoms. Wildfire smoke can be hazardous even when you cannot see it or smell it. Your employer cannot retaliate against you for reporting symptoms, for seeking medical attention, or for following medical advice you have been given. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3).

**(3) The right to obtain medical attention without fear of reprisal:**

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention or following medical advice.

Employers must also have effective provisions made in advance for prompt medical attention of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, employers must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3).

For more information on your workplace safety and health rights, discrimination protections, and filing a discrimination complaint, visit [www.Lni.wa.gov/WorkplaceDiscrimination](http://www.Lni.wa.gov/WorkplaceDiscrimination).

**(4) The requirements of WAC 296-307-09805 through 296-307-09860:**

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-307-09805 through 296-307-09860.

CURRENT PM <sub>2.5</sub>	AQI	REQUIREMENTS AT CURRENT PM <sub>2.5</sub> LEVEL
0.0-20.4 µg/m <sup>3</sup>	((0-68)) <u>0-71</u>	<ul style="list-style-type: none"> <li>• Prepare a written wildfire smoke response plan.</li> <li>• Provide wildfire smoke training to employees.</li> </ul>

		<ul style="list-style-type: none"> <li>• Watch the PM<sub>2.5</sub> conditions and forecasts.</li> <li>• Prepare a two-way communication system.</li> <li>• Make provisions for prompt medical attention, and permit such medical attention without retaliation.</li> </ul>
20.5-35.4 µg/m <sup>3</sup>	((69-100)) <u>72-100</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Notify employees of PM<sub>2.5</sub> conditions.</li> <li>• Ensure only trained employees work outdoors.</li> <li>• Consider implementing exposure controls.</li> <li>• Consider providing voluntary use respirators.</li> </ul>
35.5-250.4 µg/m <sup>3</sup>	((101-300)) <u>101-350</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement exposure controls.</li> <li>• Make N95 respirators available for voluntary use.</li> </ul>
250.5-500.3 µg/m <sup>3</sup>	((301-499)) <u>351-848</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air.</li> <li>• Directly distribute N95 respirators to employees for voluntary use.</li> </ul>
500.4-554.9 µg/m <sup>3</sup>	((500-beyond the AQI)) <u>849-956</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.</li> </ul>
555 µg/m <sup>3</sup> <u>or more</u>	((Beyond the AQI)) <u>957 or more</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Require respirators with an assigned protection factor (APF) of 25 or more.</li> </ul>

**(5) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815:**

The employer's methods of determining the current PM<sub>2.5</sub>: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(6) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>:**

Various government agencies monitor the air quality at locations throughout Washington and provide information to the public on the current air quality. These monitoring sites measure several harmful pollutants, but the pollutant of particular concern for wildfire smoke is the current PM<sub>2.5</sub> which is reported as the hourly average of PM<sub>2.5</sub> in µg/m<sup>3</sup>. Some of these sites also report the NowCast Air Quality Index (AQI). The NowCast AQI uses the air quality data of all the pollutants from these regulatory monitors and the NowCast averaging time to attempt to provide a general index of the overall air quality.

Although these monitoring stations may measure several pollutants, WAC 296-307-09805 through 296-307-09860 only uses the hourly average of PM<sub>2.5</sub>. The NowCast AQI for PM<sub>2.5</sub> may also be used as an alternative.

One way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest monitor on the map, or [fire.airnow.gov](http://fire.airnow.gov) and enter the zip code of the location where you will

be working. The current PM<sub>2.5</sub> is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted air quality by email for your city or zip code.

While the requirements in this rule are based on the current PM<sub>2.5</sub>, employers may choose to use the NowCast Air Quality Index (AQI) for PM<sub>2.5</sub> to comply with this rule. Because the current PM<sub>2.5</sub> is based on a one-hour average, and the NowCast AQI averages data over a longer time, it is normal for the two values to differ over short periods of time. Your employer will tell you whether they use the current one-hour average PM<sub>2.5</sub>, or the NowCast AQI for PM<sub>2.5</sub>. The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to approximate the current PM<sub>2.5</sub>.

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> 72
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((301))</del> 351
500.4 µg/m <sup>3</sup>	<del>((500))</del> 849
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> 957

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as: Worsening air quality; availability issues of exposure control measures and respirators; and any symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(7) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:**

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The employer's exposure symptom response procedures are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(8) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:**

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the current PM<sub>2.5</sub> is less than 35.5 µg/m<sup>3</sup>.

Respirator use is not voluntary, and a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
- Work under the scope of this rule where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI ((~~500~~) 849) or higher.

If respirator use is required, you will be enrolled in a complete respiratory protection program which includes additional training, fit-testing, and medical evaluations.

To evaluate respiratory hazards in your workplace, see WAC 296-307-624 through 296-307-628, *Respiratory hazards*.

Take the following precautions to ensure the best possible protection when using N95 respirators voluntarily for protection from wildfire smoke:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. For PM<sub>2.5</sub>, a National Institute for Occupational Safety and Health (NIOSH) certified respirator with at least an N95 particulate filter is required. A label or statement of certification should appear on the respirator or respirator packaging.

KN95 masks, surgical masks, or other items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering-face-piece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

For the best protection, follow the manufacturer's instructions for medical evaluations, fit-testing, and shaving. Fit-testing is done to ensure that you have the correct size respirator, and that it seals properly. Without fit-testing, wildfire smoke can leak around the seal of the respirator and increase your risk of experiencing adverse health effects. Because of this, you should not rely on voluntary use respirators alone to protect you from wildfire smoke. Take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in subsection (10) of this appendix, ask your employer to voluntarily arrange for respirator fit-testing, or both.

(c) Tight-fitting respirators such as N95s cannot form a seal over facial hair. Small particles such as those in wildfire smoke will leak around the respirator if you are not clean-shaven. Be sure you are clean-shaven to ensure the respirator can seal to your face.

(d) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or va-

pors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(e) Keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider, particularly if you have a heart, lung, or other medical conditions.

**(9) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:**

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease, as exposure to wildfire smoke can worsen symptoms. A fit-test is conducted to verify that a respirator properly seals to your face so smoke does not leak around the seal.

It also ensures that the respirator be comfortable so you can wear it as long as you need. Your employer is not required to provide a fit-test for voluntary use of N95 respirators for wildfire smoke below a current PM<sub>2.5</sub> of 500.4 µg/m<sup>3</sup> (AQI ((~~500~~) 849)) unless your employer chooses to require respirator use. Even without a fit-test, you can take steps to improve the respirator seal, and to reduce your exposure to wildfire smoke by following the steps in subsection (10) of this appendix.

While wearing a respirator provides protection from wildfire smoke, it increases breathing resistance, causing you to work harder to breathe. If you have heart or lung problems, talk to your doctor or other medical provider before using a respirator. A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Your employer is not required to provide a medical evaluation for voluntary use of N95 respirators for wildfire smoke below a current PM<sub>2.5</sub> of 500.4 µg/m<sup>3</sup> (AQI ((~~500~~) 849)) unless your employer chooses to require respirator use. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern. Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure.

If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-307-09830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



**(10) How to properly put on, use, and maintain the respirators provided by the employer:**

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Make sure you are clean-shaven to allow a better seal and more reliable protection. Loose-fitting powered air-purifying respirators do not rely on a tight seal to provide protection, so they may be worn by people with facial hair.

Always inspect your respirator for damage or defects before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

The proper way to put on a respirator depends on the type and model of the respirator. For those who use a filtering-facepiece respirator such as an N95 follow these steps to put on the respirator:

(a) With clean, dry hands, inspect the respirator and straps for any damage or defect.

(b) Hold the respirator with the straps facing you, and the metal or foam nosebridge facing up.

(c) Place the mask with the top over your nose and the bottom under your chin. Hold the mask in place with one hand.

(d) While holding the mask to your face with one hand, grab the top strap with the other hand.

(e) Pull the top strap over your head and place it so the strap goes above your ears.

(f) While continuing to hold the mask to your face, pull the bottom strap over your head and place it so the strap goes below your ears.

(g) Bend the nosepiece of the respirator over the top of the nose, so it fits securely.

(h) Perform a seal check:

(i) The mask should sit snug on your face, with the top strap above your ears, the bottom strap below.

(ii) Cover the respirator with both hands and exhale. If you feel air leaking where the respirator seals against your face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

(iii) Next, cover the respirator with both hands and inhale. If you feel air leaking where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

Filtering-facepiece respirators are disposable respirators that cannot be cleaned or disinfected. Best practice is to replace filtering-facepiece respirators at the beginning of each shift.

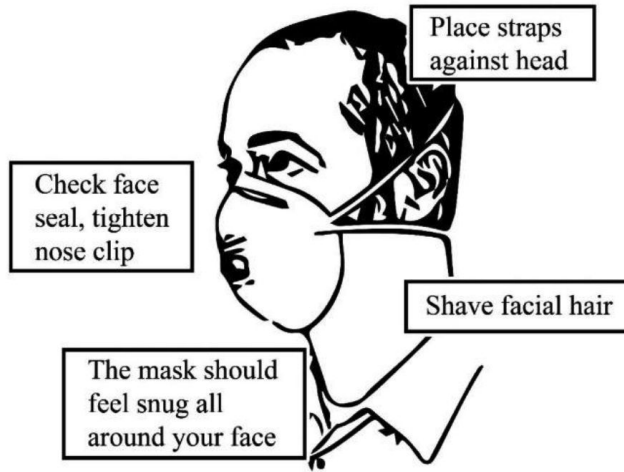
Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or

- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-307-09830(3), take off the respirator, and get help. You should

also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09860 Appendix B: Calculating the Air Quality Index for PM<sub>2.5</sub> (nonmandatory)**. The Air Quality Index (AQI) for PM<sub>2.5</sub> is calculated as follows:

$$((I_{PM2.5})) I_p = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$((I_{PM2.5})) I_p$  is the Air Quality Index value for PM<sub>2.5</sub>

$C_p$  is the concentration of PM<sub>2.5</sub> in µg/m<sup>3</sup> truncated to 1 decimal place

$BP_{Hi}$  is the concentration breakpoint that is greater than or equal to  $C_p$

$BP_{Lo}$  is the concentration breakpoint that is less than or equal to  $C_p$

$I_{Hi}$  is the AQI value corresponding to  $BP_{Hi}$

$I_{Lo}$  is the AQI value corresponding to  $BP_{Lo}$

PM <sub>2.5</sub> ((THRESHOLDS)) BREAKPOINT <sup>1</sup>	AQI <sup>1</sup>	AQI CATEGORY <sup>1</sup>	WA DOH HEALTH MESSAGING <sup>2</sup>
((0.0-12.0)) 0.0-9.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
((12.1-35.4)) 9.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.

PM <sub>2.5</sub> ((THRESHOLDS)) BREAKPOINT <sup>1</sup>	AQI <sup>1</sup>	AQI CATEGORY <sup>1</sup>	WA DOH HEALTH MESSAGING <sup>2</sup>
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
<del>((55.5-150.4))</del> <u>55.5-125.4</u>	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
<del>((150.5-250.4))</del> <u>125.5-225.4</u>	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((250.5-350.4))</del> <u>225.5</u> <u>or more</u>	<del>((301-400))</del> <u>301 or more</u>	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((350.5-500.4</del>	<del>401-500</del>	<del>Hazardous</del>	<del>Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.</del>
<del>&gt;500.4</del>	<del>Beyond the AQI</del>	<del>Hazardous (beyond the AQI))</del>	

<sup>1</sup> ((U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality—The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.)) Federal Register Vol. 89, No. 45, Page 16405, March 6, 2024: <http://www.govinfo.gov/content/pkg/FR-2024-03-06/pdf/2024-02637.pdf>.

<sup>2</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>.

**OTS-5289.3**

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-805 Purpose and scope.** WAC 296-820-805 through 296-820-860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

- (1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.
- (2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.
- (3) Work within the scope of chapter 296-305 WAC, (~~(Safety standards for firefighters))~~ Safety standards for firefighters.
- (4) Workers performing prescribed burns.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-810 Definitions.** (1) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM<sub>2.5</sub>. References to the AQI used throughout this chapter means the "NowCast AQI for PM<sub>2.5</sub>."

((Note: The EPA has proposed revisions to the AQI.<sup>1</sup> DOSH will revisit chapter 296-820 WAC and WAC 296-307-098 Wildfire smoke, if the proposed changes are adopted.))

(2) **Current PM<sub>2.5</sub>.** The concentration of PM<sub>2.5</sub> for the most current hour available, calculated using an hourly average of PM<sub>2.5</sub> data.

Note: The NowCast AQI as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM<sub>2.5</sub>.

(3) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(4) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(5) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(6) **NowCast.** The method used by the EPA and the Washington state department of ecology to approximate the air quality for the most current hour available by using a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(7) **PM<sub>2.5</sub>.** Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter (µg/m<sup>3</sup>).

(8) **Wildfire smoke.** PM<sub>2.5</sub> which includes emissions from planned and unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gases and particulates. Fine particulates such as PM<sub>2.5</sub> are the primary pollutant of public and occupational health concern in wildfire smoke.

(9) **Wildlands.** Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

((<sup>1</sup> Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>))

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-815 Identification of harmful exposures.** The employer must determine the current PM<sub>2.5</sub> for worksites covered by WAC 296-820-805 through 296-820-860 periodically as needed. The employer may use any of the following methods to determine employee exposures

such that they are able to comply with the requirements in WAC 296-820-805 through 296-820-860:

(1) Check PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> from any of the following:

- (a) Washington department of ecology website;
- (b) Air Quality WA mobile app;
- (c) Washington department of labor and industries PM<sub>2.5</sub> Air Quality Monitoring Map;

- ~~((d))~~ (d) Washington smoke information website;
- ~~((e))~~ (e) U.S. EPA Fire and Smoke Map;
- ~~((f))~~ (f) U.S. EPA AirNow website;
- ~~((g))~~ (g) U.S. EPA AirNow mobile app;
- ~~((h))~~ (h) U.S. Forest Service AirFire website; or
- ~~((i))~~ (i) Local clean air agency website.

(2) Obtain PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM<sub>2.5</sub> levels at the work location in accordance with WAC 296-820-845.

The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to comply with this section:

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> <u>72</u>
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((301))</del> <u>351</u>
500.4 µg/m <sup>3</sup>	<del>((500))</del> <u>849</u>
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

- Notes:
- The current PM<sub>2.5</sub> is updated hourly.
  - Employers are not responsible for tracking employee exposures outside of working hours.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-820 Hazard communication.** For any worksite covered by WAC 296-820-805 through 296-820-860, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

(1) The hazard communication system must include procedures for:

(a) Informing employees when the current PM<sub>2.5</sub> as identified in WAC 296-820-815, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

- (i) When at least two consecutive current PM<sub>2.5</sub> readings are 20.5 µg/m<sup>3</sup> (AQI ~~((69))~~ 72) or more;
- (ii) 35.5 µg/m<sup>3</sup> (AQI 101) or more;
- (iii) 250.5 µg/m<sup>3</sup> (AQI ~~((301))~~ 351) or more;

(iv) 500.4  $\mu\text{g}/\text{m}^3$  (AQI (~~500~~) 849) or more; and

(v) 555  $\mu\text{g}/\text{m}^3$  (~~((beyond the))~~ AQI 957) or more.

(b) Enabling and encouraging employees to inform the employer of:

(i) Worsening air quality;

(ii) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-820-805 through 296-820-860; and

(iii) Any symptoms that may potentially be related to wildfire smoke exposure including, but not limited to:

(A) Respiratory:

- Cough;
- Difficulty breathing;
- Wheezing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attack;
- Runny nose;
- Sore throat;
- Sinus pain or pressure; or
- Phlegm.

(B) Cardiovascular:

- Chest pain or discomfort;
- Fast or irregular heartbeat;
- Feeling weak, light-headed, faint, or dizzy; or
- Pain or discomfort in the jaw, neck, or back.

(C) Symptoms concerning for a stroke:

- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
- Sudden confusion, trouble speaking, or difficulty understanding speech;
- Sudden trouble seeing in one or both eyes;
- Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
- Sudden severe headache with no known cause.

(D) Headache; scratchy or irritated eyes; fatigue or tiredness.

(2) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a current  $\text{PM}_{2.5}$  concentration of 20.5  $\mu\text{g}/\text{m}^3$  (AQI (~~(69)~~) 72) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:

(a) The health effects and symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;

(c) The right to obtain medical attention without fear of reprisal;

(d) The requirements of WAC 296-820-805 through 296-820-860;

(e) The employer's methods of determining the current  $\text{PM}_{2.5}$  under WAC 296-820-815;

(f) How employees can obtain the current  $\text{PM}_{2.5}$ , and the employer's methods to communicate the current  $\text{PM}_{2.5}$ ;

(g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

- (i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
- (j) How to properly put on, use, and maintain the respirators provided by the employer.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-825 Information and training.** The employer must provide all workers with information and training regarding wildfire smoke before work that exposes the worker to a current PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more. Training must be provided at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the following information found in WAC 296-820-850, Appendix A:

- (a) The health effects and symptoms of wildfire smoke exposure;
- (b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;
- (c) The right to obtain medical attention without fear of reprisal;
- (d) The requirements of WAC 296-820-805 through 296-820-860;
- (e) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-820-815;
- (f) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>;
- (g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;
- (h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;
- (i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
- (j) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to current PM<sub>2.5</sub> levels that are 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

- (a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-820-805 through 296-820-860;
- (b) The procedures the supervisor must follow if an employee exhibits symptoms of wildfire smoke exposure; and
- (c) Procedures for moving or transporting employees to an emergency medical service provider, or other appropriate level of care, if necessary.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-830 Exposure symptom response.** (1) Employers must allow employees who display any symptoms that may potentially be related to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention, or following medical advice.

(2) Employers must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(a) Symptoms requiring immediate medical attention include, but are not limited to:

- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks;
- Chest pain or symptoms concerning for heart attack;
- Nausea or vomiting;
- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
- Sudden confusion, trouble speaking, or difficulty understanding speech;
- Sudden trouble seeing in one or both eyes;
- Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
- Sudden severe headache with no known cause.

(b) Except as required under subsection (3) of this section, while medical attention is being arranged or where medical attention is not necessary, employers must take steps to reduce or eliminate continued exposure to wildfire smoke as appropriate to employee symptoms; intensity of exposure; and exposure controls in place, including respiratory protections in place.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (AQI ((~~301~~)) 351) or more, employers must ensure workers experiencing symptoms requiring immediate medical attention, including those described under subsection (2)(a) of this section, be moved to a location that ensures sufficient clean air such as:

- (a) A location where the current PM<sub>2.5</sub> is less than 20.5 µg/m<sup>3</sup>; or
- (b) An enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

(4) Employers must have effective provisions made in advance for prompt medical attention of employees who display symptoms of wildfire smoke exposure.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-835 Exposure controls.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (AQI ((~~69~~)) 72) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.



- (3) Such controls include, but are not limited to:
- (a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;
  - (b) Providing portable HEPA filters in enclosed areas;
  - (c) Relocating work to a location with a lower ambient air concentration of PM<sub>2.5</sub>;
  - (d) Changing work schedules to a time with a lower ambient air concentration of PM<sub>2.5</sub>;
  - (e) Avoiding or reducing work that creates additional exposures to dust, fumes, or smoke;
  - (f) Reducing work intensity; and
  - (g) Providing additional rest periods.
- (4) WAC 296-820-835 is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-820-805 (1) or (2).

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-840 Respiratory protection.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (~~((AQI 69))~~) to 35.4 µg/m<sup>3</sup> (AQI 72 to 100), the employer is encouraged to provide N95 filtering-facepiece respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (~~((AQI 101))~~) to 250.4 µg/m<sup>3</sup> (AQI ~~((300))~~ 101 to 350), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

- (a) Directly distribute to each exposed employee; or
- (b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (~~((AQI 301))~~) to 500.3 µg/m<sup>3</sup> (AQI ~~((499))~~ 351 to 848), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Required use of respiratory protection.

(a) Where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (~~((AQI 500))~~) to 554.9 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 849 to 957), employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, except as provided in (b) of this subsection. The employer must provide and require to be worn one of the following respirators:

- (i) N95 filtering-facepiece respirator;
- (ii) Half-facepiece air-purifying respirator equipped with P100 filters; or
- (iii) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-842-13005 *Select and provide appropriate respirators.*

(b) This subsection does not apply to employees exposed to PM<sub>2.5</sub> for a total of 15 minutes or less during a 24-hour period.

(5) Where the current PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 957) or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air-purifying respirator;  
 (b) Full-facepiece air-purifying respirator;  
 (c) Full-facepiece powered air-purifying respirator; or  
 (d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-842-13005 *Select and provide appropriate respirators*, such that the PM<sub>2.5</sub> levels inside the respirator are less than 55.5 µg/m<sup>3</sup> (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-820-825 in lieu of the advisory information in Table 2 of WAC 296-842-11005 *Make sure voluntary use of respirators is safe*, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering-facepiece respirators must not be cleaned, repaired, or shared. Dispose of and replace any filtering-facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, is required if the employer chooses to require respirator use.
  - For voluntary use of filtering-facepiece respirators, such as N95 respirators, some of the requirements of chapter 296-842 WAC, *Respirators*, such as fit-testing and medical evaluations, do not apply.
  - Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering-facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from chapter 296-842 WAC, *Respirators*, such as medical evaluations and establishing a respiratory protection program.
  - For voluntary or required use of loose-fitting powered air-purifying respirators, some of the requirements of chapter 296-842 WAC, *Respirators*, do not apply, such as fit-testing and requiring workers to be clean-shaven.
  - During emergency response, required use of respirators must be implemented to the extent feasible.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-850 Appendix A: Protection from wildfire smoke information and training (mandatory).** (1) **The health effects and symptoms of wildfire smoke:**

(a) Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The EPA has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system. In addition, particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. It can

also cause difficulty breathing, reduced lung function, wheezing, bronchitis, worsening of asthma, heart failure, and early death.

(b) Wildfire smoke can harm your health even if you cannot see or smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect, whether or not you have symptoms. Watch for symptoms as an additional indication to reduce exposure to smoke, and reduce work intensity.

This appendix reviews many wildfire smoke symptoms, but not every possible symptom may be mentioned, and it is a good idea to talk to your doctor or other health care provider before being exposed to wildfire smoke to have a plan for protecting yourself, including what symptoms to watch out for and how to reduce your exposure. This is especially important if you have any medical conditions; are pregnant; or have questions about the health effects or symptoms of wildfire smoke exposure.

(c) The wildfire smoke rule has additional requirements in WAC 296-820-830 when workers experience symptoms requiring immediate medical attention. When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing such symptoms be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3). Symptoms requiring immediate medical attention include, but are not limited to:

- Symptoms concerning for a heart attack, such as:
  - Chest pain or discomfort;
  - Feeling weak, light-headed, faint, or dizzy;
  - Pain or discomfort in the jaw, neck, or back;
  - Pain or discomfort in one or both arms or shoulders;
  - Shortness of breath, especially if accompanied by chest discomfort;
- Symptoms concerning for a stroke, such as:
  - Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination;
  - Sudden severe headache with no known cause;
- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks; or
- Nausea or vomiting.

(d) In addition to symptoms that under this rule require immediate medical attention, wildfire smoke can also cause other symptoms, many of which are described below. Even if a symptom is not mentioned here, you have the right under the wildfire smoke rule to seek medical attention or follow medical advice if you develop any symptoms you think may potentially be related to wildfire smoke exposure, regardless of their severity.

Regardless of whether a symptom is serious enough to require immediate medical attention, employers covered by the wildfire smoke rule are required by WAC 296-820-830(4) to have effective provisions

made in advance for prompt medical attention of employees displaying symptoms of wildfire smoke exposure.

If you develop a symptom, you should follow the advice of your doctor or health care provider, and seek medical attention if necessary. Your employer must not retaliate against you for seeking medical attention or following medical advice you have been given.

In addition to the symptoms requiring immediate medical attention according to WAC 296-820-830, all of the following symptoms are also potentially related to wildfire smoke exposure. They may also require medical attention:

- Respiratory:
  - Cough;
  - Runny or irritated nose;
  - Sore throat;
  - Sinus pain or pressure;
  - Phlegm.
- Fast or irregular heartbeat;
- Headache;
- Scratchy or irritated eyes; or
- Fatigue or tiredness.

(e) Developing wildfire smoke symptoms, even mild ones, indicates you are being overexposed to the smoke and should report your symptoms to your employer. In response, according to WAC 296-820-830 your employer must permit you to follow medical advice you have been given, seek medical attention if necessary, and must take appropriate steps to reduce your exposure. This may include providing you with access to clean air according to WAC 296-820-830(3) (your employer must ensure access to clean air when the current PM<sub>2.5</sub> is greater than 250.5 µg/m<sup>3</sup>); helping you use respiratory protection; or taking other steps to control your exposure.

(f) Sensitive groups:

L&I and the Washington state department of health consider all outdoor workers as a sensitive group at higher risk of experiencing adverse health effects from wildfire smoke exposure((1)).<sup>1</sup>

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers((1)).<sup>1</sup> Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke.

Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, or flu; or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heartbeat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;

- People with other medical or health conditions that can be worsened by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

<sup>1</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf?uid=64384c71c8715](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715)

**(2) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure:**

Watch for symptoms of wildfire smoke exposure as a sign to reduce exposure. The particulate matter in wildfire smoke can harm your health, even at lower levels of exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical attention for employees who are experiencing symptoms of wildfire smoke exposure.

Do not ignore your symptoms. Wildfire smoke can be hazardous even when you cannot see it or smell it. Your employer cannot retaliate against you for reporting symptoms, for seeking medical attention, or for following medical advice you have been given. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3).

**(3) The right to obtain medical attention without fear of reprisal:**

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention or following medical advice.

Employers must also have effective provisions made in advance for prompt medical attention of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, employers must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3).

For more information on your workplace safety and health rights, discrimination protections, and filing a discrimination complaint, visit [www.Lni.wa.gov/WorkplaceDiscrimination](http://www.Lni.wa.gov/WorkplaceDiscrimination).

**(4) The requirements of WAC 296-820-805 through 296-820-860:**

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-820-805 through 296-820-860.

CURRENT PM <sub>2.5</sub>	AQI	REQUIREMENTS AT CURRENT PM <sub>2.5</sub> LEVEL
0.0-20.4 µg/m <sup>3</sup>	<del>((0-68))</del> <u>0-71</u>	<ul style="list-style-type: none"> <li>• Prepare a written wildfire smoke response plan.</li> <li>• Provide wildfire smoke training to employees.</li> <li>• Watch the PM<sub>2.5</sub> conditions and forecasts.</li> <li>• Prepare a two-way communication system.</li> <li>• Make provisions for prompt medical attention, and permit such medical attention without retaliation.</li> </ul>
20.5-35.4 µg/m <sup>3</sup>	<del>((69-100))</del> <u>72-100</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Notify employees of PM<sub>2.5</sub> conditions.</li> <li>• Ensure only trained employees work outdoors.</li> <li>• Consider implementing exposure controls.</li> <li>• Consider providing voluntary use respirators.</li> </ul>
35.5-250.4 µg/m <sup>3</sup>	<del>((101-300))</del> <u>101-350</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement exposure controls.</li> <li>• Make N95 respirators available for voluntary use.</li> </ul>
250.5-500.3 µg/m <sup>3</sup>	<del>((301-499))</del> <u>351-848</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air.</li> <li>• Directly distribute N95 respirators to employees for voluntary use.</li> </ul>
500.4-554.9 µg/m <sup>3</sup>	<del>((500-beyond the AQI))</del> <u>849-956</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.</li> </ul>
555 µg/m <sup>3</sup> <u>or more</u>	<del>((Beyond the AQI))</del> <u>957 or more</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Require respirators with an assigned protection factor (APF) of 25 or more.</li> </ul>

**(5) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-820-815:**

The employer's methods of determining the current PM<sub>2.5</sub>:

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**(6) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>:**

Various government agencies monitor the air quality at locations throughout Washington and provide information to the public on the current air quality. These monitoring sites measure several harmful pollutants, but the pollutant of particular concern for wildfire smoke is the current PM<sub>2.5</sub> which is reported as the hourly average of PM<sub>2.5</sub> in µg/m<sup>3</sup>. Some of these sites also report the NowCast Air Quality Index (AQI). The NowCast AQI uses the air quality data of all the pollutants from these regulatory monitors and the NowCast averaging time to attempt to provide a general index of the overall air quality.

Although these monitoring stations may measure several pollutants, this chapter only uses the hourly average of PM<sub>2.5</sub>. The NowCast AQI for PM<sub>2.5</sub> may also be used as an alternative.

One way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest monitor on the map, or [fire.airnow.gov](http://fire.airnow.gov) and enter the zip code of the location where you will be working. The current PM<sub>2.5</sub> is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted air quality by email for your city or zip code.

While the requirements in this rule are based on the current PM<sub>2.5</sub>, employers may choose to use the NowCast Air Quality Index (AQI) for PM<sub>2.5</sub> to comply with this rule. Because the current PM<sub>2.5</sub> is based on a one-hour average, and the NowCast AQI averages data over a longer time, it is normal for the two values to differ over short periods of time. Your employer will tell you whether they use the current one-hour average PM<sub>2.5</sub>, or the NowCast AQI for PM<sub>2.5</sub>. The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to approximate the current PM<sub>2.5</sub>.

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> <u>72</u>
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((304))</del> <u>351</u>
500.4 µg/m <sup>3</sup>	<del>((500))</del> <u>849</u>
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as: Worsening air quality; availability issues of exposure control measures and respirators; and any symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(7) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:**

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The employer's exposure symptom response procedures are: \_\_\_\_\_

**(8) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:**

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the current PM<sub>2.5</sub> is less than 35.5 µg/m<sup>3</sup>.

Respirator use is not voluntary, and a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
- Work under the scope of this rule where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI (~~500~~) 849) or higher.

If respirator use is required, you will be enrolled in a complete respiratory protection program which includes additional training, fit-testing, and medical evaluations.

To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, *Airborne contaminants*.

Take the following precautions to ensure the best possible protection when using N95 respirators voluntarily for protection from wildfire smoke:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. For PM<sub>2.5</sub>, a National Institute for Occupational Safety and Health (NIOSH) certified respirator with at least an N95 particulate filter is required. A label or statement of certification should appear on the respirator or respirator packaging.

KN95 masks, surgical masks, or other items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering-face-piece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

For the best protection, follow the manufacturer's instructions for medical evaluations, fit-testing, and shaving. Fit-testing is done to ensure that you have the correct size respirator, and that it seals properly. Without fit-testing, wildfire smoke can leak around the seal of the respirator and increase your risk of experiencing adverse health effects. Because of this, you should not rely on voluntary use respirators alone to protect you from wildfire smoke. Take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in subsection (10) of this appendix, ask



your employer to voluntarily arrange for respirator fit-testing, or both.

(c) Tight-fitting respirators such as N95s cannot form a seal over facial hair. Small particles such as those in wildfire smoke will leak around the respirator if you are not clean-shaven. Be sure you are clean-shaven to ensure the respirator can seal to your face.

(d) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(e) Keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider, particularly if you have a heart, lung, or other medical conditions.

**(9) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:**

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease, as exposure to wildfire smoke can worsen symptoms. A fit-test is conducted to verify that a respirator properly seals to your face so smoke does not leak around the seal.

It also ensures that the respirator be comfortable so you can wear it as long as you need. Your employer is not required to provide a fit-test for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI (~~500~~) 849) unless your employer chooses to require respirator use. Even without a fit-test, you can take steps to improve the respirator seal, and to reduce your exposure to wildfire smoke by following the steps in subsection (10) of this appendix.

While wearing a respirator provides protection from wildfire smoke, it increases breathing resistance, causing you to work harder to breathe. If you have heart or lung problems, talk to your doctor or other medical provider before using a respirator. A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Your employer is not required to provide a medical evaluation for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI (~~500~~) 849) unless your employer chooses to require respirator use. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern. Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure.

If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or

- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-820-830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.

**(10) How to properly put on, use, and maintain the respirators provided by the employer:**

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Make sure you are clean-shaven to allow a better seal and more reliable protection. Loose-fitting powered air-purifying respirators do not rely on a tight seal to provide protection, so they may be worn by people with facial hair.

Always inspect your respirator for damage or defects before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

The proper way to put on a respirator depends on the type and model of the respirator. For those who use a filtering-facepiece respirator such as an N95 follow these steps to put on the respirator:

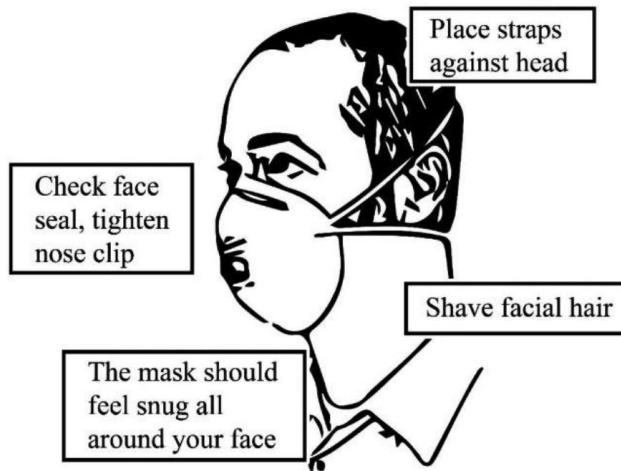
- (a) With clean, dry hands, inspect the respirator and straps for any damage or defect.
- (b) Hold the respirator with the straps facing you, and the metal or foam nosebridge facing up.
- (c) Place the mask with the top over your nose and the bottom under your chin. Hold the mask in place with one hand.
- (d) While holding the mask to your face with one hand, grab the top strap with the other hand.
- (e) Pull the top strap over your head and place it so the strap goes above your ears.
- (f) While continuing to hold the mask to your face, pull the bottom strap over your head and place it so the strap goes below your ears.
- (g) Bend the nosepiece of the respirator over the top of the nose, so it fits securely.
- (h) Perform a seal check:
  - (i) The mask should sit snug on your face, with the top strap above your ears, the bottom strap below.
  - (ii) Cover the respirator with both hands and exhale. If you feel air leaking where the respirator seals against your face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.
  - (iii) Next, cover the respirator with both hands and inhale. If you feel air leaking where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

Filtering-facepiece respirators are disposable respirators that cannot be cleaned or disinfected. Best practice is to replace filtering-facepiece respirators at the beginning of each shift.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-820-830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-860 Appendix B: Calculating the Air Quality Index for PM<sub>2.5</sub> (nonmandatory).** The Air Quality Index (AQI) for PM<sub>2.5</sub> is calculated as follows:

$$((I_{PM2.5})) I_p = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$((I_{PM2.5})) I_p$  is the Air Quality Index value for PM<sub>2.5</sub>

$C_p$  is the concentration of PM<sub>2.5</sub> in µg/m<sup>3</sup> truncated to 1 decimal place

$BP_{Hi}$  is the concentration breakpoint that is greater than or equal to  $C_p$

$BP_{Lo}$  is the concentration breakpoint that is less than or equal to  $C_p$

$I_{Hi}$  is the AQI value corresponding to  $BP_{Hi}$

$I_{Lo}$  is the AQI value corresponding to  $BP_{Lo}$

PM <sub>2.5</sub> ((THRESHOLDS)) BREAKPOINT <sup>1</sup>	AQI <sup>1</sup>	AQI CATEGORY <sup>1</sup>	WA DOH HEALTH MESSAGING <sup>2</sup>
<del>((0.0-12.0))</del> <u>0.0-9.0</u>	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
<del>((12.1-35.4))</del> <u>9.1-35.4</u>	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
<del>((55.5-150.4))</del> <u>55.5-125.4</u>	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
<del>((150.5-250.4))</del> <u>125.5-225.4</u>	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((250.5-350.4))</del> <u>225.5</u> <u>or more</u>	<del>((301-400))</del> <u>301 or more</u>	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((350.5-500.4</del>	401-500	<del>Hazardous</del>	<del>Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.</del>
<del>&gt;500.4</del>	<del>Beyond the AQI</del>	<del>Hazardous (beyond the AQI))</del>	

<sup>1</sup> ((U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.)) Federal Register Vol. 89, No. 45, Page 16405, March 6, 2024: <http://www.govinfo.gov/content/pkg/FR-2024-03-06/pdf/2024-02637.pdf>.

<sup>2</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>.

## WSR 24-21-098

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed October 17, 2024, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-101.

Title of Rule and Other Identifying Information: Veterinarian-client-patient relationship (VCPR) as related to telehealth. In response to three rules petitions received in 2022, the veterinary board of governors (board) is proposing changes to WAC 246-933-010 and 246-933-200 to establish additional standards for use of telehealth when establishing and maintaining a VCPR. The proposed rules add relevant definitions and specify boundaries on the use of telehealth in veterinary services.

Hearing Location(s): On December 9, 2024, at 9:10 a.m., at the Department of Health, Town Center 2, Room 153, 111 Israel Road S.E., Tumwater, WA 98501; or virtual [Date of Intended Adoption: December 9, 2024.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_OGM0ZmY4ZjgtZDBjYy00NmQzLWI0NmYtM2I0NmZmMjM3ZmI4%2540thread.v2%2F0%3Fcon-text%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%25224f64b0cb-39c0-4afe-b683-8cdc99a0355e%2522%257d&data=05%7C02%7CAmber.Freeberg%40doh.wa.gov%7Cfc5cc94e66d0427d22aa08dc80c83737%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638526844621707896%7CUnknown%7CTWfPbGZsb3d8eyJWijoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=m4gSji-FAwLPbxMJ8f15FVKuBdvInlsSARlMnBV8N9rU%3D&reserved=0; or call in (audio only) 564-999-2000, 833-322-1218 (toll-free), Phone Conference ID 654 257 718#.</p>
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Submit Written Comments to: Poppy Budrow, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, [veterinary@doh.wa.gov](mailto:veterinary@doh.wa.gov), beginning the date and time of this filing, by December 2, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Poppy Budrow, phone 564-669-0026, TTY 711, email [poppy.budrow@doh.wa.gov](mailto:poppy.budrow@doh.wa.gov), by November 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing to amend WAC 246-933-010 Definitions, by adding relevant terms relating to telehealth in veterinary services. The board is also proposing to amend WAC 246-933-200 Veterinarian-client-patient relationship, to clarify the regulatory requirements for establishing and maintaining a VCPR and specifying allowances for the utilization of telehealth

Reasons Supporting Proposal: In 2022, the board received three rule-making petitions in relation to standards for telehealth services in the practice of veterinary medicine. The board determined there are areas of veterinary services that may be appropriate for telehealth and agreed to consider amending the rules to allow for telehealth veterinary services when establishing and maintaining a VCPR. The board conducted workshops and solicited input from interested parties in order to develop rules that are consistent with industry standards, provide greater access to care, and maintain patient safety.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Poppy Budrow, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-0026.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Poppy Budrow, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-0026, TTY 711, email poppy.budrow@doh.wa.gov, veterinary@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only apply to credential holders, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 17, 2024

Andrea Sanchez-Chambers, DVM

Chairperson, Veterinary Board of Governors

## OTS-5715.2

AMENDATORY SECTION (Amending WSR 93-08-029, filed 3/30/93, effective 4/30/93)

**WAC 246-933-010 Definitions.** (~~For the purposes of this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise. Unless stated, words used in the singular may be read in the plural.~~) The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Advertise" means to announce publicly by any form of media in order to aid directly or indirectly in the sale of a commodity or service.

(2) "Animal" means any species normally recognized as treatable by veterinary medicine.

(3) "Controlled substances" as defined in RCW 69.50.101.

(4) "Department" means the department of health.

(5) "Drug((s))" as defined in RCW 69.50.101.

(6) "Health certificate" means a document prepared pursuant to law and which attests to the fact that an animal is in a certain state of health.

(7) "Patient" means any animal under the care and treatment of a veterinarian.

(8) "Secretary" means the secretary of the department of health.

(9) "Teleadvice" means the provision of any health information, opinion, guidance, or recommendation concerning prudent future actions

that are not specific to a particular patient's health, illness, or injury. This is general advice that is not intended to diagnose, prognose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions.

(10) "Telehealth" means the overarching term that encompasses all uses of technology geared to remotely deliver health information or education. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services. Telehealth is not a specific service, but a collection of tools which allow veterinarians to enhance care and education delivery. Telehealth encompasses teleadvice, telemedicine, and teletriage.

(11) "Telemedicine" means remote delivery of health care services, such as health assessments or consultations, over the telecommunications infrastructure. It allows veterinarians to evaluate, diagnose, and treat patients without the need for an in-person visit.

(12) "Teletriage" means the provision of emergency animal care advice, recommendations, or treatment in response to immediate, potentially life-threatening animal health situations (e.g., poison exposure mitigation, animal CPR instructions, immediate response to acute life-threatening trauma). A diagnosis is not rendered.

(13) "Veterinary board of governors" is that board appointed by the governor pursuant to chapter 18.92 RCW.

AMENDATORY SECTION (Amending WSR 16-11-004, filed 5/4/16, effective 6/4/16)

**WAC 246-933-200 ((Veterinary)) Veterinarian-client-patient relationship.** A ~~((veterinary))~~ veterinarian-client-patient relationship (VCPR) is the basis for interaction between veterinarians and their clients and patients.

(1) A ~~((veterinary))~~ veterinarian-client-patient relationship exists when all of the following conditions have been met:

(a) The veterinarian has assumed responsibility for making clinical judgments regarding the health of the animal ~~((+s))~~ and need for medical treatment, and the client or key party as defined in WAC 246-934-020 has agreed to follow the instructions of the veterinarian.

(b) The veterinarian has sufficient knowledge of the animal ~~((+s))~~ to initiate, at a minimum, a general or preliminary diagnosis of the medical conditions of the animal ~~((+s))~~. This means the veterinarian:

(i) Has physically examined the animal ~~((+s))~~ within the last year, or sooner if medically appropriate; or

(ii) In cases involving operations with several animals, such as encountered at farms, laboratories, or in shelters, is personally acquainted with the keeping and care of the ~~((animal(s)))~~ animals by virtue of an examination of the ~~((animal(s)))~~ animals or by medically appropriate and timely visits to the premises where the ~~((animal(s)))~~ animals are kept.

(c) The veterinarian is readily available for follow-up evaluation or has arranged for emergency coverage and continuing care and treatment.

(2) The veterinarian shall not establish a ~~((veterinary-client-patient relationship))~~ VCPR solely by ~~((telephonic or other electronic means))~~ telehealth. ~~((However, once established, a veterinary-client-~~

~~patient relationship may be maintained between medically necessary examinations via telephone or other types of consultations.))~~ Once a VCPR has been established, ongoing care can be provided via telemedicine; however, it is the responsibility of the examining veterinarian to determine if an additional physical examination is medically appropriate based on available information regardless of when the last physical examination was performed.

(3) Once a VCPR has been established, it extends to all veterinarians while employed/practicing at the same premises or same mobile practice entity as the veterinarian who established the most current VCPR. The VCPR cannot be extended to other veterinarians based solely on the accessibility of the medical records.

(4) In the absence of an established VCPR, allowable telehealth services are limited to:

(a) Teleadvice;

(b) Triage;

(c) Telemedicine for the purpose of prescribing sedation, other than a controlled substance, prior to an in-person visit, and only to facilitate transportation to, examination by, or treatment by a veterinarian;

(d) Dispensing drugs, other than controlled substances, prescribed by another veterinarian, including a veterinarian licensed in another state, if:

(i) Failure to dispense the drug could interrupt a therapeutic regimen or cause a patient to suffer;

(ii) The prescribing veterinarian has ascertained information necessary to fill the requested prescription;

(iii) The quantity of the dispensed drug does not exceed a 10-day supply for each animal annually;

(iv) The annual total of dosage units of drugs dispensed under this subsection is not more than five percent of the total dosage units of drugs the veterinarian dispenses in a year;

(v) The veterinarian maintains records of dispensing activities under this section consistent with chapter 246-933 WAC; and

(vi) Consistent with RCW 18.92.012, controlled substances can be dispensed only if prescribed by a veterinarian licensed under chapter 18.92 RCW.

(5) Once a VCPR has been established, all forms of telehealth, as defined in WAC 246-933-010, may be used at the discretion of the veterinarian.

(6) The ~~((veterinary-client-patient relationship))~~ VCPR may be terminated under these conditions:

(a) ~~((Veterinarians may terminate a veterinary-client-patient relationship as long as))~~ The termination does not constitute patient abandonment as described in WAC 246-933-060.

(b) If there is an ongoing medical or surgical condition, the client is offered a patient ~~((should be referred))~~ referral at the time of termination to another veterinarian for diagnosis, care, and treatment.

(c) Clients may terminate the ~~((veterinary-client-patient relationship))~~ VCPR at any time.

~~((4))~~ (7) For animals or animal products for food consumption:

(a) There must be a written agreement with the client that identifies the farm veterinarian of record (VOR) who is accountable for drug use and treatments administered to the animals on the farm operation;



(b) The VOR is the responsible party for providing appropriate oversight of drug use on the farm operation. Oversight includes establishment of diagnostic and treatment protocols, training of personnel, review of treatment records, monitoring drug inventories, assuring appropriate labeling of drugs, and monitoring compliance and outcomes. Veterinary oversight of drug use must include all drugs used on the farm regardless of the distribution of the drugs to the farm;

(c) Provision of drugs or drug prescriptions must be for specific time frames appropriate to the scope and type of operation involved and only for the management groups within the operation that the VOR has direct involvement and oversight;

(d) A veterinarian issuing a veterinary feed directive (VFD) must comply with applicable federal law, including 21 C.F.R. 558.6.

~~((5))~~ (8) Medical records must be maintained pursuant to WAC 246-933-320(7).

~~((6))~~ (9)(a) A veterinarian shall use or prescribe drugs only within the context of a ~~((veterinary))~~ veterinarian-client-patient relationship except as outlined in subsection (4) of this section. Veterinary prescription drugs are restricted by federal law, under 21 U.S.C. Sec. 353(f), to be used by or on the order of a licensed veterinarian.

(b) Extra label use is legal only when ordered by a veterinarian and within the context of a ~~((veterinary))~~ veterinarian-client-patient relationship.

## WSR 24-21-102

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 18, 2024, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-109.

Title of Rule and Other Identifying Information: Large on-site sewage system rules; establishing a civil penalty schedule in WAC 246-272B-08105.

The department of health (DOH) is proposing to establish a civil penalty schedule for violations of a law or rule regulating large on-site sewage systems. This proposed rule is necessary to clarify DOH's penalties based on significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances.

Hearing Location(s): On December 18, 2024, at 8:00 a.m., at DOH, Town Center 2, Room 166, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar <https://us02web.zoom.us/join/98501166111>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 27, 2024.

Submit Written Comments to: DOH c/o Ashlie Laydon, P.O. Box 47822, Olympia, WA 98504-7822, email [ashlie.laydon@doh.wa.gov](mailto:ashlie.laydon@doh.wa.gov), beginning date and time of filing, by December 18, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Ashlie Laydon, TTY 711, email [ashlie.laydon@doh.wa.gov](mailto:ashlie.laydon@doh.wa.gov), by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes a civil penalty schedule to protect public health and the environment by ensuring large on-site sewage systems are properly designed, operated, and maintained.

Reasons Supporting Proposal: A civil penalty schedule, in rule, provides transparency in how DOH calculates the penalty amount and serves as a deterrent to future noncompliance. Protection of public health and the environment requires properly designed, operated, and maintained on-site sewage systems. Failure of these systems can pose certain health and environmental hazards if sewage is not adequately treated, leaks above ground creating a potential of direct or indirect contact with the public, or if untreated sewage reaches surface or groundwater.

Statutory Authority for Adoption: RCW 70A.115.040.

Statute Being Implemented: RCW 70A.115.050.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Ashlie Laydon, 111 Israel Road S.E., Tumwater, WA 98501; Implementation and Enforcement: Andrew Jones, 111 Israel Road S.E., Tumwater, WA 98501, 360-742-9233.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ashlie Laydon, P.O. Box 47822, Olympia, WA 98504-7822, TTY 711, email [ashlie.laydon@doh.wa.gov](mailto:ashlie.laydon@doh.wa.gov).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs if a business is compliant with chapter 70A.115 RCW and chapter 246-272B WAC. RCW 70A.115.050 gives DOH the authority to assess a penalty of not more than \$10,000 per day for each violation. The proposed rule establishes a civil penalty schedule, in rule, to outline how DOH will calculate civil penalties based on the significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances.

October 18, 2024  
Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

**OTS-5771.1**

NEW SECTION

**WAC 246-272B-08105 Civil penalty schedule.** (1) The department calculates penalties based on:

- (a) The significance of the violation;
- (b) Previous compliance record; and
- (c) The presence of aggravating or exacerbating circumstances.

(2) Significance of violation. The department determines significance of the violation based on risk:

(a) Low. Low risk violations do not affect the function of the LOSS and have a low potential to threaten public health or the environment.

(b) Medium. Medium risk violations are those relating to reporting requirements of LOSS function, including monitoring, operation, and maintenance of the LOSS and do not present an immediate threat to public health or the environment.

(c) High. High risk violations are those relating to the functioning of the LOSS and present an immediate threat to public health or the environment.

(3) Previous compliance record. The department considers any notice of violation issued to the person responsible for compliance with LOSS requirements in the past five years when calculating a penalty.

(4) Penalty schedule.

Number of Notice of Violations in the past 5 years	Low Risk	Medium Risk	High Risk
0	\$250	\$500	\$1,000
1	\$350	\$700	\$1,400
2	\$450	\$900	\$1,800

Number of Notice of Violations in the past 5 years	Low Risk	Medium Risk	High Risk
3	\$550	\$1,100	\$2,200
4	\$650	\$1,300	\$2,600
5 or more	\$750	\$1,500	\$3,000

(5) Aggravating or exacerbating circumstances. The department can also consider circumstances that aggravate or exacerbate the harm or risk to people or the environment. The violation can be aggravated or exacerbated by an existing circumstance, or the violation can aggravate or exacerbate an existing circumstance related to the system or its operation. Aggravating or exacerbating circumstances can include, but are not limited to, the following factors:

(a) The extent to which there is a history of unaddressed permit conditions;

(b) The extent that other actions or inactions by the owner or their representative contribute to the severity of the risk to public health or the environment posed by the violation; and

(c) The length of time that factors (a) or (b) of this subsection have been present for the system.

(6) If the department determines that one or more aggravating or exacerbating factors are present, then the department may increase the penalty to a level greater than listed in the penalty schedule.

(7) The maximum civil penalty that may be imposed by the department is \$10,000 per day for each violation.

(8) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and distinct violation. When a person has committed multiple violations, the violations are cumulative for the purpose of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(9) Nothing in this section prevents the department from responding to a violation by:

(a) Declining to pursue a civil penalty;

(b) Issuing a notice of correction instead of pursuing a civil penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

**WSR 24-21-117**  
**PROPOSED RULES**  
**SECRETARY OF STATE**

[Filed October 21, 2024, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-02-090.

Title of Rule and Other Identifying Information: Ballots and instructions.

Hearing Location(s): On November 26, 2024, at 2:30 p.m., at the Washington Secretary of State, Washington State Library, 6880 Capitol Boulevard S.E., Tumwater, WA 98501. When attending the hearing in person, walk into the front lobby of the Washington State Library. You will be escorted to the conference room at 2:25 p.m. to be present when the hearing begins at 2:30 p.m. If you arrive after that time, there will be a staff member available in the lobby to escort you to the conference room.

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Dave Piersma, P.O. Box 40229, Olympia, WA 98504, email dave.piersma@sos.wa.gov, fax 360-664-4619, beginning October 21, 2024, 8:00 a.m., by November 25, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Dave Piersma, phone 360-902-4172, fax 360-664-4619, email dave.piersma@sos.wa.gov, by November 25, 2024, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates the declaration printed on ballot return envelopes in compliance with SB [ESSB] 5890 and the requirements for instructions accompanying ballot packets.

Reasons Supporting Proposal: SB [ESSB] 5890 requires the office of the secretary of state to update the ballot declaration for use by June 1, 2025.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.40.091.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

October 21, 2024  
Amanda Doyle  
Chief of Staff

**OTS-4415.5**

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

**WAC 434-230-015 Ballots and instructions.** (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A United States citizen;

A Washington state resident (~~(that meets the requirements for voting mandated by state law)~~);

At least 18 years old on election day, or 17 years old at the primary and 18 years old by the day of the November general election;

Voting only once in this election and not voting in any other United States jurisdiction;

Not serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a Washington felony conviction or currently incarcerated for a federal or out-of-state felony conviction;

Not disqualified from voting due to a court order; (~~and~~)

Aware it is illegal to forge a signature or cast another person's ballot and that attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both; and

Aware that the signature on this declaration will be compared to the signature(s) in the voter's registration file."

The declaration must include space for the voter to sign and date the declaration, for the voter to write (~~(his or her)~~) their phone number, and for two witnesses to sign if the voter is unable to sign.

(d) Explain how the voter may make a mark, witnessed by two other people, if the voter is unable to write their signature;

(e) Explain that a power of attorney cannot be used to sign a ballot for someone else;

(f) Explain how to place the ballot in the security envelope/sleeve and place the security envelope/sleeve in the return envelope;

(g) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Explain how the voter may update their address;

(i) If applicable, include language with the reissued ballot notifying the voter that the reissued ballot is their current ballot;

(j) (~~If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;~~

~~(k)~~) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

~~((1))~~ (k) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

~~((m))~~ (l) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that ~~((he or she))~~ the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

~~((n))~~ (m)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that ~~((he or she))~~ the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice president appear on the general election ballot, the following must be added to the statement required by ~~((n))~~ (m)(i) of this subsection:

"The election for president and vice president is different. Candidates for president and vice president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6) (a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state, or county office: "READ: Each candidate for partisan office may state a political party that ~~((he or she))~~ the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice president but immediately above the first partisan congressional, state, or county office: "READ: Each candidate for president and vice president is the official nominee of a political party. For other partisan offices, each candidate may state a po-

litical party that ((he or she)) the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) ((Counties)) County auditors may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.161 and 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

Counties may use ballot envelopes with the previous declaration through ((December 2021)) May 2025.



**WSR 24-21-120  
PROPOSED RULES****LOWER COLUMBIA COLLEGE**

[Filed October 21, 2024, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-047.

Title of Rule and Other Identifying Information: Code of student conduct and student disciplinary procedure.

Hearing Location(s): On December 11, 2024, at 5:00 p.m., at Lower Columbia College (college), Administration Building, Room 100, 1600 Maple Street, Longview, WA; or join Zoom meeting <https://lowercolumbia.zoom.us/j/83269599646>, Meeting ID 832 6959 9646.

Date of Intended Adoption: December 11, 2024.

Submit Written Comments to: Bryanna Doumit, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, email [rulemaking@lowercolumbia.edu](mailto:rulemaking@lowercolumbia.edu), fax 360-442-2129, beginning November 6, 2024, 8 a.m., by December 5, 2024, 8 a.m.

Assistance for Persons with Disabilities: Contact Bryanna Doumit, phone 360-442-2100, fax 360-442-2129, TTY 800-833-6388, email [rulemaking@lowercolumbia.edu](mailto:rulemaking@lowercolumbia.edu), by December 5, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the college's student conduct code, chapter 132M-126 WAC, into compliance with a new final rule governing sex discrimination grievance procedures (Title IX procedures) recently adopted by the United States Department of Education pursuant to its authority under Title IX of the Education Amendment of 1972 and to update other provisions of the student conduct code to reflect current issues and needs of the district and its students. These updates ensure that the code's prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students. The college proposes to repeal now outdated Title IX procedures and to repeal the existing student code of conduct and replace it with an updated student code that includes required Title IX procedures.

Reasons Supporting Proposal: The college must revise their chapter 132M-126 WAC to meet new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including post-secondary institutions, must respond to allegations of sexual discrimination consistent with Title IX's prohibition against sex discrimination. In addition, other revisions to the code of student conduct are necessary to address changes in case law, and align with the new processes and changes in practice for student conduct. The changes ensure that the interests of the college community and procedural rights of students are adequately protected.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.

Name of Proponent: Lower Columbia College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sue Orchard, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, 360-442-2301.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this college is not mandated to comply with RCW 34.05.328. Further, the college does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Title IX, 20 U.S.C. § 1681 et. seq.; failure to comply with Title IX regulations could result in corrective action by the United States Department of Education, including possible loss of federal funding.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adopts revisions to the college's student code of conduct, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses. Moreover, the proposed rule is necessary to comply to changes in federal Title IX regulations, state statutes, and to ensure the protection of individual students' constitutional and procedural rights.

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This change is not anticipated to impose any additional cost on business.

October 17, 2023 [2024]

Kendra Sprague

Vice President of Foundation

Human Resources and Legal Affairs

**OTS-5633.3**

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-005 Preamble.** Lower Columbia College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share (~~in~~) the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the college community's rights, privileges, and property (~~of the college community~~). For allegations of sexual harassment occurring before August 1, 2024, the archived rules apply and can be found here: <https://lawfilesexternal.wa.gov/law/WACArchive/2023/WAC%20132M-126%20%20CHAPTER.htm>

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-010 Authority.** The board of trustees of Washington State Community College District No. 13, acting pursuant to RCW 28B.50.140(~~(13)~~) (14), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. (~~Unless otherwise specified~~) Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-015 Definitions.** The following definitions shall apply for purposes of this student conduct code:

- (1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.
- (2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.
- (3) "Business day" means a weekday, excluding weekends, college holidays, and college closure days.
- (4) "College" means Lower Columbia College and any other college centers or premises established within Washington State Community College District No. 13.
- (5) "College community" means trustees, students, staff, faculty, and visitors in college facilities and college premises.

(6) "College official" includes any person employed by the college performing assigned duties.

(7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(8) ~~((A "complainant" is an alleged victim of sexual misconduct.))~~ "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(9) "Conduct review officer" is the vice president of student services or other college administrator designated by the president ~~((to be))~~ who is responsible for receiving and for reviewing or referring appeals of student disciplinary actions ~~((in accordance with the procedures of))~~ as specified in this code.

(10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(11) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student code of conduct.

(12) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Faculty member" and "instructor" mean any employee of Washington State Community College District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, or librarian.

(14) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(15) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation; or

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(16) ~~((The))~~ President is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

~~((16))~~ (17) "Program" or "programs and activities" means all operations of the college.

(18) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

~~((17))~~ (19) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(20) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(21) "Respondent" is ~~((the))~~ a student ~~((against whom disciplinary action is initiated.~~

~~(18))~~ who is alleged to have violated the student conduct code.

(22) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) ~~((By))~~ Sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

~~((19))~~ "Sexual misconduct" has the meaning ascribed to this term in WAC ~~132M-126-030(13)~~.

~~(20))~~ (23) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

~~((21))~~ (24) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

~~((22))~~ (25) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(26) "Student group" ~~((for purposes of this code,))~~ is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

~~((23))~~ (27) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

(28) "Supportive measures" means reasonable, available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(29) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-020 Statement of jurisdiction.** (1) The student conduct code shall apply to ~~((student))~~ conduct by students or student groups that occurs:

(a) On college premises;

(b) At or in connection with ~~((college-sponsored))~~ college programs or activities; or

(c) Off-campus ~~((conduct that))~~ premises, if in the judgment of the college ~~((adversely affects)),~~ the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students ~~((or student groups))~~ are engaged in ~~((official))~~ college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated students))~~ students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, ~~((as well as))~~ during the academic year, and ~~((during))~~ periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The ~~((student conduct officer))~~ college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

(6) In addition to initiating disciplinary proceedings for violations of the student code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-025 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and ~~((to))~~ respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) ~~((Academic freedom.))~~ Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college premises that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation ~~((which))~~ that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment ~~((which))~~ that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) ~~((Due process.))~~ Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-030 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit ~~((r))~~ an act(s) of misconduct, which include, but are not limited to, the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including ~~((, but not limited to, cheating, plagiarism, and fabrication.))~~:

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to ~~((the completion of))~~ completing an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person or artificial intelligence in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations ~~((in))~~ when completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

~~((2) Other dishonesty. Any other acts of dishonesty. Such acts))~~

(4) Acts of dishonesty. Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; ~~((or))~~

(c) Furnishing false information or failing to furnish correct information ~~((r))~~ in response to the request or requirement of a college officer or employee ~~((r))~~; or



~~((3) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:~~

~~(a) Instruction, research, administration, disciplinary proceeding(s), or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.~~

~~(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.~~

~~(6-)) (d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.~~

~~(5) **Alcohol.** The use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies and federal, state, and local laws) or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.~~

~~(6) **Cannabis, drug, and tobacco violations.**~~

~~(a) **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(b) **Drugs.** The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.~~

~~(c) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased~~

or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields, and college buildings. Tobacco use is also prohibited at events on college premises or in college-owned, rented, or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(10) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(11) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or perva-

sive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(13) **Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) Hazing does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(14) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(15) **Lewd conduct.** Conduct that is lewd or obscene and not otherwise protected under the law.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

**(17) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or ~~((the property of another person))~~ another person's property. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((7) Failure to comply with directive.~~ Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

~~(8) Weapons.~~ Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;~~

~~(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or~~

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.~~

~~(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.~~

~~(9) Hazing.~~

~~(a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group;~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) Hazing does not include customary athletic events or other similar contests or competitions.~~

~~(d) Consent is not a valid defense against hazing.~~

~~(10) **Alcohol, drug, and tobacco violations.**~~

~~(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.~~

~~(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields and college buildings. Use of tobacco is also prohibited at events on college premises, or in college-owned, rented or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.~~

~~(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.~~

~~(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

~~(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures in this code. See WAC 132M-126-115 through 132M-126-155.~~

~~(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:~~

~~(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;~~

~~(ii) Alter the terms or conditions of employment for a college employee(s); and/or~~

~~(iii) Create an intimidating, hostile, or offensive environment for other campus community members.~~

~~(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(e-)) (18) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.~~

~~(19) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.~~

~~(20) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment and may occur when a respondent causes more than de minimis harm to an individual by treating them differently from a similarly situated individual on the basis of: Sex stereotype, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Except as permitted by 20 U.S.C. 1681 (a) (1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b) (1), or § 106.41(b), preventing a person from participating in an education program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.~~

~~(a) **Sex-based harassment.** "Sex-based harassment" is a form of discrimination and means of sexual harassment or other harassment on the basis of sex, including the following conduct:~~

~~(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.~~

~~(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:~~

~~(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;~~

~~(B) The type, frequency, and duration of the conduct;~~

~~(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;~~

~~(D) The location of the conduct and the context in which the conduct occurred; and~~

~~(E) Other sex-based harassment in the college's education program or activity.~~

~~(iii) **Sexual violence.** "Sexual violence" ((is a type of sexual discrimination and harassment.)) includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, dating violence, and stalking ((are all types of sexual violence)).~~

~~((i))~~ (A) Nonconsensual sexual intercourse ~~(. Any actual or attempted)~~ is any sexual intercourse (anal, oral, or vaginal), however slight, with any object ~~(or body part)~~, by a person upon another person ~~(r)~~ that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

~~((ii))~~ (B) Nonconsensual sexual contact ~~(-)~~ (fondling) is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

~~((iii))~~ (C) Incest ~~(-)~~ is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.

~~((iv))~~ (D) Statutory rape ~~(- Consensual)~~ (rape of a child) is nonforcible sexual intercourse ~~((between))~~ with a person who is ~~((18 years of age or older, and a person who is under the age of 16))~~ under the statutory age of consent.

~~((v))~~ (E) Domestic violence ~~(-)~~ is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault,  ~~((or))~~ coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington ~~((, RCW 26.50.010))~~.

~~((vi))~~ (F) Dating violence ~~(-)~~ is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person ~~(+)~~

~~(A))~~ who is or has been in a social relationship of a romantic or intimate nature with the victim; and ~~((B))~~ where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interactions between the persons involved in the relationship.

~~((vii))~~ (G) Stalking ~~(-)~~ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to ~~((+)~~

~~(A))~~ fear for their safety or the safety of others ~~((+))~~ or ~~((B))~~ to suffer substantial emotional distress.

~~((d))~~ (b) Consent. For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual word or conduct in-

dicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

~~((14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.~~

~~(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceedings.~~

~~(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:~~

~~(a) Unauthorized use of such resources or opening of a file, message, or other item;~~

~~(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;~~

~~(c) Unauthorized use or distribution of someone else's password or other identification;~~

~~(d) Use of such time or resources to interfere with someone else's work;~~

~~(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;~~

~~(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;~~

~~(g) Use of such time or resources in violation of applicable copyright or other law;~~

~~(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization.~~

~~(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.~~

~~(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or proce-~~



~~dures relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.~~

~~(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.~~

~~(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.~~

~~In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.) (c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceedings involving allegations of sex discrimination.~~

~~(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property or unauthorized entry onto or into college property.~~

~~(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic and parking rules.~~

~~(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon capable of producing bodily harm is prohibited on the college campus, and during college programming or activities, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in the performance of their duties;~~

~~(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or~~

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and subject to such terms or conditions incorporated in the written permission.~~

~~(d) Possession and/or use of disabling chemical sprays for the purpose of self-defense is not prohibited.~~

~~In addition to initiating discipline proceedings for violating the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.~~

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-035 Corrective action, disciplinary sanctions, and terms and conditions.** (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon ((students found to have violated)) a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.

(a) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that ((continuation of)) continuing the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation ((and)) which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during ((the time of)) disciplinary probation, the deferred disciplinary sanction ((which may include, but is not limited to, a suspension or a dismissal from the college,)) shall take effect immediately without further review. The deferred disciplinary sanction may include, but is not limited to, suspension or dismissal from the college. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and ((from)) student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled ((premises)) facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **((Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

((b-)) **Educational ((sanction)).** ((The college may require the student to complete)) Participation in or successful completion of an educational activity ((or experience directly related to the violation committed, at the student's expense.

((c-)) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The

~~student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.~~

~~(d-)) designed to create an awareness of the student's misconduct.~~

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **Not in good standing.** A student ((may be)) deemed "not in good standing" with the college((. If so, the student)) shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function((r)) or any form((s)) of intercollegiate competition or representation.

~~((e) **No trespass order.**)~~ (d) **No contact directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose a professional within the scope of practice and with the professional credentials defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(f) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may be monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from ((college property based on their misconduct.

~~(f) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.)) any or all college premises and/or college-sponsored activities based on the violation.~~

(h) **Campus housing suspension or termination.** Removal from campus housing for a specified period or permanently. Conditions may be imposed before a student is permitted to return to campus housing.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either before or upon the student's reenrollment, depending on the nature of the sanction, con-

dition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 22-23-113, filed 11/17/22, effective 12/18/22)

**WAC 132M-126-036 Hazing prohibited—Sanctions.** (1) ~~((Hazing by a student or a student group is prohibited pursuant to WAC 132M-126-030(9)).~~

~~(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.~~

~~(3) Washington state law provides that:~~

~~(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for-profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

(b)) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

~~((e)) (3) Any student group((s)) that knowingly permits hazing to be conducted by its members or by others subject to its direction or control, shall be deprived of any official recognition or approval granted by the college.~~

~~((d)) (4) Any student group((s)) found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.~~

NEW SECTION

**WAC 132M-126-037 Amnesty policy.** (1) Lower Columbia College values the health, safety, and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided

that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sexual misconduct, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regard to alcohol, drugs, or other prohibited conduct.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-040 Initiation of disciplinary action.** (1) ~~((All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.))~~ Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to violate the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer or designee may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner, and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions shall be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent ((and the respondent shall be afforded an opportunity)), who will be allowed to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based ((upon)) on the available information.

~~((3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4))~~ (10) Within ((ten)) 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason thereof.

~~((5))~~ (11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings((-));

(b) Impose a disciplinary sanction(s), as described in WAC

132M-126-035((-)); or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing ~~((7))~~ and to the attention of the chair of the student conduct committee, with a copy served on the respondent.

~~((6))~~ (12) In cases involving allegations of ~~((sexual misconduct))~~ sex discrimination, the student conduct officer ~~((on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions occurs.))~~ shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. Within five business days of receiving the investigation report, the student conduct officer shall serve the respondent, complainant, and Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The student conduct officer may extend the time for serving a written recommendation for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and the respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before the student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complainant if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside of the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all

supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that the complainant has equal access to the college's program and activities.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-045 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth by WAC 132M-126-040(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 21 calendar days of the student conduct officer's decision. Failure to file a notice of appeal timely constitutes a waiver of the right to appeal, and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, the complainant if any, and the student conduct ~~((review))~~ officer.

(4) A respondent ~~((r))~~ who timely appeals a disciplinary action or whose case is referred to the student conduct committee ~~((r))~~ has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal ~~((r))~~ unless the respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any condition or terms imposed in conjunction with one of the forgoing disciplinary actions.

(8) The student conduct committee shall hear appeals from:

(a) ~~((The imposition of))~~ Disciplinary suspensions in excess of ~~((ten))~~ 10 instructional days;

(b) Dismissals; ~~((and))~~

(c) ~~((Discipline))~~ Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

~~((8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~



- ~~(a) Suspensions of ten instructional days or less;~~  
~~(b) Disciplinary probation;~~  
~~(c) Written reprimands; and~~  
~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.~~
- ~~(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.~~
- ~~(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~
- ~~(a) The dismissal of a sexual misconduct complaint; or~~  
~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~
- ~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~
- ~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as afforded the respondent.)~~

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

- WAC 132M-126-055 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.
- (2) The parties to a brief adjudicative proceeding are the respondent ~~((,))~~ and the student conduct officer ~~((, and in cases involving sexual misconduct, the complainant))~~. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:
- (a) An opportunity to be informed of the agency's view of the matter; and
- (b) An opportunity to explain the party's view of the matter.
- (3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ~~((ten))~~ 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.
- ~~(4) ((In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual~~

~~misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.~~

~~(5))~~ If the conduct review officer, upon review, determines that the respondent's conduct may warrant the imposition of a disciplinary suspension in excess of (~~more than ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-060 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided the party files a written request for review with the conduct review officer within (~~ten~~) 21 calendar days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president or designee shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within (~~twenty~~) 20 calendar days after the request is submitted.

(5) If the president or designee, upon review, determines that the respondent's conduct may warrant the imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-070 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government (ASLCC);
- (b) Two faculty members appointed by the faculty association;
- (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) ~~((r))~~ or other impartial hearing chair ~~((r))~~ appointed by the president.

(2) The administrative staff member or other impartial hearing officer shall serve as the chair of the committee and may take action on preliminary hearing matters ~~((prior to))~~ before convening the committee. ~~((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~

(3) Hearings may be heard by a quorum of three ~~((members of the))~~ committee members so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training in the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-075 ~~((Appeal))~~ Student conduct committee—Prehearing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW ~~((and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control))~~.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days ~~((in advance of))~~ before the hearing date. ~~((The chair may shorten this notice period if both parties agree, and also may continue the~~

hearing at a later time for good cause shown.)) The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The ~~((committee))~~ chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day ~~((prior to))~~ before the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The ~~((committee))~~ chair may provide to the committee members in advance of the hearing copies of (a) the student conduct officer's notification of the imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer ~~((, upon request,))~~ shall provide reasonable assistance to the respondent and complainant in ~~((obtaining relevant and admissible evidence that is within the college's control))~~ procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days before the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours before the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe their rationale for any decision on the record.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate ~~((, and))~~. Any improper ex parte communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by ~~((a nonattorney assistant))~~ an advisor of their choice ~~((. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee~~

chair with a copy to the student conduct officer.)), which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or complainant is represented by an attorney, the student conduct officer may also be represented by ((a second, appropriately screened)) an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney will still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide notice that includes all information required in subsection (2) of this section and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extension of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** Before the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair about the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, including the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** Before the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair regarding the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-080 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method ~~((that))~~ they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is

required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted((r)) in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case (~~(for imposing disciplinary sanctions)~~).

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of (~~sexual misconduct, no party shall directly question or cross-examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair who, in their discretion, shall pose the questions on the party's behalf.~~) sex discrimination, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Before any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant or is otherwise impermissible. The chair will retain copies of any written questions provided by any party for the record.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude, and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses and, if not, to determine whether questions must be submitted to the chair to be asked of witnesses or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-085 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ 20 calendar days following the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or ~~((the demeanor of witnesses shall be so))~~ witnesses' demeanor shall be identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) ~~In cases involving ((allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including the suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights))~~ sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.



AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-090** ~~((Appeal from))~~ **Student conduct committee—Review of initial decision.** (1) ~~((A party who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party, including a complainant in sex-based harassment cases, may appeal the committee's ((initial)) decision to the president or designee by filing a ((notice of)) written appeal with the president's office within ((ten)) 21 calendar days of service of the committee's ((initial)) decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president or designee may ask for additional briefing from the parties on issues raised on appeal. The president's or designee's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

~~((3))~~ (5) The president or designee shall ((provide)) serve a written decision ((to the party and the student conduct officer)) on all parties and their attorneys, if any, within ((twenty)) 20 calendar days after receipt of the notice of appeal. The president's or designee's decision shall be final and ((shall include a notice of any rights to request reconsideration and/or judicial review)) subject to judicial review pursuant to chapter 34.05 RCW, Part V.

~~((4))~~ (6) In cases involving allegations of ((sexual misconduct, the president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

~~((5))~~ sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president or designee shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-100 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of ~~((τ))~~ or interference with, the ~~((operations of))~~ the college's operations.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning the respondent that their privilege to enter into or remain on college premises has been withdrawn ~~((τ))~~ and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued, pending the conclusion of disciplinary proceedings, and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why the summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or officers who may be bound or protected by it.

~~((6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132M-126-050	Brief adjudicative proceedings authorization.
WAC 132M-126-110	Sexual misconduct procedures.
WAC 132M-126-115	Order of precedence.
WAC 132M-126-120	Prohibited conduct under Title IX.
WAC 132M-126-125	Title IX jurisdiction.
WAC 132M-126-130	Initiation of discipline.
WAC 132M-126-135	Prehearing procedure.
WAC 132M-126-140	Rights of parties.
WAC 132M-126-145	Evidence.
WAC 132M-126-150	Initial order.
WAC 132M-126-155	Appeals.

## WSR 24-21-125

## PROPOSED RULES

## BOARD OF ACCOUNTANCY

[Filed October 22, 2024, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-009.

Title of Rule and Other Identifying Information: WAC 4-30-057  
Limitations on CPA-inactive and CPA-retired, and 4-30-058 Other au-  
thorized titles.

Hearing Location(s): On January 31, 2025, at 9:00 a.m., at the  
Radisson Hotel Seattle Airport, 18118 International Boulevard, San  
Juan Rooms 2 and 3, Seattle, WA 98188; or Microsoft Teams meeting. The  
link to join the meeting will be available on the board of accountan-  
cy's (board) website approximately two weeks before the hearing date  
at <https://acb.wa.gov/next-board-meeting>. A phone number will be pro-  
vided as well in case you are unable to attend online.

Date of Intended Adoption: January 31, 2025.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator,  
P.O. Box 9131, Olympia, WA 98507, email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov),  
fax 360-664-9190, by January 29, 2025.

Assistance for Persons with Disabilities: Contact Kirsten Dono-  
van, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 711,  
email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), by January 29, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: The board proposes adoption of new  
rule, WAC 4-30-057, to provide guidance on CPA-inactive and CPA-re-  
tired allowable and prohibited activities and restricted title use.

The board proposes amending WAC 4-30-058 to remove subsection (6)  
related to the use of the CPA-retired designation, as this information  
has been moved to WAC 4-30-057.

Reasons Supporting Proposal: See purposes above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementa-  
tion, and Enforcement: Jennifer Sciba, Acting Director, 711 Capitol  
Way South, Suite 400, Olympia, WA 98501, 360-586-0952.

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

A cost-benefit analysis is not required under RCW 34.05.328. The  
board is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024  
Jennifer Sciba  
Acting Director

OTS-5947.1

NEW SECTION**WAC 4-30-057 Restrictions on CPA-inactive and CPA-retired.** (1)

**Introduction.** Effective July 1, 2024, persons holding a license may renew their license in an inactive status. The purpose of this rule is to explain restrictions on the activities of persons while their license is in an inactive status, as well as persons who wish to use the title "CPA-retired."

(2) **CPA-inactive restrictions.** Persons holding an inactive license are prohibited from the practice of public accounting. RCW 18.04.025(9). The "practice of public accounting" means performing or offering to perform by a person or firm holding itself out to the public as a licensee, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. RCW 18.04.025(17).

(3) **CPA-inactive allowable activities.** Persons holding an inactive license may perform or offer to perform services in an employer-employee relationship in industry, government, nonprofit, or education, or uncompensated work such as a volunteer, trustee, director, or executor.

(4) **CPA-inactive prohibited activities.** Persons holding an inactive license may not perform or offer to perform public accounting services:

(a) As an independent contractor in industry, government, nonprofit, or education;

(b) For compensation as a trustee, director, or executor;

(c) As a sole practitioner offering to perform services for a client or potential client; or

(d) As part of a CPA firm either offering to perform services for a client or potential client or working in purely an administrative role.

For the purpose of this section, "compensation" does not include reimbursement of actual expenses or a limited per diem allowance for expenses.

(5) **CPA-inactive conversion to active status.** At any time, persons holding an inactive license may apply to convert their license status from inactive to active. See WAC 4-30-120.

(6) **CPA-inactive professional conduct rules.** Persons holding an inactive license are subject to the following rules for ethics and prohibited practices:

(a) Integrity and objectivity. See WAC 4-30-040;

(b) General standards. See WAC 4-30-046;

(c) Compliance with standards. See WAC 4-30-048;

(d) Accounting principles. See WAC 4-30-049;

(e) Acts discreditable. See WAC 4-30-052;

(f) Form of organization and name. See WAC 4-30-056;

(g) Other authorized titles. See WAC 4-30-058.

(7) **CPA-inactive continuing professional education (CPE).** Persons holding an inactive license have limited CPE requirements for renewal. See WAC 4-30-134. However, persons holding an inactive license are still required to maintain professional competence in all their allowable roles regardless of limited CPE requirements for renewal.

(8) **CPA-inactive restricted title use.** Persons holding an inactive license may only use the title "CPA-inactive" and are prohibited from using the titles "certified public accountant" or "CPA." Persons

holding an inactive license may not perform any of the activities in subsection (4) of this section regardless of whether or not they use the title "CPA-inactive."

(9) **CPA-retired.** Persons who have reached 60 years of age and hold a license in good standing in either an active or inactive status, may apply to retire their license. When their license is in a retired status, they may then use the title "CPA-retired."

(10) **CPA-retired allowable activities.** The title "CPA-retired" may be used when performing uncompensated services such as a volunteer, trustee, director, or executor.

(11) **CPA-retired prohibited activities.** Persons who have retired their license may not use the title "CPA-retired" to perform or offer to perform services:

(a) In an employer-employee relationship in industry, government, nonprofit, or education;

(b) As an independent contractor in industry, government, nonprofit, or education;

(c) For compensation as a trustee, director, or executor;

(d) As a sole practitioner offering to perform services for a client or potential client; or

(e) As part of a CPA firm either offering to perform services for a client or potential client or working in purely an administrative role.

For the purpose of this section, "compensation" does not include reimbursement of actual expenses or a limited per diem allowance for expenses.

(12) **Renewal out of retirement.** At any time, persons who have retired their license may apply to renew as an active licensee. See WAC 4-30-122.

(13) **CPA-retired restricted title use.** Persons who have retired their license are prohibited from using the titles "certified public accountant," "CPA," or "CPA-inactive." However, persons who have retired their license may perform any of the activities in subsection (11) of this section without use of the title "CPA-retired."

(14) **Lapsed licensees.** Persons with a lapsed license are prohibited from using the titles "CPA-inactive," "CPA-retired," as well as the titles "certified public accountant," or "CPA."

## OTS-5948.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

**WAC 4-30-058 Other authorized titles.** (1) The board allows the use of other titles by any person regardless of whether the person has been granted a certificate or holds a license if the person using the titles or designations is authorized at the time of use by a nationally recognized entity sanctioning the use of board authorized titles.

(2) Nothing in this chapter prohibits the use of the title "accountant" by any person regardless of whether the person holds a license under this chapter.

(3) Nothing in this chapter prohibits the use of the title "enrolled agent" or the designation "EA" by any person regardless of

whether the person holds a license under this chapter if the person is properly authorized at the time of use to use the title or designation by the Internal Revenue Service (IRS).

(4) The board also authorizes titles and designations authorized by:

(a) The American Institute of Certified Public Accountants (AICPA);

(b) The Association of International Certified Professional Accountants (AICPA);

(c) The Institute of Management Accounts (IMA);

(d) The Accreditation Council for Accountancy and Taxation; and

(e) Certified Financial Planner Board of Standards (CFP Board).

(5) These authorized designations relate to title use only, are not limited to, individuals who have held or are holding a license under the act, and do not authorize these other designated individuals to use the title "certified public accountant" or "CPA," or "CPA-inactive."

~~((6) The board further authorizes the use of the designation "CPA retired" in this state by those individuals who, upon notice to the board to retire a license, meet the following criteria:~~

~~(a) Has reached 60 years of age and holds an active license in good standing; or~~

~~(b) At any age, has held an active license in good standing, not suspended or revoked, to practice public accounting in any state for a combined period of not less than 20 years.)~~

**WSR 24-21-132**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed October 22, 2024, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-129.

Title of Rule and Other Identifying Information: Pension discount rate; amending WAC 296-14-8810 Pension tables, pension discount rate and mortality tables, in chapter 296-14 WAC, Industrial insurance.

Hearing Location(s): On December 5, 2024, at 9:30 a.m. Join Zoom meeting <https://lni-wa-gov.zoom.us/j/88125201517?pwd=sbPUTVy6bvPhIyIOkcSH238ErHGKKS.1>, Meeting ID 881 2520 1517, Pass-code \$%t5Ri\$+; or join by phone 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/u/kdEkuhmjuL>. The virtual meeting starts at 9:30 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: January 21, 2025.

Submit Written Comments to: Suzy Campbell, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email [Suzanne.Campbell@Lni.wa.gov](mailto:Suzanne.Campbell@Lni.wa.gov), fax 360-902-5029, beginning October 23, 2024, at 8 a.m., by December 5, 2024, at 5 p.m.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email [Cristina.Gaffoglio@Lni.wa.gov](mailto:Cristina.Gaffoglio@Lni.wa.gov), by November 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long term treasuries for self-insured pensions. The PDR is the interest rate used to account for the time value money when evaluating the present value of future pension payments. This rule proposes to lower the PDR for self-insured employers from 5.5 percent to 5.4 percent effective April 1, 2025.

Reasons Supporting Proposal: These reductions allow our financial statements to more accurately reflect our liabilities and overall financial position, and are consistent with recommendations from our annual independent actuarial review of our rate making.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), and 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Sarah Jackson, Tumwater, Washington, 360-902-5118; and Enforcement: Brenda Heilman, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees or rates pursuant to legislative standards.

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



Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024

Joel Sacks

Director

## OTS-5865.1

AMENDATORY SECTION (Amending WSR 24-02-069, filed 1/2/24, effective 4/1/24)

**WAC 296-14-8810 Pension tables, pension discount rate and mortality tables.** (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;

(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;

(iii) A pension discount rate of 4.0 percent for state fund pensions;

(iv) A pension discount rate of (~~5.5~~) 5.4 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

**WSR 24-21-133**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed October 22, 2024, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-096.

Title of Rule and Other Identifying Information: Physician assistant billing procedure, WAC 296-20-12501.

Hearing Location(s): On December 4, 2024, at 3:00 p.m., join electronically via Zoom <https://lni-wa-gov.zoom.us/j/81272605343?pwd=0W82SbeoVuLedcdaEixacjqlJYvm91.1>, Meeting ID 812 7260 5343, Passcode 22Hearing%; or join by phone (audio only) 253-215-8782 US (Tacoma), 253-205-0468 US. The hearing will begin at 3:00 p.m. (Pacific Time U.S. and Canada) and will continue until all oral comments are received.

Date of Intended Adoption: January 21, 2025.

Submit Written Comments to: Marc Hobbs, Department of Labor and Industries (L&I), Insurance Services, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email [Marc.Hobbs@lni.wa.gov](mailto:Marc.Hobbs@lni.wa.gov), fax 360-902-4249, beginning October 23, 2024, at 8:00 a.m., by December 4, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Marc Hobbs, phone 360-902-4244, fax 360-902-4249, email [Marc.Hobbs@lni.wa.gov](mailto:Marc.Hobbs@lni.wa.gov), by November 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to repeal WAC 296-20-12501 in its entirety. WAC 296-20-12501 requires physician assistants to be paid at 90 percent of the value listed in the fee schedule for services they perform. This change will allow L&I to pay physician assistants at parity with other providers.

Reasons Supporting Proposal: The pay differential in rule was put in place when physician assistants were exclusively supervised by other providers. Due to the passage of ESHB 2041, chapter 62, Laws of 2024, physician assistants may now practice autonomously in collaborative agreements. Therefore, it no longer makes sense to pay them less than other providers who practice independently.

Billing procedures are commonly published as part of payment policies rather than in WAC sections. No other WAC would be rendered inaccurate by the repeal of WAC 296-20-12501. Nothing in this WAC must by necessity appear in rule; therefore, it makes the most sense to repeal it in its entirety and move any necessary information physician assistants may need to payment policy, where it can be explained in greater detail and updated to reflect changes.

L&I will do a separate rule making to make any changes related to nonbilling language in chapter 296-20 WAC needed to align with ESHB 2041.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Hobbs, Tumwater, Washington, 360-902-4244; Implementation and Enforcement: Brenda Heilman, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Marc Hobbs, L&I, Insurance Services, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-4244, fax 360-902-4249, email Marc.Hobbs@Lni.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Removing the pay differential represents a 0.41 percent increase in the overall portion of the medical aid fund spent on physician assistants and is not expected to affect the base rates for a classification or the experience factor of an employer. As such, the proposed rules are not expected to add additional costs. Also, if more physician assistants are encouraged to treat injured workers, it can improve workers' ability to find a provider. Increasing access to care reduces delays in medical treatment and time loss payments, resulting in reduced claim costs and helping workers heal and return to work more quickly resulting in overall cost savings.

October 22, 2024  
Joel Sacks  
Director

## **OTS-5632.1**

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-20-12501 Physician assistant billing procedure.

## WSR 24-21-137

## PROPOSED RULES

## SKAGIT VALLEY COLLEGE

[Filed October 22, 2024, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-009.

Title of Rule and Other Identifying Information: Student conduct code, chapter 132D-150 WAC.

Hearing Location(s): On November 26, 2024, at 1:00 p.m., <https://skagitvalleycollege.zoom.us/j/82712287586>, Meeting ID 864 9770 2995, Passcode 275781; or One-tap mobile +12532050468,,82712287586#,,,,\*642909# US, +12532158782,,82712287586#,,,,\*642909# US (Tacoma).

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Pam Davis, 2405 East College Way, Mount Vernon, WA 9827 [98273], email [pam.davis@skagit.edu](mailto:pam.davis@skagit.edu), fax 360-416-7995, by November 19, 2024.

Assistance for Persons with Disabilities: Contact Pam Davis, phone 360-416-7995, fax 360-416-7773, TTY 360-416-7718, email [pam.davis@skagit.edu](mailto:pam.davis@skagit.edu), by November 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring chapter 132D-150 WAC, code of student conduct, into compliance with Title IX federal law changes that went into effect April 29, 2024.

Reasons Supporting Proposal: Skagit Valley College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 1, 2024. Amendments to the department's regulations implementing Title IX to clarify how recipient schools and institutions covered by Title IX must ensure that their education programs and activities are free from all prohibited sex discrimination. These amendments to the regulations were published by the Department of Education, Office for Civil Rights and codified at 34 C.F.R. Part 106, as amended, 89 F.R. 33474 (Apr. 29, 2024).

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 34.05.020.

Rule is necessary because of federal law, 34 C.F.R. 106.1.

Name of Proponent: Skagit Valley College, governmental.

Name of Agency Personnel Responsible for Drafting: Claire Peinado and Sandy Jordan, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7961; Implementation and Enforcement: Claire Peinado, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7961.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 34 C.F.R. 106.1 Nondiscrimination on the basis of sex.

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024

Pam Davis  
Executive Assistant to the President  
Rules Coordinator

**OTS-5640.2**

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-020 Statement of jurisdiction.** (1) The code of student conduct shall apply to ~~((student))~~ conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college ~~((sponsored))~~ programs or activities; or
- (c) ~~((To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students are engaged in official college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the associated students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time ~~((of application for admission))~~ they gain admission to the college through the ~~((actual receipt of a degree,))~~ last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by a student or student groups that occurs off campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-030 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "Calendar day" means days on the calendar including weekends and holidays.

(3) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(4) "Complainant" means the following individuals who are alleged to have been subjected to conduct violations of this code:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(5) "Conduct review officer" is a college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and/or first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(10) "President" is the president of the college. The president is authorized to delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set for this chapter as may be reasonably necessary.

(11) "Program" or "programs and activities" means all operations of the college.

(12) "Relevant" means related to allegations under investigation. Questions are relevant when they seek evidence that may aid in showing whether a violation occurred, and evidence is relevant when it may aid a decision maker in determining whether a violation occurred.

(13) "Respondent" is a student who is alleged to have violated the student conduct code.

(14) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document via first class mail to the party's last known address; or

(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and/or deposited in the mail.

(15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(16) "Student conduct officer" is a college administrator designated by the president or vice president (~~((for))~~) of student services to be responsible for implementing and enforcing the student conduct code. The president or vice president (~~((for))~~) of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((2) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(3) "The president" is the president of the college. The president is authorized to delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.~~

~~(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.~~

~~(6) "Respondent" is the student against whom disciplinary action is initiated.~~

~~(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:~~

~~(a) Hand delivery of the document to the party; or~~

~~(b) By sending the document via first class mail to the party's last known address; or~~

~~(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.~~

~~Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.~~

~~(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:~~

~~(a) Hand delivery of the document to the specified college official or college official's assistant; or~~

~~(b) By sending the document by email and first class mail to the specified college official's office and college email address.~~

~~Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.~~

~~(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.~~

~~(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."~~

~~(11) "Business day" means a weekday, excluding weekends and college holidays.~~

~~(12) "Calendar day" means days on the calendar including weekends and holidays.~~

~~(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-050.)~~ (17) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or a respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-



based harassment, occurred while the individual was performing employment-related work.

(18) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(19) "Supportive/interim measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive/interim measures may include, but are not limited to, counseling; extensions of the deadlines and other course-related adjustments; campus escort services; increased security and monitoring of a certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; modified on-campus employment schedule or location; restrictions on access to portions of campus including, but not limited to, on-campus housing; and training and education programs related to sex-based harassment.

(20) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

**Note:** "Day" refers to calendar days unless otherwise specified.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

**WAC 132D-150-040 Statement of student rights.** (1) As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual (~~harassment~~) discrimination.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 23-19-024, filed 9/10/23, effective 10/11/23)

**WAC 132D-150-050 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by the law.

(2) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in the conduct proceeding.

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, (~~and~~) fabrication, and deliberate damage.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((2) Other)~~ (4) Acts of dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

~~((3) Obstruction or disruption.~~ Obstruction or disruption of:

~~(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) Assault, intimidation, harassment.~~ Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

~~(a) Bullying is severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.~~

~~(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.~~

~~(5) Cyber misconduct.~~ Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

~~(6) Property violation.~~ Damage to, or theft or misuse of, real or personal property or money of:

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization;~~  
~~(c) Any other member of the college community or organization; or~~  
~~(d) Possession of such property or money after it has been stolen.~~

~~(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.~~

~~(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;~~

~~(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or~~

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical, religious, or other purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.~~

~~(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.~~

~~(9) **Hazing.** Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.~~

~~(10) **Alcohol, drug, and tobacco violations.**~~

~~(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.~~

~~(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, win-~~

dows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that

person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

~~(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

~~Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.~~

~~(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.~~

~~(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:~~

~~(a) Unauthorized use of such resources or opening of a file, message, or other item;~~

~~(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;~~

~~(c) Unauthorized use or distribution of someone else's password or other identification;~~

~~(d) Use of such time or resources to interfere with someone else's work;~~

~~(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;~~

~~(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;~~

~~(g) Use of such time or resources in violation of applicable copyright or other law;~~

~~(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or~~

~~(i) Failure to comply with the college's electronic use policy.~~

~~(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.~~

~~(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.~~

~~(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.~~

~~(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.~~

~~In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.)~~ (5) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Cannabis.** The use, possession, delivery, sale, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(6) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic

communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

**(7) Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

**(8) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

**(9) Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

**(10) Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on



the intensity, frequency, context, and duration of the comments or actions.

(11) **Hazing.** Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Examples of hazing include, but are not limited to:

(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(12) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(13) **Lewd conduct.** Conduct which is:

(a) Lewd. Involving sexual conduct that is considered indecent or offensive.

(b) Obscene. Offensive, rude, or shocking, usually because of being too obviously related to sex or showing sex.

(14) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(15) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(16) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

(18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) **Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(I) Invading another person's sexual privacy;

(II) Prostituting another person;

(III) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(IV) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(V) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(VI) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(VII) Causing the nonconsensual indecent exposure of another person, as defined by subsection (12) of this section.

(D) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

(E) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(F) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(G) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, economic abuse, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(H) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(I) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(20) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(21) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where

that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic and parking rules.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus and during college programming and activities, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

**WAC 132D-150-070 ~~Corrective action—Disciplinary sanctions—Terms and conditions.~~** One or more of the following corrective actions or disciplinary sanctions may be imposed upon ((students)) a student or upon college-sponsored student organizations, athletic teams, or living groups found ((to have violated)) responsible for violating the student conduct code.

(1) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is ((a)) an alleged violation and that continued violations may be cause for ((further)) disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited

period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the ~~((action is taken))~~ suspension is imposed.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the ~~((action is taken))~~ dismissal is imposed.

(6) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Education.** Participation in or successful completion of an educational assignment, designated to create an awareness of the student's misconduct.

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

~~((b))~~ (d) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~((e))~~ (e) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

~~((d))~~ (f) **No contact ~~((order))~~ directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

More than one of the disciplinary terms and conditions above may be imposed for any single violation.

If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the

student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions or readmission to the college.

NEW SECTION

**WAC 132D-150-080 Hazing sanctions.** (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-090 Initiation of disciplinary action.** (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

~~((2))~~ (8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing ~~((him or her))~~ them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

~~((3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4))~~ (9) Within ~~((ten))~~ 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to



reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

((5)) (10) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132D-150-070.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(11) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If

either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-110 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth by WAC 132D-150-090(11) Initiation of disciplinary action, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~ten business~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct (~~review~~) officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) (~~The student conduct committee shall hear appeals from:~~

~~(a) The imposition of disciplinary suspensions in excess of ten instructional days;~~

~~(b) Dismissals; and~~

~~(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.~~

~~(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~(a) Suspensions of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.)~~ A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The student conduct committee shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals;

(c) Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of (~~sexual misconduct~~) sex discrimination, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a (~~sexual misconduct~~) sex discrimination complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a (~~sexual misconduct~~) sex discrimination violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a (~~sexual misconduct~~) sex discrimination violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

#### NEW SECTION

**WAC 132D-150-120 Conduct holds on student records.** (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

#### NEW SECTION

**WAC 132D-150-125 Amnesty policy.** (1) Skagit Valley College values the health, safety, and wellness of those in our college communi-

ty. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical attention or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health and safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sex discrimination, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regards to alcohol, drugs, or other prohibited conduct.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-150 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which (~~he or she is~~) they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving (~~sexual misconduct~~) sex discrimination, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within (~~ten business~~) 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~ten~~) 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) (~~In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the com-~~

plainant's protection. The notice will also inform the complainant of their appeal rights.

~~(5))~~ If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-170 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within ~~((twenty-one))~~ 21 days of service of the initial decision.

(2) The president shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within ~~((twenty))~~ 20 days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty))~~ 20 calendar days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

**WAC 132D-150-210 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;  
 (b) Two faculty members appointed by the president;  
 (c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. (~~The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.~~)

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member (~~pursuant to RCW 34.05.425(4)~~).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-230 Appeal—Student conduct committee—Prehearing.**

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control~~).

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and

(f) A statement that retaliation is prohibited.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline, or referral to the committee; and

(b) The notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

~~(9) ((Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.)) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.~~

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing; and

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be



served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that (~~he/she selects~~) they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the college's case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of ~~((sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.))~~ sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent

may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-270 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form, written or verbal, it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within (~~twenty~~) 21 calendar days following the (~~later of the~~) conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving (~~allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.~~) sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-290 Appeal from student conduct committee review of initial decision.**

~~(1) ((A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.~~

~~(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.~~

~~(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any request to reconsideration and/or judicial review.~~

~~(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.~~

~~(5)) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.~~

~~(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:~~

~~(a) Procedural irregularity that would change the outcome;~~

~~(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and~~

~~(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.~~

~~(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.~~

~~(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before~~

the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and the Title IX coordinator.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-13-151, filed 6/22/21, effective 7/23/21)

**WAC 132D-150-310 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion

of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of (~~sexual misconduct~~) sex discrimination, the complainant shall be notified that a summary suspension has been imposed (~~in~~) on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132D-150-350	Supplemental sexual misconduct procedures.
WAC 132D-150-370	Supplemental definitions.
WAC 132D-150-390	Supplemental complaint process.
WAC 132D-150-410	Supplemental appeal rights.
WAC 132D-150-500	Order of precedence.
WAC 132D-150-510	Prohibited conduct under Title IX.
WAC 132D-150-520	Title IX jurisdiction.
WAC 132D-150-530	Initiation of discipline.
WAC 132D-150-540	Prehearing procedure.
WAC 132D-150-550	Rights of parties.
WAC 132D-150-560	Evidence.
WAC 132D-150-570	Initial order.
WAC 132D-150-580	Appeals.

**WSR 24-21-141**  
**PROPOSED RULES**  
**GREEN RIVER COLLEGE**  
[Filed October 22, 2024, 1:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-014.

Title of Rule and Other Identifying Information: Green River College, rules of student conduct.

Hearing Location(s): On December 3, 2024, at 12:00 p.m., at Green River College, 31920 124th Avenue S.E., Auburn, WA 98092, Pine and Noble Room SU 200; or Zoom <https://us02web.zoom.us/j/89498365564?pwd=fSPUGlbOvLrbdKppFqdirQecaDRZc4.1>, Meeting ID 894 9836 5564, Passcode 98092; or One-tap mobile, +12532050468,,89498365564# US, +12532158782,,89498365564# US (Tacoma). Find your local number <https://us02web.zoom.us/j/89498365564?pwd=fSPUGlbOvLrbdKppFqdirQecaDRZc4.1>. Student conduct permanent rules open forum, on December 3, 2024, at 11:30 a.m. Pacific Time (US and Canada).

Date of Intended Adoption: January 17, 2025.

Submit Written Comments to: Shawn Percell, 31920 124th Avenue S.E., Auburn, WA 98092, email [conduct@greenriver.edu](mailto:conduct@greenriver.edu), <https://forms.office.com/r/epYdKRUCMv>, by December 20, 2024.

Assistance for Persons with Disabilities: Contact disability support services, phone 253-931-6460, TTY 253-288-3359, email [dss@greenriver.edu](mailto:dss@greenriver.edu), [www.greenriver.edu/accessibility](http://www.greenriver.edu/accessibility), by November 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address state and federal law compliance requirements and general updates to organization and usefulness of the student conduct code for students and the campus community.

On April 19, 2024, the United States Department of Education released its final rule to fully effectuate Title IX's promise that no person experiences sex discrimination in federally funded education. Before issuing the proposed regulations, Green River College received feedback on its Title IX regulations, as amended in 2020, from a wide variety of stakeholders. The final regulations strengthen several major provisions from the current regulations and provide schools with information to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations are effective on August 1, 2024, and apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. Existing policies and procedures will remain in place for complaints of alleged conduct that occurs prior to August 1, 2024.

Reasons Supporting Proposal: Chapter 34.05 RCW and RCW 28B.50.140.

Statutory Authority for Adoption: 2024 Title IX Regulations; § 106; Authority: 20 U.S.C. 1681 *et seq.*

Statute Being Implemented: 2024 Title IX Regulations; § 106; Authority: 20 U.S.C. 1681 *et seq.*

Rule is necessary because of federal law, § 106; Authority: 20 U.S.C. 1681 *et seq.*

Name of Proponent: Green River College, Student Affairs, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Shawn Percell, Director of Judicial Affairs, SA - 206, 253-833-9111; and Enforcement: David Larsen, Dean of Enrollment and Completion, SA - 206, 253-833-9111.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 34 C.F.R. 106.1 Nondiscrimination on the basis of sex.

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024

Shawn Percell

Director of Judicial Affairs and Compliance

### OTS-5906.3

AMENDATORY SECTION (Amending WSR 15-15-071, filed 7/13/15, effective 8/13/15)

**WAC 132J-126-010 Purpose.** (1) Green River College, an agency of the state of Washington, provides a variety of educational opportunities for students; namely the opportunities to examine the academic, vocational, technical, cultural, social, and recreational aspects of society. Green River College as an institution of society must maintain conditions conducive to the effective performance of its functions. Consequently, Green River College has special expectations regarding the conduct of students. Student conduct that detracts from, or interferes with, the accomplishment of college purposes is not acceptable.

(2) The student is a member of the community at large, and as such has the rights and responsibilities of any citizen. In addition, admission to Green River College carries with it the presumption that students will conduct themselves as responsible members of the college community. This includes an expectation that students will obey the law, will comply with rules and regulations of the college, will maintain a high standard of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

(3) The following rules regarding the conduct of students are adopted in order to provide students a full understanding of the rules that will enable the college to maintain conditions conducive to the effective performance of the college's functions. Sanctions for violations of the rules of student conduct will be administered by the college in the manner provided by said rules. When violation(s) of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to the appropriate authorities. In cases of minors, this conduct may also be referred to parents or legal guardians.



(4) The office of judicial ~~((programs))~~ affairs, under the leadership of the vice president of student affairs, maintains and administers the student conduct code ~~((of conduct))~~ for Green River College. The office of judicial ~~((programs))~~ affairs and Green River College strive to engage our students to become civic minded citizens who positively contribute to society and achieve their educational goals. The office of judicial ~~((programs))~~ affairs seeks to educate students as to their rights, responsibilities, and expectations as members of Green River College while providing a fair and educational process through which alleged violations of the conduct code ~~((of conduct))~~ are adjudicated.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-020 Statement of jurisdiction.** (1) The student conduct code shall apply to ~~((student))~~ conduct by students or student groups that occurs:

(a) On college premises ~~((, to conduct that occurs))~~;

(b) At or in connection with college ~~((sponsored))~~ programs or activities ~~((,))~~; or ~~((to off-campus conduct that,))~~

(c) Off-campus premises if in the judgment of the college, ~~((adversely affects))~~ the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but ~~((is))~~ not limited to, ~~((locations in which students are engaged in official college activities including, but not limited to,))~~ college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated))~~ students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(4) Students are responsible for their conduct from the time of application for admission through the ~~((actual receipt of a degree))~~ last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. Inappropriate conduct by students who have completed classes and are awaiting graduation ceremony are covered by this student conduct code.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 23-06-050, filed 2/27/23, effective 3/30/23)

**WAC 132J-126-030 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

**"Assembly"** is any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or groups of persons.

**"Business day"** means a weekday, excluding weekends and college holidays.

~~(("Cheating" is defined as intentional deception in producing or creating academic work. Cheating includes, but is not limited to:~~

- ~~(a) Intentional plagiarism;~~
- ~~(b) Selling or giving your own completed work to others who intend to turn it in as their own;~~
- ~~(c) Purchasing or accepting the work of others with the intent of turning it in as your own;~~
- ~~(d) Acquiring and/or using teachers' editions of textbooks, without the permission of the specific instructor, in order to complete your course assignments;~~
- ~~(e) Obtaining or attempting to obtain an examination prior to its administration;~~
- ~~(f) Referring to devices, materials or sources not authorized by the instructor;~~
- ~~(g) Receiving assistance from another person when not authorized by the instructor;~~
- ~~(h) Providing assistance to another person when not authorized by the instructor;~~
- ~~(i) Taking an examination for another person;~~
- ~~(j) Obtaining or attempting to obtain another person to take one's own examination;~~
- ~~(k) Falsifying laboratory results or copying another person's laboratory results; and~~
- ~~(l) Falsifying or attempting to falsify the record of one's grades or evaluation.))~~

**"College"** means Green River College.

**"College facilities"** includes all buildings, structures, grounds, office space, and parking lots.

**"College groups"** shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

**"College official"** includes any person employed by the college, performing assigned administrative or professional responsibilities.

**"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

**"Complainant"** ~~((means any person who submits a charge alleging that a student violated the student code. When a student believes that she/he has been a victim of another student's misconduct, the student who believes she/he has been a victim will have the same rights under this student code as are provided to the complainant, even if another member of the college community submitted the charge himself or herself))~~ is a student, employee, or another member of the college community who was participating or attempting to participate in college

programs and activities at the time of the alleged violation, and who is directly affected by a claimed violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may file complaints alleging a violation of the student conduct code. In any case involving a report of sex discrimination, a complainant is afforded certain rights as specified in this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision or dismissal of their sex discrimination complaint; and

(c) The right to be accompanied by an advisor, who may be an attorney retained at complainant's cost.

"Conduct review officer" is a college administrator designated by the president, the vice president of student affairs, or other designated college administrator ((designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary)) who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

"De minimis" insignificant; too trivial or minor to merit consideration.

"Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

"Disciplinary appeal" is the process by which an aggrieved ((student)) party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal are heard by the student conduct ((appeals board)) committee. Appeals of all other appealable disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

"Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspectives or viewpoints.

"Fabrication" is defined as intentional misrepresentation of an activity done by a student for an academic project or practicum. Fabrication includes, but is not limited to:

(a) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(b) Counterfeiting a record of internship or practicum experiences;

(c) Submitting a false excuse for absence or tardiness; ((and))

(d) Unauthorized multiple submission of the same work; sabotage of others' work; or

(e) Creating or using falsified records with any administrative office.

((("Faculty member" means any person hired by the college to conduct classroom, counseling, or teaching activities or who is otherwise considered by the college to be a member of its faculty.))

**"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

- (a) Hand delivery of the document to the specified college official or college official's assistant; or
- (b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

**"May"** is used in the permissive sense.

**"Member of the college community"** includes any person who is a student, faculty member, college official or any other person employed by the college. A person's status in a particular situation shall be determined by the vice president of student affairs or designee.

**"Noncollege groups"** shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

**"Organization"** means number of persons who have complied with the formal requirements for college recognition/registration.

**"Plagiarism"** is defined as using others' original ideas in your written or spoken work without giving proper credit.

- (a) Ideas include, but are not limited to:
  - (i) Facts;
  - (ii) Opinions;
  - (iii) Images;
  - (iv) Statistics;
  - (v) Equations;
  - (vi) Hypotheses;
  - (vii) Theories.
- (b) Plagiarism can occur in two ways: Intentional and unintentional.
- (c) Ways that intentional plagiarism occur include, but are not limited to:
  - (i) Turning in someone else's work as your own;
  - (ii) Copying words or ideas from someone else without giving credit;
  - (iii) Failing to put a quotation in quotation marks;
  - (iv) Giving incorrect information about the source of a quotation;
  - (v) Changing words but copying the sentence structure of a source without giving credit;
  - (vi) Copying so many words or ideas from a source that it makes up the majority of your work, whether you give credit or not.
- (d) Unintentional plagiarism may occur when a student has tried in good faith to document their academic work but fails to do so accurately and/or thoroughly. Unintentional plagiarism may also occur when a student has not had course work covering plagiarism and documentation and is therefore unprepared for college academic writing or speaking.

**"Policy"** means the written regulations of the college as found in, but not limited to, the student code, the college web page and computer use policy, and catalogs.

**"Pregnancy or related conditions"** means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

"Preponderance of the evidence" is the standard of proof used for decisions in the disciplinary and appeal processes.

"President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

"Process advisor" is a person selected by a respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code. A process advisor must consent to participating in this role.

"Program" or "programs and activities" means all operations of the college.

"Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

"Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

"Respondent" is the student ((against whom disciplinary action is initiated)) who is alleged to have violated the student conduct code.

"Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

"Shall" is used in the imperative sense.

"Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

"Student conduct officer" is a college administrator designated by the president or vice president of student affairs to be responsible for implementing and enforcing the student conduct code. The president or vice president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a stu-

dent employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

**"Student group"** for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups (~~within student housing.~~

~~"The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~"Vice president of student affairs" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The vice president of student affairs may designate a student conduct officer to fulfill this responsibility).~~

"Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

"Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

## NEW SECTION

**WAC 132J-126-035 Service of notices, filings, orders, and time limits.** (1) Service of all college notices under this code will be sent by electronic mail (email) addressed to the party's college-issued email address. An alternative email address may be provided to the presiding officer(s) and reviewing officer(s) in writing. Service is complete at the moment the email is sent to the email address. If there is no email on record, service may also be accomplished by personal service or by posting it in the United States mail, properly addressed, and postage prepaid. Service by mail is complete upon deposit in the United States mail.

(2) The parties are permitted to file documents with the presiding officer or reviewing officer(s) via email or other electronic

means as determined by the presiding officer or reviewing officer(s). Receipt of such documents will be determined by the date of the email. For documents that must be shared with other parties, the college will be responsible for service of such documents, as above.

(3) In computing any period of time under this conduct code, the day of service of any order, notice, or other document is not counted. The last day of the applicable period of time is counted. If the last day of the applicable period of time falls on a Saturday, Sunday, or official state holiday (which includes the day after Thanksgiving), the period ends on the next business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(4) The time limit for seeking administrative review of an initial order is based upon the date of service of the initial order.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-040 Student code authority.** (1) The Green River College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee.

(2) Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

(3) The vice president of student affairs or designee shall develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct hearings that are not inconsistent with provisions of the student code.

~~((2))~~ (4) The vice president of student affairs or designee shall determine the composition of the student conduct committee in accordance with WAC 132J-126-180.

~~((3))~~ (5) Decisions made by a student conduct officer shall be final, pending the normal appeal process.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-050 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) (~~(Academic freedom.)~~) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including (~~(sexual)~~) sex discrimination or sex-based harassment.

(2) (~~(Due process.)~~) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 15-15-071, filed 7/13/15, effective 8/13/15)

**WAC 132J-126-070 Denial of access to Green River College.** (1)

The vice president of student affairs may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to self or other members of the campus community.

(2) Denial of access decisions may be appealed, as or like disciplinary actions, to the student conduct committee.

(3) Notice. Any prospective student or enrolled student who has been denied admission shall be served with oral or written notice of the denied admission. If oral notice is given, a written notification shall be served to the denied prospective student or enrolled student within five business days of the oral notice.

(4) The written notification shall be entitled "Notice of Admission Denial" and shall include:

(a) The reason(s) for denying admission; and

(b) Appeal rights with an explanation of the consequences of failing to file a timely appeal.



AMENDATORY SECTION (Amending WSR 23-06-050, filed 2/27/23, effective 3/30/23)

**WAC 132J-126-090 ~~Conduct—Student responsibilities and prohibited student conduct.~~** (~~Any student or student group shall be subject to disciplinary action as provided for in this chapter, who either as a principal actor, aide, abettor, or accomplice as defined in RCW 9A.08.020:~~

~~Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;~~  
~~Violates any provision of this chapter; or~~  
~~Commits any prohibited act including, but not limited to, the following:~~

~~(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. In academically honest writing or speaking, the student documents his/her source of information whenever:~~

~~Another person's exact words are quoted;~~

~~Another person's idea, opinion or theory is used through paraphrase; and~~

~~Facts, statistics, or other illustrative materials are borrowed.~~

~~In order to complete academically honest work, students should:~~

~~Acknowledge all sources according to the method of citation preferred by the instructor;~~

~~Write as much as possible from one's own understanding of the materials and in one's own voice;~~

~~Ask an authority on the subject, such as the instructor who assigned the work; and~~

~~Seek help from academic student services such as the library and/or writing center.~~

~~(2) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products are not allowed on college campus. In addition to the main campus, this also includes any building and premises owned, leased or operated by the college outside of the main campus. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.~~

~~(3) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(4) **Drugs/substance abuse.**~~

~~(a) Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells any narcotic drug or controlled substance as defined in RCW 69.50.101, in violation of law or in a manner which significantly disrupts a college activity. For purposes of this section, "sell" includes the statutory meaning in RCW 69.50.410.~~

~~(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(5) **Conduct at college functions.** Any student who significantly disrupts or obstructs any teaching, research, administration, disci-~~

plinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.

~~(6) **Theft; stolen property; robbery.** Any student who, while in any college facility or participating in a college-related program, commits or attempts to commit theft as defined in RCW 9A.56.020, or possesses stolen property as defined in RCW 9A.56.140, or commits or attempts to commit robbery as defined in RCW 9A.56.190.~~

~~(7) **Damaging property.**~~

~~(a) Any student who causes or attempts to cause physical damage to property owned, controlled or operated by the college, or to property owned, controlled or operated by another person while said property is located on college facilities.~~

~~(b) Any student who in this or any other manner is guilty of malicious mischief in violation of RCW 9A.48.070 through 9A.48.100.~~

~~(8) **Abuse; intimidation.** Physical abuse, verbal abuse, threats, intimidation, coercion, and/or other conduct which threatens or endangers the health or safety of any person.~~

~~(9) **Hazing.**~~

~~(a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group; or~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions.~~

~~(d) Consent is not a valid defense against hazing.~~

~~(10) **Failure to comply.** Failure to comply with directions of college officials, campus safety officers, or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.~~

~~(11) **Possession of keys.** Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.~~

~~(12) **Policy violation.** Violation of any college policy, rule, or regulation published in hard copy or available electronically on the college website.~~

~~(13) **Violation of laws.** Violation of any federal, state, or local law.~~

~~(14) **False alarms.** Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.~~

~~(15) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person be-~~

cause of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

~~(16) **Sexual misconduct.**~~

~~(a) Sexual misconduct is any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.~~

~~(b) Consent to sexual activity requires that, at the time of the act, there are actual words or conduct demonstrating freely given agreement to sexual activity, silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:~~

~~(i) Force or blackmail is threatened or used to procure compliance with the sexual activity; or~~

~~(ii) The person is unconscious or physically unable to communicate his or her unwillingness to engage in sexual activity; or~~

~~(iii) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause.~~

~~(c) A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.~~

~~(d) The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.~~

~~(e) The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(17) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.~~

~~(18) **Weapons and fireworks.** Possession or use of fireworks anywhere on campus; possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or any other cutting or stabbing instrument, or club, or incendiary device, or explosive, or any facsimile weapons, or any other weapon apparently capable of producing bodily harm and/or property damage is prohibited on the college campus, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel, legally authorized military personnel, or bank-related security personnel required by their office to carry such weapons or devices.~~

~~(b) Possession or use of disabling chemical sprays when used for self-defense.~~

~~(c) The president may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.~~

~~(19) **Demonstrations.** Participating in an on-campus or off-campus demonstration, riot, or activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.~~

~~(20) **Disorderly conduct.** Conduct that is disorderly, lewd, indecent, or obscene; breach of peace; or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored by, or participated in by, the college or members of the college community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or without his/her effective consent when such a recording is in a place or situation where he or she has a reasonable expectation of privacy. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.~~

~~(21) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of his/her race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

~~(22) **Stalking.** Stalking, defined as intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.~~

~~(23) **Improper use of technology.** Theft or other abuse of computer facilities and resources including, but not limited to:~~

~~(a) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.~~

~~(b) Unauthorized transfer of a file.~~

~~(c) Use of another individual's identification and/or password.~~

~~(d) Use of computing facilities and resources to interfere with the work of another student, faculty member, or college official.~~

~~(e) Use of computing facilities and resources to view or send obscene or abusive messages.~~

~~(f) Use of computing facilities and resources to interfere with normal operation of the college computing system.~~

~~(g) Use of computing facilities and resources in violation of copyright laws.~~

~~(h) Any violation of the Student Affairs Policy SA-24 – Student Acceptable Computer Use.~~

~~(24) **Forgery or alteration of records.** Any student who, while in any college facility or participating in a college-related program, engages in forgery, as defined in RCW 9A.60.020.~~

~~(25) **Disruption of conduct process.** Abuse of the student conduct system including, but not limited to:~~

~~(a) Falsification, distortion, or misrepresentation of information before a student conduct officer.~~

~~(b) Disruption or interference with the orderly conduct of a student conduct hearing proceeding.~~

~~(c) Institution of a student conduct code proceeding in bad faith.~~

~~(d) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.~~

~~(e) Attempting to influence the impartiality of a member of a student conduct officer prior to, and/or during the course of, the student conduct hearing proceeding.~~

~~(f) Harassment (verbal or physical) and/or intimidation of a member of a student conduct officer prior to, during, and/or after a student conduct hearing proceeding.~~

~~(g) Failure to comply with the sanction(s) imposed under the student code.~~

~~(h) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.~~

~~(26) **False complaint.** Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.~~

~~(27) **Classroom conduct.** Any student who significantly disrupts any college class and makes it unreasonably difficult to conduct the class in an orderly manner shall be subject to disciplinary action. An instructor/faculty member may impose any of the following actions for classroom conduct:~~

~~(a) Warning: An oral or written notice to a student that college and/or classroom expectations about conduct have not been met.~~

~~(b) Reprimand: A written notice which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct shall result in further disciplinary action.~~

~~(c) Summary suspension for a maximum of two days: As defined in WAC 132J-126-230.~~

~~At any time, severe misconduct or continued misconduct shall be just cause for the matter to be forwarded immediately to the vice president of student affairs or designee for further action.~~

~~(28) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.) The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:~~

(1) Abuse or intimidation of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including:

(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, coursework, assessment, test, or examination. This includes, but is not limited to, the selling or giving of your own completed work to others who intend to turn it in as their own, purchasing or accepting the work of others with the intent of turning it in as your own, acquiring instructor editions of textbooks without permission of the specific instructor in order to complete your assignments, referring to devices or materials not authorized by the instructor, taking an examination for another person, or obtaining or attempting to obtain another person to take one's own examination.

(b) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication - Falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) Multiple submissions - Submitting the same work in separate courses without the express permission of the instructor(s).

Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

(4) Acts of dishonesty. Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee;

(c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) **Cannabis, drug, and tobacco violations.**

(a) **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being observably under the influence of any legend drug or possession of drug paraphernalia, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(c) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products are not allowed on college campus. In addition to the main campus, this also includes any building and premises owned, leased, or operated by the college outside of the main campus. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water-pipes, hookahs, chewing tobacco, and snuff.

(7) **Classroom conduct.** Any student who significantly disrupts any college class and makes it unreasonably difficult to conduct the class in an orderly manner shall be subject to disciplinary action. An instructor/faculty member may impose any of the following actions for classroom conduct:

(a) **Warning:** An oral or written notice to a student that college and/or classroom expectations about conduct have not been met.

(b) **Reprimand:** A written notice which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct shall result in further disciplinary action.

(c) **Summary suspension** for a maximum of two instructional days as defined in WAC 132J-126-230.

At any time, severe misconduct or continued misconduct shall be just cause for the matter to be forwarded immediately to the vice president of student affairs or designee for further action.

(8) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, texts, or messages, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity (spoofing), nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed

at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(10) **Disorderly conduct.** Conduct that is disorderly, lewd, indecent, or obscene; breach of peace; or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored by, or participated in by, the college or members of the college community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without their prior knowledge, or without their effective consent when such a recording is in a place or situation where they have a reasonable expectation of privacy. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(11) **Disruption of conduct process.** Abuse of the student conduct system including, but not limited to:

(a) Falsification, distortion, or misrepresentation of information before a student conduct officer.

(b) Disruption or interference with the orderly conduct of a student conduct hearing proceeding.

(c) Engaging in student conduct code proceeding in bad faith.

(d) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(e) Attempting to influence the impartiality of a member of a student conduct officer prior to, and/or during the course of, the student conduct hearing proceeding.

(f) Harassment (verbal or physical) and/or intimidation of a member of a student conduct officer prior to, during, and/or after a student conduct hearing proceeding.

(g) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(12) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college. Disruption or obstruction may also include obstruction or disruption at other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.



(13) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(14) **Failure to comply.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(15) **False complaint.** Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(16) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(17) **Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(18) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or way such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(19) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's identification or password;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Any violation of the Student Affairs Policy SA-24 - Student Acceptable Computer Use.

(20) **Property violation.**

(a) Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks. Violations include attempts and successful completion of the items listed above.

(b) Any student who in this or any other manner is guilty of malicious mischief in violation of RCW 9A.48.070 through 9A.48.100.

(21) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies.

(22) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community including, but not limited to, tampering with fire safety equipment, failing to evacuate during a fire alarm, or triggering false alarms or other emergency response systems.

(23) **Stalking.** Stalking is defined as a course of conduct or pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear for their safety or the safety of their property, or the safety of others or their property, or suffer substantial emotional distress. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(a) Repeated, unwanted, intrusive, and frightening communications from the perpetrator by phone.

(b) Following or laying in wait for the victim at places such as home, school, work, or recreation place.

(c) Making direct or indirect threats to harm the victim, the victim's children, relatives, friends, or pets.

(d) Damaging or threatening to damage the victim's property.

(e) Harassing victim through the internet.

(f) Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.

(g) Obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting the victim's friends, family work, or neighbors, etc.

(24) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object,

by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testi-

fied, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(25) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(26) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic, and parking rules.

(27) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus and during college programming and activities, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel, or bank-related security personnel required by their office to carry such weapons or devices while in performance of their official duties;

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission;

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-100 Violation of law and college discipline.** (1) College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and this student code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the vice president of student affairs or designee. Determinations made or sanctions imposed under this student code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of, or against the criminal law defendant.

(2) When a student is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for that individual because of his or her

status as a student. If the alleged offense is also being processed under the student conduct code, the college may advise off-campus authorities of the existence of the student conduct code and of how such matters are typically handled within the college community. The college will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the college community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

#### NEW SECTION

**WAC 132J-126-110 Amnesty.** (1) Green River College values the health, safety, and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect to not initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect to not initiate disciplinary action against a student who, while in the course of reporting violence, sex discrimination, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regard to alcohol, drugs, or other prohibited conduct.

#### NEW SECTION

**WAC 132J-126-115 Interim measures.** (1) After receiving a report of sex discrimination or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

- (a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting party, other specified persons, and/or a specific student group or organization;
- (b) Reassignment of on-campus housing;
- (c) Reassignment of arranged off-campus housing;
- (d) Changes to class schedules, assignments, or test schedules;
- (e) Modified on-campus employment schedule or location;
- (f) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or

(g) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. A student conduct officer or designee may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer or designee.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code. A respondent who fails to comply with any interim protective measures may, however, be charged with a "failure to comply" pursuant to WAC 132J-126-090.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-120 Purpose of disciplinary action.** The college may apply sanctions or take other appropriate action for violations of the student conduct code (~~(of conduct)~~). Disciplinary proceedings shall determine whether and under what conditions the (~~violator~~) respondent may continue as a student of the college.

AMENDATORY SECTION (Amending WSR 23-06-050, filed 2/27/23, effective 3/30/23)

**WAC 132J-126-125 Hazing prohibited—Sanctions.** (~~((1) Hazing by a student or a student group is prohibited pursuant to WAC 132-126-090(9).~~)

~~(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.~~

~~(3) Washington state law provides that:~~

~~(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

~~(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.~~

~~(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.~~

~~(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date~~

~~the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.))~~ (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the student conduct code, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-130 Corrective action, disciplinary ((terms)) sanctions, terms and conditions.** ~~((The following definitions of disciplinary terms have been established to provide consistency in the application of penalties:~~

~~(1) **Warning** — A notice in writing to the student that the student is violating or has violated institutional regulations.~~

~~(2) **Probation** — A written reprimand for violation of specified regulations. Probation is indefinite or for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period.~~

~~(3) **Loss of privileges** — Denial of specified college privileges for a designated period of time.~~

~~(4) **Fines** — Previously established and published monetary charges.~~

~~(5) **Restitution** — Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.~~

~~(6) **Discretionary sanctions** — These may include, but are not limited to, work assignments, essays, service to the college, or other related discretionary assignments.~~

~~(7) **College suspension** — Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.~~

~~(8) **College dismissal** — Permanent separation of the student from the college.~~

~~(9) **Revocation of admission and/or degree** — Admission to or a degree awarded from the college may be revoked for fraud, misrepresenta-~~



tion, or other violation of college standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

~~(10) **Registration hold** — Students may have their registration privileges blocked pending the completion of specified sanctions/conditions. Holds may be placed and removed only by the vice president of student affairs or designee.~~

~~(11) **Revocation of club status and loss of college recognition** — Applies to clubs and organizations.)~~ (1) The following corrective actions or disciplinary sanctions may be imposed upon students or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code:

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of the student conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction.

(i) Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(ii) If the student, subject to a deferred disciplinary sanction, is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation.

(d) **Disciplinary suspension.** Separation from the college and from student status for a stated period of time.

(i) There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

(ii) Conditions of suspension may be imposed and will be specified. Except as otherwise specified in the final order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner will extend the suspension period and any conditions, and may result in additional disciplinary sanctions.

(iii) The college may put an enrollment hold in place during the suspension period, which includes enrollment privileges being blocked pending the completion of specified sanctions/conditions. Holds may be placed and removed only at the direction of the vice president of student affairs or designee.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.

(2) **Additional disciplinary terms.** Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **Revocation of club status and loss of college recognition.** Applies to clubs and organizations.

(d) **Not in good standing.** A student found to be "not in good standing" with the college may be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(e) **No contact directive.** An order directing a student to have no direct or indirect physical, verbal, electronic, and/or written contact with another specified student, college employee, a particular college facility, or group.

(f) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required.

(i) The student may choose the professional within the scope of practice and with the professional credentials as defined by the college.

(ii) The student will sign all necessary releases to allow the college access to any such evaluation.

(iii) The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(g) **Housing suspension.** Separation of the student from college-owned or operated housing or host family status for a definite period of time, after which the student may be eligible to return. Conditions for reacceptance may be specified.

(h) **Housing dismissal.** Permanent separation of the student from college-owned or operated housing or host family status.

(i) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, material replacement, appropriate service, or other compensation.

(j) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(k) **Revocation of admission and/or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction, term, or condition, the disciplinary sanction, term, or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanctions, terms, or conditions, and may be considered in petitions for readmission to the college.

NEW SECTION

**WAC 132J-126-135 Conduct hold on student records.** (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official, or until the conduct process has concluded.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-140 Initiation of disciplinary action.** (~~((1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

~~(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student~~

~~conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.~~

~~(4) The student conduct officer may take any of the following disciplinary actions:~~

~~(a) Exonerate the respondent and terminate the proceedings;~~

~~(b) Impose a disciplinary sanction(s), as described in WAC 132J-126-130;~~

~~(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.)~~ (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner according to college procedures and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex discrimination complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the vice president of student affairs or designee shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132J-126-130; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) Cases involving allegations of sex discrimination, including sex-based harassment, will follow the procedure set forth in WAC 132J-126-530.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-150 Appeal from disciplinary action.** ~~((The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.~~

~~(1) The notice of appeal must include a brief statement explaining why the respondent is seeking review.~~

~~(2) The parties to an appeal shall be the respondent and the conduct review officer.~~

~~(3) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.~~

~~(4) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.~~

~~(5) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.~~

~~(6) The student conduct committee shall hear appeals from:~~

~~(a) The imposition of disciplinary suspensions in excess of ten instructional days;~~

~~(b) Dismissals; and~~

~~(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.~~

~~(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~(a) Suspensions of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.~~

~~(8)) (1) Except in cases involving allegations of sex discrimination, including sex-based harassment, as set forth in WAC 132J-126-140 (2) (a), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.~~

~~(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.~~

~~(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct officer.~~

~~(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.~~

~~(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.~~

~~(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.~~

~~(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:~~

~~(a) Suspensions of 10 instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.~~

~~(8) The student conduct committee shall hear appeals from:~~

(a) Disciplinary suspensions in excess of 10 instructional days; or, for disciplinary suspensions from a student group, suspensions in excess of two academic terms;

(b) Dismissals; or, for dismissals from a student group, deprivation of recognition or approval granted by the college;

(c) Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-160 Brief adjudicative proceedings (~~(—Initial hearing)~~) (BAP).** (~~((1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.~~)

~~(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter; and (b) an opportunity to explain the party's view of the matter.~~

~~(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.~~

~~(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.)~~ **(1) Authorization.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to student conduct appeals involving the following disciplinary actions:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(2) **Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matters that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

(3) **Initial hearing.**

(a) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(b) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(i) An opportunity to be informed of the agency's view of the matter; and

(ii) An opportunity to explain the party's view of the matter.

(c) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(d) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(4) **Review of an initial decision.**

(a) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(b) The president shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(c) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(d) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 21 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 21 calendar days after the request is submitted.

(e) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess



of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-180 Student conduct committee—Membership and governance.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;  
 (b) Two faculty members appointed by the president;  
 (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, refer to WAC 132J-126-540(1).

(6) Green River College may, in its sole discretion, contract with an administrative law judge or other qualified person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

(7) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-190 ((~~Appeal~~)) Student conduct committee—~~Prehearing~~.** (1) ~~((Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.~~

~~(2))~~ The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

~~((3))~~ (2) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

~~((4))~~ (3) Upon request filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than ~~((the third day))~~ three business days prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

~~((5))~~ (4) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent, or in a case involving sex discrimination, the complainant.

If doing so ~~((7))~~; however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

~~((6))~~ (5) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

~~((7) The student conduct officer))~~ (6) The committee chair, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

~~((8))~~ (7) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

~~((9))~~ (8) Each party may be accompanied at the hearing by a nonattorney ~~((assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a sec-~~

~~end, appropriately screened assistant attorney general)) process advisor of their choice, which may be retained at the party's expense.~~

(9) Each party may elect to be represented by an attorney at their own expense. The respondent and/or complainant will be deemed to have waived the right to be represented by an attorney unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing.

(10) The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(11) Cases involving allegations of sex discrimination, including sex-based harassment, will follow the procedure set forth in WAC 132J-126-540.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-200 Student conduct ((~~appeals~~)) committee ((~~hearings~~))—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that ~~((he/she selects))~~ they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recordings shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case ~~((for imposing disciplinary sanctions))~~.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) The chair may decide that the respondent and complainant shall not directly question or cross-examine one another. Subject to this exception, all cross-examination questions by the respondent and complainant shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf. All cross-

examination questions submitted to the chair in this manner shall be memorialized in writing and maintained as part of the hearing record.

(8) Cases involving allegations of sex discrimination, including sex-based harassment, will follow the procedure set forth in WAC 132J-126-530.

(9) The chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-210 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within (~~twenty~~) 21 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by (~~the respondent~~) a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) Cases involving sex discrimination, including sex-based harassment, will follow the procedure set forth in WAC 132J-126-560.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-220 Appeal from student conduct committee initial decision.** (1) (~~A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee~~) Any party, including a complainant in sex-based harassment cases, may appeal the com-

mittee's (~~(initial)~~) decision to the president by filing a (~~(notice of)~~) written appeal with the president's office within (~~(twenty-one)~~) 21 calendar days of service of the committee's (~~(initial)~~) decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The (~~(notice of)~~) written appeal must identify the specific findings of fact and/or conclusions of law in the (~~(initial)~~) decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(~~(3)~~) (5) The president shall (~~(provide)~~) serve a written decision to all parties and their attorneys, if any, within (~~(forty-five)~~) 21 calendar days after receipt of the (~~(notice of)~~) appeal. The president's decision shall be final and shall (~~(include a notice of any rights to request reconsideration and/or)~~) be subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(~~(4)~~) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(~~(5)~~) (6) Cases involving allegations of sex discrimination, including sex-based harassment, will follow the procedure set forth in WAC 132J-126-560.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 23-11-129, filed 5/23/23, effective 6/23/23)

**WAC 132J-126-230 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer, or designee, may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the conduct code (~~(of conduct)~~); and

(b) Presents an immediate danger or imminent threat to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that ~~((his or her))~~ their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) ~~((An officer designated by the president, who shall be someone other than the student conduct officer,))~~ The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding (BAP).

(a) During the summary suspension hearing, the issue before the ~~((reviewing))~~ conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the ~~((student))~~ respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) Cases involving allegations of sex discrimination, including sex-based harassment, will follow the procedure set forth in WAC 132J-126-530(4).

(7) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the

classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed two instructional days per episode. Any such summary action may be appealed to the vice president for student affairs, or designee, for a brief adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-300 Recordkeeping.** (1) The vice president of student affairs, or designee, shall maintain for at least six years the following records of student grievance and disciplinary actions and proceedings:

(a) Initial and final orders in cases where a student's grievance has been sustained or a disciplinary action against a student has been reversed and the student fully exonerated;

(b) The complete records in all cases where adjudication has been requested; and

(c) A list or other summary of all disciplinary actions reported or known to the vice president and not appealed.

(2) Final disciplinary actions shall be entered on student judicial records, provided that the vice president of student affairs or designee shall have discretion to remove some or all of that information from a student's judicial record upon the student's request and showing of good cause.

(3) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES (for alleged conduct that occurred prior to August 1, 2024)**

**SUPPLEMENTAL SEX DISCRIMINATION STUDENT CONDUCT CODE AND PROCEDURES (for alleged conduct that occurred on or after August 1, 2024)**

NEW SECTION

**WAC 132J-126-500 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence.** This supplemental student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard student conduct code and procedure, WAC 132J-126-010 through 132J-126-480, this supplemental student conduct code and procedure shall take precedence.

NEW SECTION

**WAC 132J-126-510 Sex discrimination—Prohibited conduct and definitions.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sex discrimination."

For purposes of this supplemental procedure, the following definitions apply:

(1) **"Complainant"** means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) **"Pregnancy or related conditions"** means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) **"Program"** or **"programs and activities"** means all operations of the college.

(4) **"Relevant"** means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) **"Remedies"** means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) **"Respondent"** is a student who is alleged to have violated the student conduct code.

(7) **"Sex discrimination."** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than



de minimis (insignificant) harm to an individual by treating them differently from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual as-

sault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "**Consent.**" For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) "**Title IX retaliation**" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "**Student employee**" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) **"Student group"** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) **"Supportive measures"** means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) **"Title IX coordinator"** is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

#### NEW SECTION

**WAC 132J-126-520 Sex discrimination—Jurisdiction.** This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132J-126-510 and occurs:

- (1) On college premises;
- (2) At or in connection with college programs or activities; or
- (3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

#### NEW SECTION

**WAC 132J-126-530 Sex discrimination—Dismissal and initiation of discipline.** (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based

harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When a summary suspension is imposed pursuant to WAC 132J-126-230, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended finding and disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If

either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

#### NEW SECTION

##### **WAC 132J-126-540 Sex discrimination—Prehearing procedure.** (1)

For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. The prehearing notice must inform the parties that:

- (i) The respondent is presumed not responsible for the alleged sex-based harassment;
- (ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;
- (iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;
- (iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and
- (v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations.

(i) The chair may conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(ii) Upon the request of any party, the chair must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking will be provided.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

NEW SECTION**WAC 132J-126-550 Sex discrimination—Presentation of evidence.**

In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(1) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(2) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(3) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client communications and attorney work product privilege;

(c) Clergy privileges;

(d) Medical or mental health providers and counselor privileges;

(e) Sexual assault and domestic violence advocate privileges; and

(f) Other legal privileges set forth in RCW 5.60.060 or federal law.

(4) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(5) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

NEW SECTION

**WAC 132J-126-560 Sex discrimination—Initial order.** In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

NEW SECTION

**WAC 132J-126-570 Sex discrimination—Appeals.** (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on all parties and the Title IX coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132J-126-060	Right to sale of personal property.
WAC 132J-126-170	Brief adjudicative proceedings—Review of an initial decision.
WAC 132J-126-280	Brief adjudicative proceedings authorized.
WAC 132J-126-290	Brief adjudicative proceedings—Agency record.



**WSR 24-21-143**  
**PROPOSED RULES**  
**POLLUTION LIABILITY**  
**INSURANCE AGENCY**

[Filed October 22, 2024, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-145.

Title of Rule and Other Identifying Information: Chapter 374-90 WAC, Underground storage tank (UST) revolving loan and grant program (program).

Hearing Location(s): On November 25, 2024, at 1:00 - 2:30 p.m., virtual Zoom session; on December 2, 2024, at 6:00 - 7:30 p.m., virtual Zoom session; and on December 4, 2024, at 11:00 a.m. - 12:30 p.m., virtual Zoom session. Please submit written comments to rules@plia.wa.gov. See <https://plia.wa.gov/public> for more details and links to the Zoom sessions.

Date of Intended Adoption: December 20, 2024.

Submit Written Comments to: Phi V. Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, 800-822-3905, beginning November 6, 2024, 8:00 a.m., by December 13, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Xyzlinda VanEvery, phone 360-407-0515, TTY 711 or 800-833-6388, email rules@plia.wa.gov, by December 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This chapter establishes the UST program pursuant to chapter 70A.345 RCW and outlines the program requirements and processes. The purpose of the program is to assist owners or operators of petroleum UST systems to: Remediate past releases; upgrade, replace, or remove petroleum UST systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The program also assists owners and operators of heating oil tanks to remediate past releases or prevent future releases by upgrading, replacing, decommissioning, or removing heating oil tank systems.

Reasons Supporting Proposal: The program will provide owners of petroleum USTs and of properties with petroleum releases or heating oil tanks with the financial means to clean up contamination and replace older fueling and heating infrastructure. The program will help ensure that petroleum releases that are harmful for human health and the environment are cleaned up to state cleanup standards and will allow the property to be safely used or upgraded.

Statutory Authority for Adoption: RCW 70A.345.030.

Statute Being Implemented: Chapter 70A.345 RCW, Underground storage tank revolving loan and grant program.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Phi V. Ly, 500 Columbia Street N.W., #103, Olympia, WA 98501, 360-407-0520.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule does not meet the conditions of RCW 34.05.328 (5) (a) that mandate a cost-benefit analysis, and the pollution liability insurance agency (PLIA) is not choosing to voluntarily subject the rule to a cost-benefit analysis.

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement (SBEIS)

**Executive Summary:** As of April 2024, there were more than 8,000 operational petroleum USTs across more than 3,000 sites within the state of Washington. While the use of these tanks varies across several different industries, a significant number of them are owned and operated by small businesses, primarily small gas stations which keep their fuel stores in one or more UST. With the proposed implementation of a revolving loan and grant program for UST owners and operators, PLIA needs to determine how these policy changes may impact small businesses.

The authorization for the UST program was signed by the governor in April of 2016. PLIA has been operating the program since then under guidance documents. The program was created to serve the state's aging UST infrastructure. The vast majority of the state's operating USTs are between 20 and 40 years of age, which means they are approaching or at the end of their operational lifespan. As the tanks age, the risk of leakage increases, posing a potential environmental threat. Removing and replacing a UST is expensive, as is spill cleanup. The program provides UST owners and operators with financial aid that can be used to address these issues. Though the program has already been operating for years under interpretive guidance, the proposed rule will formally adopt this program, and provide a framework for both the UST and heating oil tank programs.

To analyze the potential impacts of this proposed rule for an SBEIS, Greene Economics performed an analysis using a database provided by the department of ecology (DOE). The database contains information on all of the USTs in the state, both active and inactive, and dates back to the early 20th century. In addition, the team used data collected by PLIA over the initial years of the program. These data include all loans and grants distributed to both UST and heating oil owners and operators since the program's inception.

The projected compliance cost of this new program was determined to be zero because the program is entirely voluntary. In addition, there are no significant costs associated with the program application process. In fact, the program provides businesses with grant money and loans offered at prime rates that they would not be able to secure elsewhere. PLIA also has a priority ranking scheme that favors small business applicants. Therefore, there are no anticipated disproportionate impacts expected for small businesses under this new rule.

**Section 1: Introduction:** PLIA proposes a new rule to administer a State UST and heating oil tank program, providing owners and operators of USTs and heating oil tanks financial assistance to remediate past releases; upgrade, replace, or remove petroleum UST systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The proposed rule defines criteria and procedures for a state-run program that was first established as a pilot in 2016 for UST owners and expanded to include heating oil tank owners in 2020. Since the proposed rule has the potential to impose more than minor costs on businesses, an SBEIS is required by law (RCW 19.85.030). This study has been developed to analyze the compliance costs of the proposed rule to small and large businesses to determine whether small businesses will bear a disproportionate share of these costs or experience any economic impacts from participating in the UST program.

**Objective of the SBEIS:** The objective of the SBEIS, as established in RCW 19.85.040, is to identify and evaluate the various requirements and costs that the rule might impose on businesses. In particular, the purpose is to determine whether a disproportionate impact of the compliance costs is borne by small businesses in the state. The legislative purpose of the Regulatory Fairness Act (chapter 19.85 RCW) is set out in RCW 19.85.011:

*"The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business."*

The specific purpose of the SBEIS is identified in RCW 19.85.040:

*"A small business economic impact statement must include [1] a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and [2] the kinds of professional services that a small business is likely to need in order to comply with such requirements. [3] It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. [4] It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. [5] To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:*

- (a) Cost per employee;*
- (b) Cost per hour of labor; or*
- (c) Cost per one hundred dollars of sales.*

*(2) A small business economic impact statement must also include:*

*(a) [6] A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(3);*

*(b) [7] A description of how the agency will involve small businesses in the development of the rule;*

*(c) [8] A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply and;*

*(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."*

For purposes of the SBEIS, the terms "business," "small business," and "industry" are defined by RCW 19.85.020:

*(1) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.*

*(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.*

(3) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce, or the North American industry classification system as published by the executive office of the president and the office of management and budget. However, if the use of a four-digit standard industrial classification or North American industry classification system would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification or the North American industry classification system.

**Summary of Proposed Rule:** PLIA was authorized by the Washington state legislature to establish a UST program in 2016 (chapter 70A.345 RCW). With the state's aging UST infrastructure, this program is meant to provide owners and operators of USTs with financial assistance to remediate contamination, enhance UST systems to prevent future releases, and install new infrastructure for dispensing renewable or alternative energy. Though authorized to establish this program in 2016, PLIA was permitted to implement the UST program through interpretive guidance pending adoption of rules to prevent the delay of critical loan and grant awards (RCW 70A.345.100).

With this memorandum of agreement in place, PLIA has been administering the UST program under interpretive guidance since 2016, with the addition of the heating oil tank loan and grant program in 2020. This new proposed rule will replace the interpretive guidance and allow for the running of this program under an officially adopted rule. The proposed rule mirrors the existing interpretive guidance with a few minor changes.

"PLIA partners with the Washington State Department of Health (DOH) for administration of the financial lending portion of the program. The DOH has existing underwriting capabilities and experience administering loan and grant programs, while PLIA has the technical expertise and project management experience to efficiently and effectively guide cleanups and infrastructure upgrades to prevent future contamination."<sup>1</sup>

Under the existing guidance and proposed rule, PLIA offers financial assistance for remediating past releases, upgrading, replacing, or removing petroleum UST systems to prevent future releases, and installing new infrastructure or retrofitting existing infrastructure for dispensing renewable or alternative energy. The program also provides financial assistance to heating oil tank owners and operators that need funding to remediate past releases or prevent future releases through upgrades, replacements, and decommissioning; the removal of heating oil tank systems; or the installation of new infrastructure to replace heating oil with another source for heating purposes.

To be eligible for this program, UST owners and operators must maintain compliance with UST requirements at the state or federal level and be registered with DOE or the federal equivalent if seeking financial assistance for an operational UST. For nonoperational UST systems, the site must not be under an agreed order or consent decree. Both UST and heating oil tank owners and operators must also be applying for funds to address issues as listed above to be considered eligible for assistance. A personal credit history report may be required for applicants applying for loan funding.

Application for these programs occurs on a yearly cycle, with dates and applications available on PLIA's website. The application cycle may be suspended if the program receives a large applicant pool

that exceeds PLIA's resources. The UST program was so popular in its first few years that PLIA closed the application cycle in 2020 to address the backlog of current program participants from 2017 through 2020.

In most instances, accepted applicants require a preliminary planning assessment (PPA) to determine the magnitude and cost of the proposed project. PLIA provides a PPA grant to cover these costs. It should be noted that the award of this grant does not guarantee further program funding. The grant pays up to \$150,000 for the PPA and reduces an applicant's total funding award amount. PLIA's agency-contracted consultants conduct these assessments.

PLIA uses program ranking criteria to determine which projects are prioritized for funding. Projects that involve remediation are of high priority, especially those with significant contamination and that pose an immediate threat to public and environmental health. Other considerations include the age of the tank or tanks in question, insurance and financial need, and environmental justice<sup>2</sup> concerns. The heating oil tank loan and grant funding similarly prioritizes applicants seeking remediation for oil spills. The ranking for these projects also considers whether the location of the project is in an area identified as a vulnerable population or overburdened community.

UST program funding is awarded via loan, grant, agency-led remediation, or some combination of these mechanisms with the total not exceeding \$2 million (which includes the PPA grant funding).

- For a loan, the participant is charged interest (prime rate for the year the applicant applied) for a 30-year term on the outstanding balance applied to project work.
- Agency-led remediation funding can only go towards costs associated with remediation work and is subject to cost recovery. PLIA directly pays the prime consultant from the funding award upon review and approval of invoices. Funds are not dispersed to the participant except in very limited circumstances.
- Grant funding for the entirety of the project is very limited by the program and is only considered when there are exceptional civic benefits by remediating contamination. Such a project site must also be highly ranked and scored based on the criteria outlined in the program guidance.

Heating oil tank program funding is awarded via loan or grant and cannot exceed \$75,000. The grant and loan funds have the same stipulations as those awarded via the UST program.

The new rule includes specific eligible and ineligible costs for the UST and heating oil tank programs. These eligibility requirements are the same as those listed in the current program guidance. The rule also lists scenarios through which PLIA may terminate a project. These scenarios include times when a participant fails to comply with program funding rules, there is a mutual agreement to suspend or terminate the project, funding becomes limited, the participant enters a Model Toxics Control Act "agree order" or "consent decree," or termination is necessary to protect the interests of the state.

**History of Revolving Loan and Grant Program:** The programs for both USTs and heating oil tanks have already provided financial aid to several entities over the past few years. Though the heating oil tank program was not initiated until 2020, PLIA has conducted PPAs for 25 applicants and has distributed loans to three entities.

The UST program has administered since 2016. In the first four years of its existence, PLIA received 89 applications.<sup>3</sup> Due to the large volume of applicants, PLIA has not reopened its application cycle since the 2019-2020 award cycle and has been working on providing financial aid to the backlog of applicants. As highlighted in Table 2 below, PLIA has provided its applicants with over \$7 million in PPA grants, \$700 thousand in additional grant funding, over \$360 thousand in remedial action funding, and over \$2 million in loan funding.

**Table 1: UST Loan and Grant Funding Totals by Year:**

Year	Invoice Total by Fund Source			
	PPA Fund	Grant Fund	Loan Fund	Remedial Action fund
2017	\$2,513			
2018	\$3,539,918			
2019	\$1,092,328	\$30,610		
2020	\$510,181	\$128,943	\$547,171	
2021	\$2,005,897	\$89,282	\$868,852	\$162,063
2022	\$635,892	\$318,466	\$49,905	
2023	\$168,848	\$97,012	\$24,661	
2024	\$9,915	\$61,302	\$673,451	\$200,154
<b>TOTAL</b>	<b>\$7,965,492</b>	<b>\$725,615</b>	<b>\$2,164,040</b>	<b>\$362,217</b>

Since the inception of the UST program, PLIA has completed 86 PPAs and distributed program funding to the eight entities listed in Table 3. The grants and loans have ranged from \$150 thousand to over \$1 million.

- The funds granted to the Port of Illahee funded the removal of USTs and cleanup of contamination at a gasoline station and convenience market that historically served the local community. With this grant, the Port of Illahee was able to purchase this property and remodel the building as a community-meeting space.
- Quick Stop#4 applied for a loan to remove and replace five aging USTs (55 years old). Quick Stop#4 is a family owned and operated convenience store and gas station that serves the community of Longview. The loan supported the removal and replacement of the tanks, remedial cleanup efforts, and the installation of EV charging stations.
- Seaview Mobil had a similar story. The gas station and convenience store are family run and have been serving the small community of Seaview since 1980. The loan paid for cleanup and the removal and replacement of their three aging USTs.<sup>4</sup>

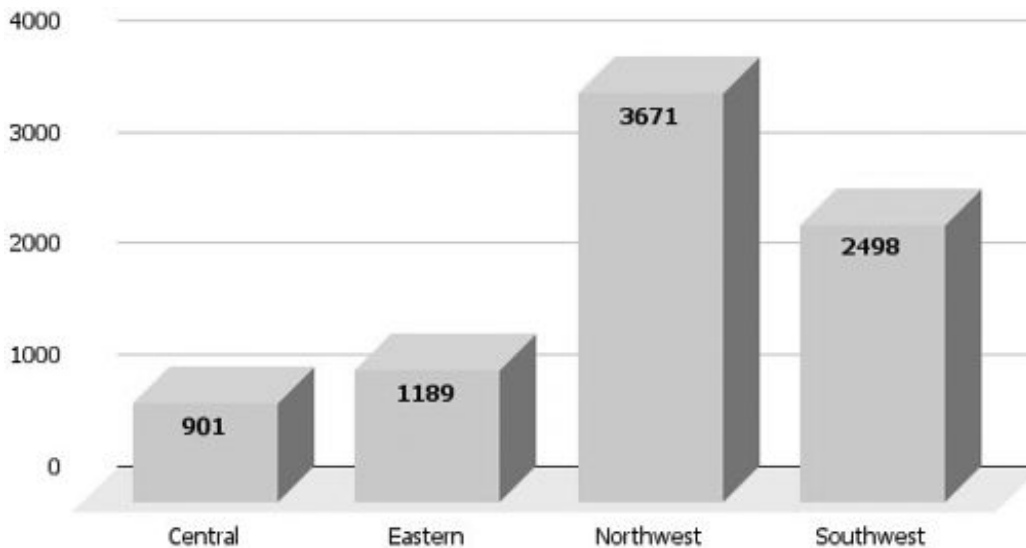
**Table 2: UST Funding Details:**

Entity	Funding Total (excluding PPA)	Years of Project Work
Bill's Garage	\$400,000	2021-2023
Port of Illahee	\$539,500	2023-2024
Port of Skagit	\$165,181	2019-2021
Quick Stop#4	\$1,377,022	2020-2023
Seaview Mobil	\$727,944	2021-2023
Smitty's Conoco #190	\$567,645	2021
Vashon Athletic Club	\$1,009,469	2020-2024
Nordic Properties, Inc.	\$159,084	2023-2024

**Industries Required to Comply with New Rule:** UST owners and operators can be found in several different industries throughout Washington. The following analysis of Washington state UST operational sites by site type was conducted using an extensive database<sup>5</sup> which contains all regulated tanks installed and documented in the state since 1900 and was made available through DOE's website.<sup>6</sup> The database includes important information regarding the sites, tanks, and tank compartments. For example, the database lists each site name, region of the state, county, the number of tanks, date of installment, the material stored in each tank, and the material used to construct each tank. The database does not include information about tank conditions, nor the type of business using the tanks.

It should be noted that no industries must comply with this new rule. The program is completely voluntary for UST and heating oil tank owners and operators. Table 6 below is a summation of industries that may participate in the program.

The DOE UST database tells an interesting story about the USTs in the state. For instance, there are more operational tanks in western Washington compared to the eastern and central parts of the state. The northwest region is comprised of only seven counties, but these counties contain over 3,600 USTs. The central region also contains seven counties but houses less than 1,000 USTs. The southwest region (12 counties) and eastern region (13 counties) also contain a similar number of counties, but the southwest region has double the number of USTs. As seen in the graphic below, the northwestern region has the greatest number of USTs with triple the number of operational tanks compared to the central region and the eastern region (see Figure 1).



**Figure 1: Total Number of Operational UST by Region in the State**

As of April 2024, there are 3,235 sites with at least one tank listed as "Operational." Tanks are given various different statuses, such as "Removed," "Closed In Place," "Closure In Progress," "Temporarily Closed," "Red Tag," and more. As seen in the table below, of the 15,078 total UST systems in the DOE UST database, 8,251 are labeled operational (see Table 4). There is an average of 2.6 operational tanks per site.

**Table 3: UST by Status:**

UST Status	Number of UST
Operational	8,251
Change in Service	14
Closed in Place	427
Closure in Process	73
Exempt	326
Red Tag	26
Removed	5,609
Temporarily Closed	331
Unknown	16
Unregister 30-day Notice	5

Of the operational tanks, the vast majority are between 25 and 40 years of age, nearing or at the end of their viable lifespan. The table below highlights this trend (see Table 5).

**Table 4: Age Breakdown of Operational UST:**

Age in Years	0-9	10-14	15-19	20-24	25-29	30-34	35-40	40-44	45+
# of Operational Tanks	505	292	364	446	1,590	2,128	1,586	648	687

Small gas stations made up the largest portion of operational sites. A series of informed data refinements were employed to estimate the number of sites that qualify as small gas stations (including those with a convenience store attached), and the share of all operational tanks represented by this group. The first step in this process involved isolating the group of tanks with contents labeled under both "Motor Fuel for Vehicles" and "Unleaded Gasoline," as those are the classifications that at least one tank at every small gas station would adhere to. Following this, the hypermarkets of Costco, Safeway, Walmart, and Fred Meyer were filtered out, and a word search was employed to remove sites with naming conventions not likely to be used by small gas stations. For example, this method eliminated all police departments, fire departments, hospitals, Washington department of transportation fueling stations, and sites with "port of" or "city of" in their name. This analysis resulted in a final list of 2,360 sites, or approximately 73 percent of all operational sites.

Emergency generator tanks are the next most common type of UST held by a broad variety of business types. These represent just over nine percent, followed by large gas stations (hypermarkets such as Costco and Safeway) at 5.4 percent. The table below contains around 90 percent of the total 3,235 operational sites. The remaining 10 percent belong to a diverse array of groups from large automobile fleet owning companies like Microsoft to small businesses with niche UST needs. While the larger organizations might also apply to the proposed financial assurance program, identifying the specific type of business was not possible with the available data. However, the table below provides a general overview of the UST owners and operators potentially affected by the proposed financial assurance program (see Table 6).

**Table 5: Statewide Breakdown of UST Sites:**

Site Type	Percentage of Operational Sites	Number of Operational Sites
Small Gas Stations	73.0%	2,360
Large Gas Stations (Hypermarkets)	5.4%	176
Emergency Generator Tanks	9.2%	298
Aviation Fuel Supply Tanks	1.4%	45



Site Type	Percentage of Operational Sites	Number of Operational Sites
Heating Fuel Supply Tanks	0.8%	26
Hospitals	1.0%	31
Truck Stops	0.5%	16
<b>Total</b>	<b>91.3%</b>	<b>2,952</b>

In addition to these listed UST groups, it is also important to consider the owners and operators of heating oil tanks. Heating oil tanks are used almost exclusively to heat buildings, mainly households. Approximately 1.3 percent (40,000 homes) of all Washington households use fuel oil to heat their homes.<sup>7</sup>

Based on the information available from the DOE UST database, the following table lists the industrial codes (NAICS) for the sectors that will potentially be impacted by this new rule (see Table 7). UST owners and operators fall under a wide variety of industries, which makes it challenging to compile a complete NAICS list of industries potentially impacted by the new financial assurance program. Some of the potentially affected entities are in such broad industries that only the two-digit NAICS code is provided.

**Table 6: NAICS for Industries Potentially Impacted by Proposed Program:**

Type of Business	NAICS Code/s		
Petroleum Refineries	324110		
Gas Stations/Truck Stops	447190		
Convenience Stores (w/gas station)	447110		
Heating Oil Distributors	454310		
Hospitals	622110	622310	622210
Airports	488119		
Fleets	532112		
Agriculture	11		
Government	92		

**Methods of Analysis:** This analysis compares the cost of compliance per one \$100 of sales between large and small businesses that own USTs, in order to determine whether small businesses will bear a disproportionate share of these costs. Based on sales, the hypermarkets, or large gas stations, are considered the largest businesses in this analysis. Small businesses, most of which are smaller, independently-owned gas stations, are aggregated, and the total per \$100 of sales cost is compared with that of the largest businesses to assess whether or not a disproportionate impact is expected for small businesses.

**Section 2: Compliance Costs for Washington Businesses:** As noted above, the UST and heating oil tank program is completely voluntary. Its purpose is to provide UST and heating oil tank owners and operators with a source of funding, in the form of financial assistance. Since the program is voluntary and actively provides UST and heating oil businesses with financial aid, there are no compliance costs associated with this proposed rule.

While there are no compliance costs, there are several eligibility considerations mentioned in the rule summary section above. These requirements include meeting UST requirements under chapter 173-360A WAC, being registered with DOE or an equivalent federal agency, and that the applicant must be seeking financial assistance for remedia-

tion and/or infrastructure upgrades. Nonoperational tank owners and operators must not be under an enforcement order or consent decree.

Heating oil tank owners and operators must be seeking financial assistance to pay for remediation, a heating oil tank upgrade/removal, or an upgrade or installation of new infrastructure to replace the heating oil tank. UST and heating oil tank owners and operators should already meet these eligibility requirements as they are required by other rules, and if not, the cost to meet these requirements is negligible. Again, due to the voluntary nature of this program, there are no true compliance costs. Those applying for this program should expect a range from no cost to negligible cost to meet eligibility standards.

The application for the revolving loan program is available on PLIA's website along with important application cycle dates and deadlines. Alternative formats, such as language-translated applications, will also be offered if requested. Applications must include financial documents, business documents, and UST information. There are no major anticipated costs associated with the application.

Applicants that are offered a loan can expect the interest rate on their loan to match the prime rate that was in effect in March of the year they applied. This rate will likely be lower than what they could expect via a traditional loan through a bank. PLIA also works with recipients to identify and make use of all existing funding sources (insurance policies and other mechanisms) to maximize these private funding sources before expending loan and grant funds. In summation, this proposed program is voluntary, so there are no required compliance costs. For those who do choose to participate in the program, the application process imposes no to negligible cost to applicants, and for those who are offered a loan, the interest rate on said loan is at a low rate that reduces the financial burden for participatory Washington businesses.

**Section 3: Analysis of Impact on Small Businesses:** To determine if the proposed program will have a disproportionate impact on small businesses relative to large businesses, both small and large businesses were identified. As mentioned in Section 1, the top 10 percent of businesses are considered large businesses. For this analysis, hypermarkets, or large gas station corporations are considered large businesses. Additionally, hospitals and aviation fuel supply tanks are also considered large businesses. Though they make up just under eight percent of the DOE UST database, this is the only group of affected businesses that consistently fall in the top 10 percent of annual sales and have more than 50 employees, which is the demarcation for small businesses. The vast majority of USTs belong to small businesses, almost all of which are independently owned gas stations. The remaining small businesses with USTs come from other industries (e.g., construction, nonretail facilities) and are harder to identify. Therefore, small, independently owned gas stations represent small businesses for this analysis, while hypermarkets, hospitals, and airports represent large businesses (see Table 8).

**Table 7: Breakdown of Small and Large Businesses Potentially Impacted by Proposed Financial Assurance Program:**

Sector Class	Description of Sector Class	Average Annual Sales	Number of Businesses
Large	Hyper markets (Costco, Safeway, Fred Meyers), hospitals and airports		~254
Small	Small independently owned gas stations	\$9.8 million <sup>8</sup>	~2,360

As noted in Section 2, there are no anticipated costs associated with the proposed program. Therefore, there are no anticipated disproportionate impacts on small businesses. In fact, the site ranking criteria that determines which applicants are prioritized for funding favors small businesses. As highlighted in Table 9, applicants with high financial need, with insurance need, located in environmental justice communities, and/or providing community benefits are prioritized for funding. Small businesses are more likely to serve environmental justice communities and isolated communities than larger businesses. They may also struggle to secure finances and insurance compared to larger companies that have stronger financial support. So not only will small business program participants incur little to no cost to apply to this proposed program, but their projects will also have higher priority than that of a similar project requesting funding by a larger company, ensuring that small businesses are more likely to access grant and low interest rate loans than large businesses.

**Table 8: Site Ranking for Revolving Loan and Grant Program<sup>9</sup>:**

Criteria	Explanation	Points
Age of tank(s)	Scoring is based on tank age (>25 years). Older tanks are more likely to fail/have failed.	25
Public health threat to water	Contamination with potential to impact surface and groundwater.	15
Extent of historical contamination	Immediate free-product removal required, and impacted groundwater present.	15
Insurance need	Inability to obtain insurance through PLIA reinsurance or financial assurance program, insurance policy has been cancelled, or there has been a significant premium increase.	13
Financial need	Owner/operator has documentation of financing denial.	10
Current insurance policy exceeded	Owner/operator exceeded their current insurance policy limit before completing cleanup.	8
Environmental justice (EJ)	Meeting the needs of a highly impacted EJ community. Revitalizing the community that surrounds the property by transforming the project into drivers of community revival.	8
Community need and benefit	Isolated communities depend on the station as their source of motor vehicle fuel for essential emergency, medical, fire and police services.	6

**Section 4: Small Business Involvement in Rule Making and Impact Reduction Efforts:**

**Involvement of Small Business in the Development of the Proposed Rule:** As part of the rule-making process, PLIA held public, informational listening sessions on proposed loan and grant program rules. These sessions were held in May 2023 where several attendees provided comments and questions for the agency to consider in finalizing rule language.

Due to PLIA's 2023 legislative activities that included the establishment of a new agency program and appropriations request to add additional staffing and resources, the loan and grant rule making was pended until early 2024. The additional time allowed the agency to refine program processes, properly staff the program with dedicated staffing, and update program documents.

PLIA intends to conduct additional informational listening sessions in fall 2024 prior to adoption of the rule.

**Actions Taken to Reduce the Impact of the Rule on Small Businesses:** In general, the proposed program does not impact small businesses, particularly because the program is voluntary. For small businesses that do apply for financial aid, the applicant ranking scheme described in Section 3 includes several considerations that favor small businesses, improving their chances of receiving grant and loan funding.

- 1 Ly, Phi. 2024. Underground Storage Tank Revolving Loan and Grant Program 2021-2023 Biennium Report to the Legislature. September:  
Report here.
- 2 Based on the Washington Department of Health Disparities Map: <https://fortress.wa.gov/doh/wtnibl/WTNIBL/>.
- 3 PLIA. 2024. Underground Storage Tank Revolving Loan and Grant Program Report to the Legislature 2021-2023 Biennium. September.  
Available here.
- 4 PLIA. 2022. Underground Storage Tank Revolving Loan and Grant Program Report to the Legislature 2019-2021 Biennium. September.  
Available here.
- 5 Department of Ecology. Regulated Underground Storage Tanks (USTs). Available here.
- 6 It should be noted that the percentages presented in the table below should be viewed as estimations. While a thorough examination of the  
database was conducted, some site types were harder to identify than others based on naming practice among other challenges.
- 7 United State Census Bureau. 2022. American Community Survey House Heating Fuel 1-Year Estimate. Available here.
- 8 From IMPLAN, 2022. Unites States (US Totals) Region. Available at: <https://implan.com>.
- 9 PLIA. Revised 2020. Underground Storage Tank Loan and Grant Program Guidance. September. Available here.

A copy of the statement may be obtained by contacting Phi V. Ly,  
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October 22, 2024

Phi V. Ly  
Legislative and Policy Manager

## OTS-5919.1

### Chapter 374-90 WAC UNDERGROUND STORAGE TANK REVOLVING LOAN AND GRANT PROGRAM

#### NEW SECTION

**WAC 374-90-010 Authority and purpose.** This chapter establishes the underground storage tank revolving loan and grant program pursuant to chapter 70A.345 RCW and outlines the program requirements and processes. The purpose of the program is to assist owners or operators of petroleum underground storage tank systems to: Remediate past releases; upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The program also assists owners and operators of heating oil tanks to remediate past releases or prevent future releases by upgrading, replacing, decommissioning, or removing heating oil tank systems.

#### NEW SECTION

**WAC 374-90-020 Definitions.** Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" or "PLIA" means the pollution liability insurance agency, as used throughout this chapter. For purposes of chapter 70A.345 RCW, agency or PLIA shall mean staff or employees of the pollution liability insurance agency.

(2) "Applicant" means the owner or operator of a petroleum underground storage tank or heating oil tank who has applied to the program.

(3) "Ecology" means the Washington state department of ecology.

(4) "Facility" or "petroleum underground storage tank facility" means the property where the enrolled tank is located, including any tank-related infrastructure within that property. The term encompasses all real property under common ownership associated with the operation of the petroleum underground storage tank. For purposes of this program, facility does not have the same meaning as WAC 173-340-200.

(5) "Grant" means a financial award to a program participant that is not repaid by the grantee.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means the same as RCW 70A.345.020(2). Heating oil tank does not include a tank used solely for industrial process heating purposes or generation of electrical energy. This term does not include any:

(a) Tank owned by the federal government or located on a federal military installation or federal military base.

(b) Tank located within the Hanford site.

(8) "Location" means the physical area or site where the assessment, cleanup, or infrastructure replacement, upgrade, or installation will occur.

(9) "Model Toxics Control Act" or "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW, and chapter 173-340 WAC.

(10) "Online community" means the cloud-based application and data system used by the agency and the applicant or participant to submit documentation and to report, process, and look up project information.

(11) "Operator" means the entity in control of, or having a responsibility for, the daily operation of a petroleum underground storage tank or heating oil tank.

(12) "Owner" means a person who owns a petroleum underground storage tank or heating oil tank.

(13) "Participant" means a petroleum underground storage tank owner or operator accepted into the program who receives and accepts a financial award offer, other than a preliminary planning assessment grant, and signs a participant agreement.

(14) "Petroleum" has the same meaning as defined in WAC 173-360A-0150(48).

(15) "Petroleum underground storage tank" means an underground storage tank regulated under chapter 70A.355 RCW or subtitle I of the Solid Waste Disposal Act (42 U.S.C. chapter 82, subchapter IX) that is used for storing petroleum. This includes tanks owned or operated on property under the direct jurisdiction of either the federal government or tribal governments other nonstate regulating agency. This term does not include any:

(a) Septic tank;

(b) Pipeline facility (including gathering lines):

(i) Which is regulated under 49 U.S.C. chapter 601; or

(ii) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipe-

line, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

- (c) Surface impoundment, pit, pond, or lagoon;
- (d) Storm water or wastewater collection system;
- (e) Flow-through process tank;

(f) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(g) Tank owned by the federal government or located on a federal military installation or federal military base; and

(h) Tank located within the Hanford site.

(16) "Petroleum underground storage tank system" or "tank system" means a petroleum underground storage tank and connected underground piping, underground ancillary equipment, and containment system, if any.

(17) "Preliminary planning assessment" means an identification report, to the agency, of any existing contamination at the facility, the necessary actions to address such contamination, and the cost estimate for cleanup and any desired infrastructure upgrades.

(18) "Prime consultant" means an environmental consultant or business contracted by PLIA to perform the preliminary planning assessment or remediation under the program.

(19) "Program" means the underground storage tank revolving loan and grant program established by chapter 70A.345 RCW.

(20) "Release" has the same meaning as defined in RCW 70A.305.020.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of chapter 70A.305 RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Site" has the same meaning as "facility" in RCW 70A.305.020. The phrase "facility" as used in this program is defined above.

(23) "Technical assistance program" means the program administered by the agency under the requirements of chapter 374-80 WAC.

#### NEW SECTION

**WAC 374-90-030 Eligibility—Underground storage tank owner or operator.** To be eligible for the program, an owner or operator of a petroleum underground storage tank must meet the following requirements.

(1) For an operational petroleum underground storage tank:

(a) Maintain compliance with the petroleum underground storage tank requirements of chapter 173-360A WAC, or equivalent federal regulating agency; and

(b) Be registered with the department of ecology or equivalent federal regulating agency.

(c) The petroleum underground storage tank cannot be within the site boundary currently under a Model Toxics Control Act order or decree.

(2) For a nonoperational petroleum underground storage tank, or if the tank has been removed, then the tank must not be within the site boundary of a Model Toxics Control Act order or decree. If the tank has been removed, the applicant must show by clear, cogent, and convincing evidence that the release occurred from a petroleum underground storage tank.

(3) The owner or operator is seeking financial assistance to pay for costs associated with at least one of the following actions:

(a) Remediation of a release or prevention of a threatened release of petroleum from a petroleum underground storage tank or its system;

(b) Upgrade, replacement, or removal of a petroleum underground storage tank system unless closure in place is necessary; or

(c) Upgrade, replacement, or retrofit of existing infrastructure, or the installation of new infrastructure to dispense renewable or alternative energy for motor vehicles, including recharging stations for electric vehicles or alternate fuels.

#### NEW SECTION

##### **WAC 374-90-040 Eligibility—Heating oil tank owner or operator.**

(1) To be eligible for the program, a heating oil tank owner or operator must have a heating oil tank or a historic heating oil release, and be seeking financial assistance to pay for costs associated with at least one of the following actions:

(a) Remediation of a release or prevention of a threatened release of petroleum from a heating oil tank or its system;

(b) Upgrade, replacement, or removal of a heating oil tank or its system unless a determination is made that closure in place is necessary; or

(c) Upgrade or installation of new infrastructure to replace the heating oil tank with another source for heating purposes.

(2) For a heating oil tank (operational or nonoperational), or if the tank has been removed, then the tank must not be located within the site boundary of a Model Toxics Control Act order or decree. If the heating oil tank has been removed, then the applicant must show by clear, cogent, and convincing evidence that the release occurred from a heating oil tank.

#### NEW SECTION

**WAC 374-90-050 Application.** (1) The application cycle and acceptance dates for the program will be posted on the agency's website.

(2) The director may suspend an application cycle when program funding is limited or if the agency must address a large number of applicants from an application cycle.

(3) Applicants will submit applications through the agency's online community. Alternative formats will be provided if requested from the agency.

(4) Applications must be complete with all required information and must be submitted by the application deadline.

(5) PLIA will require an applicant's personal credit history report if the applicant seeks loan funding. This information will be used to assess the applicant's financial condition.

(6) The agency will review all completed applications in the application cycle and will issue written notice about program acceptance to applicants.

(a) For accepted applicants, the notice letter will indicate whether a preliminary planning assessment is required.

(b) The agency may determine that a preliminary planning assessment is not required if an applicant provides evidence of an equivalent and technically sufficient assessment. Such an assessment should be provided in an applicant's application. If PLIA accepts the assessment, the notice letter will confirm that the assessment is accepted and that a preliminary planning assessment is not required.

(c) If an application is denied, the notice letter will list the reasons for program denial. Denied applicants may apply to the program in another application cycle if they address the reasons for denial.

#### NEW SECTION

**WAC 374-90-070 Preliminary planning assessment grant.** (1) The agency may award grant funding for a preliminary planning assessment if there has been a release or threatened release of a hazardous substance to the environment.

(2) The amount awarded through a preliminary planning assessment grant reduces an applicant's total funding award amount. Preliminary planning assessment grant amounts are listed in the program guidance.

(3) If PLIA determines that a preliminary planning assessment is required, the agency will designate a prime consultant to perform the preliminary planning assessment at the location of the release or threatened release.

(4) An award of a preliminary planning assessment grant does not guarantee that the applicant will receive further program funding.

#### NEW SECTION

**WAC 374-90-080 Project prioritization—Underground storage tank owner or operators.** (1) The agency may rank each application to establish funding and project prioritization.

(2) To ensure that program funds are used to address contamination from petroleum underground storage tanks, the agency may prioritize funding for project locations that require remediation.

(3) The agency will review information from the preliminary planning assessment, the application, and the following factors and any other factors PLIA deems relevant to establish ranking:

(a) Whether or not a release from a petroleum underground storage tank has occurred, and the nature and extent of contamination from that release.

(b) An assessment of whether the petroleum contamination poses a threat to public health and the environment.



(c) An evaluation of the location with preestablished criteria including, but not limited to, proximity to drinking water, provided in the program guidance.

(d) An assignment of a numeric score to each applicant project location and a ranking of each applicant within an application cycle.

(4) The agency may adjust project rankings if the extent of petroleum contamination is later identified as posing an immediate threat to human health or the environment. The agency may also rerank projects within an application award cycle due to emergent conditions or new information.

(5) Applicants may not appeal the agency's project rankings.

#### NEW SECTION

**WAC 374-90-090 Project prioritization—Heating oil tank owners or operators.** (1) The agency may rank each application to establish funding and project prioritization, which will determine timing on when project remediation work may occur and may limit funding offered based on the factors in subsection (3) of this section.

(2) To ensure that program funds are used to address contamination from heating oil tank releases, the agency may prioritize funding and timing of when project remediation may occur for projects that require immediate remediation and where it is known that the release is impacting surface water, groundwater used for drinking water, or a stormwater system.

(3) The agency will prioritize participants based on the time the application was submitted, general location information, and the following factors and any other factors PLIA deems relevant:

(a) Determine if the project location has contamination from a heating oil tank release and only requires remediation funding.

(b) The project location has contamination from a heating oil tank release and requires funding for remediation and infrastructure upgrade. Program funding is allocated to the cleanup of contamination from the heating oil tank release before allocation for infrastructure upgrades.

(c) The project location requires funding for only infrastructure upgrades.

(d) The project location includes a vulnerable population as defined in RCW 70A.02.010(14), or an overburdened community as identified in RCW 70A.02.010(11).

(4) The agency may adjust project rankings when the extent of contamination from the heating oil tank release is later identified as posing a threat to human health or the environment.

(5) The program may re-rank or reassess applications due to emergent conditions or availability of new information. Affected applicants will be notified in writing.

(6) Applicants may not appeal the agency's project rankings.

#### NEW SECTION

**WAC 374-90-100 Funding awards—Underground storage tank owners or operators.** (1) The agency may award funding for any amount up to,

but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single petroleum underground storage facility.

(2) Program funding is awarded by loan, grant, agency-led remediation, or a combination of these. The total funding amount cannot exceed the maximum amount established in RCW 70A.345.030(2).

(3) An applicant is considered for the following award types.

(a) Loan.

(i) A loan award is for the amount that the participant is borrowing from the program. The participant will be charged with interest on the outstanding balance of moneys applied to project work. Financing and repayment terms will be described in the participant loan agreement.

(ii) The loan amount is reduced by any grant amount paid towards the preliminary planning assessment and the technical assistance program fee, if applicable.

(iii) Loan awards must be applied to remedial action prior to infrastructure upgrade costs.

(iv) Program participants may select their own consultant to perform remediation and infrastructure upgrades.

(b) Grant.

(i) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(ii) All work may be performed by a prime consultant.

(iii) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(c) Government grant.

(i) A government grant may only be awarded to a state agency, local government, or a tribal government who is the owner or operator of a petroleum underground storage tank.

(ii) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(iii) All work may be performed by a prime consultant.

(iv) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(d) Agency-led remediation.

(i) Agency-led remediation funding is limited to costs associated with remedial action and is subject to cost recovery as provided in RCW 70A.345.070.

(ii) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award.

(iii) All remediation work will be conducted by a prime consultant.

(4) Program funding awards are made after:

(a) The department of health conducts a review of the applicant's financial circumstances and provides a recommendation (as applicable); and

(b) The agency reviews a completed preliminary planning assessment or a technically sufficient assessment that was submitted with the application.

(5) If selected for funding, any applicant with funding needs for remediation will enroll in the agency's technical assistance program

with the enrollment fee paid from the funding awarded under this chapter.

(6) When PLIA issues an applicant a written program funding award, the agency may require a meeting to review the terms and conditions of the award. Applicants have 30 calendar days to either accept or decline the program funding award and, if accepting the award, must sign a participant agreement. If the applicant does not accept the program funding award after 30 calendar days, the award terminates.

(7) Funds are not dispersed directly to the participant except with the director's approval.

(8) The agency will directly pay the prime consultant or participant-selected contractor direct costs from the program funding award after review and approval of invoices.

(9) PLIA may terminate a program funding award or may adjust a ranking of an application if information about the project significantly differs from the preliminary planning assessment. If a program funding award is terminated or a ranking is adjusted, the agency will provide written notice to the applicant with an explanation.

#### NEW SECTION

**WAC 374-90-110 Funding awards—Heating oil tank owners or operators.** (1) The agency may award funding in total of any amount up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(a) Program funding offered by grant is an amount up to, but not exceeding, \$60,000.

(b) Where program funding is only a loan the amount is up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(c) Where a project is awarded a grant and loan, the program funding combined may not exceed the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(2) Program funding may be offered by loan, grant, or combination of both.

(3) A program funding award is determined after the agency reviews the preliminary planning assessment or technically sufficient assessment, and the department of health conducts an applicant financial review (as applicable). Applicants not seeking loan funding do not need a department of health review.

(4) If the program funding award is applied to remediation, then the applicant must enroll in the agency's technical assistance program. The enrollment fee will then be paid from the total funding award.

(5) The application will be considered for the following program funding award types.

(a) Loan.

(i) A loan award amount is reduced by the amount used for the preliminary planning assessment and the technical assistance program enrollment fee, if applicable.

(ii) Loan funding will be applied to remediation prior to infrastructure upgrades.

(iii) Program participants may select their own consultant to perform remediation and infrastructure upgrades.

(b) Grant.

(i) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(ii) All work may be performed by a prime consultant.

(iii) If applicants or participants are not able to provide access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(6) If applicants receive a written program funding award, the agency may require a meeting to review the terms and conditions of the award. Applicants have 30 calendar days to either accept or decline the program funding award and, if accepting the award, sign a participant agreement. If the applicant does not accept the program funding award after 30 calendar days, the award terminates.

(7) Funds are not dispersed directly to the participant except with the director's approval.

(8) The agency will directly pay the prime consultant or participant-selected contractor direct costs from the program funding award after review and approval of invoices.

(9) If required, applicants receiving a program funding award may have their award terminated or ranking adjusted when, in PLIA's discretion, information about the project significantly differs from the preliminary planning assessment. In that event, the agency will provide written notice to the applicant with an explanation.

#### NEW SECTION

**WAC 374-90-120 Eligible and ineligible costs—Underground storage tank program funding awards.** (1) Program funding awards used for an asset (e.g., infrastructure), then that asset must have a useful life of at least 13 years.

(2) Loan funding. Eligible costs include, but are not limited to, the following:

(a) Remedial action, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of petroleum underground storage tanks.

(b) Testing and assessments to determine the nature and extent of a release of petroleum and whether cleanup standards have been met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage as required by municipal law.

(d) Replacement costs for a new petroleum underground storage tank and certain equipment related to the operation of the affected tank.

(e) Some infrastructure upgrades, including alternative energy fueling facilities.

(3) Grant funding. Eligible grant costs include, but are not limited to, the following:

(a) Remedial action, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of petroleum underground storage tanks.

(b) Testing and assessments to determine the extent and severity of a release of petroleum and whether cleanup standards have been met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage as required by municipal law.

(4) Ineligible costs for any program funding award. The program will not pay for ineligible costs incurred by the program participant. PLIA has discretion to determine whether costs are ineligible.

(5) Ineligible costs include, but are not limited to, the following:

(a) Costs covered by other valid insurance or warranties.

(b) Remedial action that exceeds cleanup levels required by the agency or MTCA.

(c) Remedial action to address a release of petroleum from or damage to a petroleum underground storage tank, or its system, or surrounding property caused by the owner or operator, an owner/operator's contractor, or the prime consultant.

(d) Replacement of tanks that were decommissioned or nonoperational at the time of a release.

(e) Any legal costs.

(f) Costs not included in an agency-approved scope of work.

(g) Costs incurred by the participant after the date the participant received a termination letter.

(h) Business related expenses, including:

(i) Costs related to development of the application package.

(ii) Costs for a business to remain operational during remedial activities.

(iii) Costs for lost revenue, including lost business income resulting from closures related to the release or remediation.

(iv) Retroactive costs.

#### NEW SECTION

##### **WAC 374-90-130 Eligible and ineligible costs—Heating oil tanks.**

(1) Program funding award must be used for improvements (e.g., heating oil tank) that have a useful life of at least 13 years.

(2) Loan funding. Eligible loan costs include, but are not limited to, the following:

(a) Remedial actions, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of heating oil tanks.

(b) Testing and assessments, including:

(i) Costs necessary to determine the nature and extent of the petroleum release.

(ii) Soil sampling, water sampling, soil vapor sampling, and testing to determine if cleanup standards are met.

(c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage required by municipal law.

(d) Infrastructure upgrades, including:

(i) Replacement costs for a new heating oil tank that meets the current standards for such tanks, as specified in guidance policy.

(ii) Replacement of certain equipment related to the operation of the affected tank.

(e) Replacement of the heating oil tank and infrastructure with heating infrastructure including:

- (i) Alternative energy heating systems.
- (ii) Upgrades to existing home heating oil systems.
- (f) Other costs included within an agency-approved scope of work.
- (3) Grant funding. Eligible grant costs include, but are not limited to, the following:
  - (a) Remedial actions, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of heating oil tanks.
  - (b) Testing and assessments, including:
    - (i) Costs necessary to determine the nature and extent of the petroleum release.
    - (ii) Soil sampling, water sampling, soil vapor sampling, and testing to determine if cleanup standards are met.
  - (c) Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage as required by municipal law.
  - (d) Other costs included within an agency-approved scope of work.
- (4) Loan or grant funding. Ineligible costs will not be paid with program funds. The program is not responsible for paying any ineligible costs incurred by the participant. Ineligible costs include, but are not limited to, the following:
  - (a) Costs covered by other valid insurance or warranties.
  - (b) Remedial action that exceeds cleanup levels required by the agency or MTCA.
  - (c) Remedial action to address a release or damage to a heating oil tank or its system or surrounding property caused by the owner or operator, the owner/operator's contractor, or the prime consultant.
  - (d) Replacement of tanks that were decommissioned, temporarily out of service, or abandoned at the time of a release of petroleum.
  - (e) Any legal costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions.
  - (f) Costs not included in an agency-approved scope of work.
  - (g) Costs incurred by the participant after the date the participant received a termination letter.
  - (h) Temporary heat restoration.
  - (i) Business related expenses, including:
    - (i) Costs needed to develop the application package.
    - (ii) Costs for a business to remain operational during remedial activities.
    - (iii) Costs for lost revenue.
    - (iv) Retroactive costs.

#### NEW SECTION

**WAC 374-90-140 Participant program termination.** (1) The agency may terminate the program funding award, in whole or in part, for any of the following situations.

(a) The participant fails to comply with the program funding award terms and conditions.

(b) The participant and agency mutually agree to the suspension or termination of the program funding award.

(c) A participant's facility enters into a Model Toxics Control Act enforcement order, agreed order, or consent decree.

(2) The agency may immediately terminate a loan or grant without notice when necessary to protect the interests of the state.

(3) The participant will be notified in writing if the agency terminates the program funding award. A cost calculation, record keeping, and program summarization process will begin no later than one week after written notice of the termination has been mailed to the participant. The notice will describe the procedures necessary to close out participation in the program. The participant will repay the remainder of the loan according to the established loan terms.

#### NEW SECTION

**WAC 374-90-150 Overpayments.** (1) The agency may require an owner or operator or prime consultant to return any overpayment made by the program. Overpayments may occur if:

(a) Another party, such as an insurer, has paid costs prior to payments from the program; or

(b) The agency discovers an accidental overpayment has been made to an owner, operator, or prime consultant for any reason.

(2) If an overpayment is not paid upon demand, the agency may pursue one of the following actions:

(a) Collections. The agency may request cost recovery with a debt collection agency.

(b) Lien filing. The agency may seek cost recovery of remedial action costs from any liable person by filing a lien on the petroleum underground storage tank facility as authorized under RCW 70A.345.070.

(c) Civil action. The agency may request the attorney general's office to commence a civil action against the owner or operator in superior court to recover costs and the agency's administrative and legal expenses to pursue recovery.

#### NEW SECTION

**WAC 374-90-160 Fraud and material omissions.** (1) The agency may seek return of payments made if:

(a) Any party misrepresents or omits material facts relevant to the agency's determination of coverage; or

(b) Any party, with intent to defraud, initiates a loan or grant request or issues or approves an invoice or request for payment, with knowledge that the information submitted is false in whole or in part.

(2) If the agency determines that any party has committed program fraud or omitted material information, the agency may request the attorney general's office to:

(a) Commence a civil action against the person in superior court; or

(b) Recover the overpayment and other expenses as determined by a court.

(3) If the agency determines that the owner or operator of an enrolled petroleum underground storage tank omitted material facts or intentionally defrauded the program, it will terminate program enrollment, and any person or party determined to have committed program fraud may be prohibited from applying for future funding. The agency

will report instances of fraud to the appropriate authorities including criminal referral for prosecution.

(4) Any party participating in the program must agree to allow the agency to conduct financial audits related to the receipt of payments intended for remedial actions.



## WSR 24-21-144

## PROPOSED RULES

## BELLINGHAM TECHNICAL COLLEGE

[Filed October 22, 2024, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-088.

Title of Rule and Other Identifying Information: Amended sections of chapter 495B-121 WAC.

Hearing Location(s): On December 2, 2024, at 11:30 a.m., at Bellingham Technical College (college), College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Date of Intended Adoption: December 19, 2024.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughlin@btc.edu, fax 360-752-7134, by November 21, 2024.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by November 21, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the college's student conduct code, chapter 485B-121 WAC, into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, 20 U.S.C. § 1681 et seq.

Name of Proponent: Bellingham Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ronda Laughlin and Michele Waltz, CS 201 and CS 213, 360-752-8334.

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

A cost-benefit analysis is not required under RCW 34.05.328. Required by federal law.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 20 U.S.C. § 1681 et seq.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process

requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Chapter 495B-121 WAC is amended in response to legislative directive 85 F.R. 30026-30579; 34 C.F.R. 106.

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024

Ronda Laughlin

Executive Assistant to the President

### OTS-5611.3

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

**WAC 495B-121-235 Statement of jurisdiction.** (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On ~~((Bellingham Technical))~~ college premises ~~((and facilities))~~;

(b) At or in connection with ~~((college-sponsored))~~ college programs or activities; or

(c) ~~((To off-campus conduct that in the judgment of the college, adversely affects))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community ~~((or))~~, the pursuit of its objectives, or the ability of a student or employee to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students ~~((or student groups))~~ are engaged in ~~((official))~~ college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated))~~ students, ~~((athletic events))~~ student government, student clubs or organizations, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from ~~((notification of))~~ the time they gain admission ~~((at))~~ to the college through the ~~((actual receipt of a))~~ last day of enrollment or award of any degree certificate ~~((or degree))~~, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct ~~((by students or student groups))~~ that occurs off campus.

(5) The student conduct officer or their designee has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an

academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violation of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-240 Statement of purpose.** The purpose of these rules is to prescribe standards of conduct for students of Bellingham Technical College. Violations of these standards may be cause for disciplinary action as described in this code.

(1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college (~~security~~) administration or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

**WAC 495B-121-245 Definitions.** The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

~~(2) ("College" means Bellingham Technical College.~~

~~(3) "Student conduct officer" is a Bellingham Technical College employee designated by the president to be responsible for implementing and enforcing the student conduct code. The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(4) "Student group" for purposes of this code is a student organization or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.~~

~~(5) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(6) "The president" is the president of Bellingham Technical College. The president is authorized to:~~

~~(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and~~

~~(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(7)) "Business day" means a weekday, excluding weekends and college holidays.~~

(3) "College premises" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(4) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination.

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(5) "Conduct review officer" is a college administrator designated by the president and is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(6) "Disciplinary action" is the process by which the student conduct officer or their designee imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not a disciplinary action.

~~((8))~~ (7) "Disciplinary appeal" is the process by which an aggrieved ((student)) party can appeal the discipline imposed or recommended by the student conduct officer or their designee. Disciplinary appeals from a suspension in excess of ((ten)) 10 instructional days or ((an expulsion)) a dismissal from the college are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

~~((9) "Respondent" is the student against whom disciplinary action is initiated.~~

~~(10) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:~~

~~(a) Hand delivery of the document to the party; or~~

~~(b) By sending the document by email and by certified mail, or first-class mail, to the party's last known address.~~

~~Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.~~

~~(11)) (8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:~~

~~(a) Hand delivery of the document to the specified college official or college official's assistant; or~~

~~(b) By sending the document by email and first-class mail to the specified college official's office and college email address.~~

~~Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.~~

~~((12) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.~~

~~(13) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.~~

~~(14) "Day" means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.~~

~~(15) A "complainant" is an alleged victim of sexual misconduct.~~

~~(16) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-265(13).)~~ (9) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related conditions.

(10) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "Program" or "programs and activities" means all operations of the college.

(12) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(13) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(14) "Respondent" is a student who is alleged to have violated the student conduct code.

(15) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail, whichever is first.

(16) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(17) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(18) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(19) "Student group" is a student organization including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.

(20) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-260 Statement of student rights.** As members of the Bellingham Technical College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college.

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including ~~((sexual))~~ sex-based harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(d) Students have the right to request disability-related accommodations through accessibility resources.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

**WAC 495B-121-265 Prohibited student conduct.** The college may impose disciplinary sanctions against a student, student group, or a

college-sponsored student ((group)) organization who commits, attempts to commit, aids, abets, incites, encourages(~~(7)~~) or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, (~~any of~~) the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including(~~, but not limited to, cheating, plagiarism, and fabrication.~~):

(a) Cheating ((includes)) - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism ((includes)) - Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication ((includes)) - Falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course or dismissal from an academic program. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer or their designee for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(~~((2) Other))~~ (4) Acts of dishonesty. ((Any other)) Acts of dishonesty(~~(- Such acts))~~ include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) (~~((Tampering with an election by or for college students; or (e-))~~) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(~~((3) Obstruction or disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:~~

(a) ~~Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the~~



~~free flow of pedestrian or vehicular movement on campus property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.~~

~~(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.~~

~~(6) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

~~(7) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such person when requested to do so.~~

~~(8) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;~~

~~(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view;~~

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission; or~~

~~(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.~~

~~(9) Hazing.~~

~~(a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

- ~~(ii) Any pastime or amusement engaged in with respect to such a student group; and~~
- ~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~
- ~~(b) Examples of hazing include, but are not limited to:~~
  - ~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~
  - ~~(ii) Humiliation by ritual act;~~
  - ~~(iii) Striking another person with an object or body part;~~
  - ~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~
  - ~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~
- ~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions.~~
- ~~(d) Consent is not a valid defense against hazing.~~
- ~~(10) Alcohol, drug, and tobacco violations.~~
  - ~~(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~
  - ~~(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~
  - ~~(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.~~
  - ~~(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.~~
- ~~(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.~~
- ~~(12) Discriminatory conduct. Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~
- ~~(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-355 (supplemental Title IX student conduct procedures).~~

~~(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:~~

~~(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;~~

~~(ii) Alter the terms or conditions of employment for a college employee(s); and/or~~

~~(iii) Create an intimidating, hostile, or offensive environment for other campus community members.~~

~~(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(c) Sexual violence. "Sexual violence" is a type of discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

~~(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any bodily contact in a sexual manner.~~

~~(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(I) The length of the relationship;~~

~~(II) The type of relationship; and~~

~~(III) The frequency of interaction between the persons involved in the relationship.~~

~~(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(A) Fear for their safety or the safety of others; or~~

~~(B) Suffer substantial emotional distress.~~

~~(d) For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

~~Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(14) Harassment. Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status, or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.~~

~~(15) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.~~

~~(16)) (c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.~~

~~(5) Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.~~

~~(6) Cannabis, drug, and tobacco violations.~~

~~(a) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the rec-~~

reational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) Drugs. The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(c) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(7) Cyber misconduct. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(8) Disruption or obstruction. Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) Discriminatory harassment.

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race, ethnicity, creed, color, sex, gender identity or expression, citizenship or immigration status, national origin, age, religion, disability, veteran or military status, sexual orientation, genetic information, 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, pregnancy, marital status, or any other characteristic protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(10) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(11) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(13) Hazing. Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(15) Misuse of electronic resources. Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

~~((17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.~~

~~(18) Procedural interference. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:~~

~~(a) Disruption or interference with the orderly conduct of a proceeding;~~

~~(b) Interfering with someone else's proper participation in a proceeding;~~

~~(c) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness; or~~

~~(d) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member.~~

~~(19)) (16) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, theft, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

~~(17) Retaliation. Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.~~

~~(18) Safety violations. Nonaccidental reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment, triggering false alarms or other emergency response systems (, or operating a motor vehicle on college property in a manner which is reasonably perceived as threatening the health or safety of another person.~~

~~(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.~~

~~(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.~~

~~In addition to initiating discipline proceedings for violations of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution).~~

(19) Sex discrimination. The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or object,



by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) Consent. For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) Title IX retaliation means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testi-

fied, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(20) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(21) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

(22) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, and during college programming and activities, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view;

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission; or

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-270 Disciplinary sanctions.** (1) Administration of the disciplinary procedure is the responsibility of the vice president of student services. The student conduct officer, or designee, shall serve as the principle investigator and prosecutor for alleged violations of this code.

(2) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(3) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(4) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member or college

administrator, the student conduct officer or designee may set conditions for the student upon return to the class or activity.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer or designee in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse themselves from disciplinary hearings by withdrawing from the college.

(7) In addition to initiating discipline proceedings for the violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-280 Initiation of disciplinary action.** (1) ~~((All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.))~~ Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer or designee for disciplinary action.

(4) If a student conduct officer or designee determines that a complaint appears to state a violation of the student conduct code, the student conduct officer or designee will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the parties.

(a) Informal dispute resolution shall not be used to resolve sex discrimination complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer or designee has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer or designee may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer or their designee. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(8) The student conduct officer or their designee shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer or designee will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer or designee may take disciplinary action based upon the available information.

~~((3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4))~~ (10) Within ((ten)) 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer or designee shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed((7)) (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer or designee, if additional information is necessary to reach a determination. The student conduct officer or their designee will notify the parties of any extension period and the reason therefore.

~~((5))~~ (11) The student conduct officer or designee may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 495B-121-265; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such

referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

~~((+6))~~ (12) In cases involving allegations of (~~sexual miscon-~~  
~~duct~~) sex discrimination, the student conduct officer or their designee, (~~on the same date that the disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.~~) shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer or their designee shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer or their designee for good cause.

(a) The complainant and respondent may either accept the student conduct officer's or their designee's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request may be verbal or written, but must be clearly communicated to the student conduct officer or their designee.

(d) The student conduct officer or designee shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer or designee may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complaint's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer or their designee, the student conduct officer's or their designee's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's or their designee's written recommendation, the Title IX coordinator or their

designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If respondent is found responsible for engaging in sex discrimination, the Title IX coordinator or their designee shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-285 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex-based harassment, as set forth in WAC 495B-121-280, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~ten business~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The student conduct committee shall hear appeals from:

(a) (~~The imposition of~~) Disciplinary suspensions in excess of (~~ten~~) 10 instructional days;

(b) Dismissals; (~~and~~)

(c) Sex discrimination, including sex-based harassment cases; and

(d) Discipline cases referred to the committee by the student conduct officer or their designee, (~~the~~) a conduct review officer, or the president.

~~((8) Student conduct appeals from the imposition of disciplinary sanctions shall be reviewed through a brief adjudicative proceeding~~

subject to the procedures outlined in WAC ~~495B-121-290~~ through ~~495B-121-305~~.

~~(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and not subject to appeal.~~

~~(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of disciplinary decisions shall be afforded the same procedural rights as are afforded the respondent.~~

~~(13) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and are not subject to appeal.)~~

(9) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s) to act as the conduct review officer, authorized to exercise any or all duties of the conduct review officer.

AMENDATORY SECTION (Amending WSR 22-22-002, filed 10/20/22, effective 11/20/22)

**WAC 495B-121-286 Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC ~~495B-121-265((+9))~~ (13).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization ~~((r))~~ or association ~~((r, or student living group))~~ is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the ~~((code of))~~ student conduct code, college ~~((anti-hazing))~~ antihazing poli-

cies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-295 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent (~~(7)~~) and the student conduct officer (~~(7, and in cases involving sexual misconduct, the complainant)~~). Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within (~~ten~~) 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~ten~~) 10 business days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) (~~In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.~~

~~(5))~~ If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension (~~of more than ten~~) in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-300 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the



president, provided a party files a written request for review with the conduct review officer within ~~((ten))~~ 10 business days of service of the initial decision.

(2) The president shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decisions and must be served on the parties within ~~((twenty business))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that ~~((committee))~~ judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty business))~~ 20 calendar days after the request is submitted.

(5) If the president ~~((,))~~ upon review ~~((,))~~ determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-310 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One administrative employee (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative employee appointed on a yearly basis shall serve as the chair of the committee and may act on preliminary hearing matters prior to convening the committee. ~~((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member (~~pursuant to RCW 34.05.425(4)~~).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair shall receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s), to act as presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-315 Student conduct committee—(~~Procedure and evidence~~) Prehearing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may also continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The (~~committee~~) chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) (~~If a~~) Upon request for a document exchange (~~is~~) filed at least five business days before the hearing by any party or at the direction of the (~~committee~~) chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer or their designee, upon request, shall provide reasonable assistance to the respondent (~~(in obtaining relevant and admissible evidence that is within the college's control)~~) and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer or designee no less than three business days in advance of the hearing. The student conduct officer or their designee shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witness to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by (~~(a nonattorney assistant)~~) an advisor of their choice (~~(. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer)~~), which may be an attorney retained at the student's expense.

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or complainant is represented by an attorney, the student conduct officer or their designee may also be represented by ((a second, appropriately screened)) an assistant attorney general.

~~((10) At the option of the college president, the college may appoint an administrative law judge as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.))~~ (11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) Notice. The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer, or designee, shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown,

the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer or their designee shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-320 Student conduct committee (~~hearing procedures~~)—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing (~~location~~) room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer or designee (unless represented by an assistant attorney general) shall present the college's case (~~for imposing disciplinary sanctions~~).

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of ((sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.)) sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the chair will determine whether the questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such questions or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of

witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-325 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the ~~((student conduct))~~ committee chair shall permit the parties to make closing arguments in whatever form ~~((it)), written or verbal,~~ the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((ten business))~~ 20 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue ~~((an initial))~~ a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

(3) The committee's initial order shall also include a determination on appropriate ~~((discipline))~~ sanctions, if any. If the matter was referred to the committee by the student conduct officer or their designee, the committee shall identify and impose disciplinary sanction(s) or conditions ~~((r))~~ (if any), as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction ~~((s))~~ and/or conditions imposed by the student conduct officer or designee, and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their ~~((legal counsel of record))~~ attorney, if any. The notice will inform the parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of ~~((sexual misconduct, the chair of the student conduct committee, on the same date as))~~ sex-based harassment, the initial decision ~~((is))~~ shall be served on ~~((the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the complainant of their appeal rights))~~ all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-330** (~~(Appeal from student conduct committee initial decision.)~~) **Student conduct committee—Review of initial decision.**

(1) (~~(A party who is aggrieved by the findings or conclusions issued by the student conduct committee)~~) Any party, including a complainant in sex-based harassment cases, may appeal the committee's (~~(initial)~~) decision to the president by filing a (~~(notice of)~~) written appeal with the president's office within (~~(ten business)~~) 21 calendar days of service of the committee's (~~(initial)~~) decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The (~~(notice of)~~) written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary((τ)) to aid review((τ)) the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the ((notice of)) appeal.

~~((3))~~ (5) The president shall provide a written decision to all parties and their attorneys, if any, within ((twenty-one business)) 20 calendar days after receipt of the notice of appeal. The president's decision shall be final and ((shall include a notice of any rights to request reconsideration and/or)) subject to judicial review pursuant to chapter 34.05 RCW, Part V.

~~((4))~~ (6) In cases involving allegations of ((sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

~~(5))~~ sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president shall not engage in any "ex parte" communication with any of the parties regarding an appeal.



AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-335 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises (~~and~~) or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer or their designee may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included (~~that warns~~) warning the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer, their designee, or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. (~~At the hearing the review officer will:~~

~~(a) Determine)~~

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope (~~and~~

~~(b) Provide).~~

(c) The respondent (~~the~~) shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

~~(+6))~~ (d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

~~((7))~~ (e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

~~((8))~~ (f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

~~((9))~~ (6) In cases involving allegations of ~~((sexual-misconduct))~~ sex-based harassment, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-340 Readmission after dismissal.** A student dismissed due to a code of conduct violation from the college may be re-admitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within ~~((thirty))~~ 30 calendar days after completion of the review process.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-290	Brief adjudicative proceedings authorized.
WAC 495B-121-350	Order of precedence.
WAC 495B-121-355	Prohibited conduct under Title IX.
WAC 495B-121-360	Title IX jurisdiction.
WAC 495B-121-365	Initiation of discipline.
WAC 495B-121-370	Prehearing procedure.
WAC 495B-121-375	Rights of parties.
WAC 495B-121-380	Evidence.
WAC 495B-121-385	Initial order.
WAC 495B-121-390	Appeals.

## WSR 24-21-145

## PROPOSED RULES

## BELLINGHAM TECHNICAL COLLEGE

[Filed October 22, 2024, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-088.

Title of Rule and Other Identifying Information: Amended sections of chapter 495B-169 WAC.

Hearing Location(s): On December 2, 2024, at 11:30 a.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Date of Intended Adoption: December 19, 2024.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughlin@btc.edu, fax 360-752-7134, by November 21, 2024.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by November 21, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring chapter 495B-168 WAC into compliance with RCW 28B.10.293 regarding collection of debts.

Reasons Supporting Proposal: To be in compliance with RCW 28B.10.293.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: Chapter 28B.10 RCW.

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

Name of Proponent: Bellingham Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz and Rhonda Laughlin, CS 201 and CS 213, 360-752-8334.

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

A cost-benefit analysis is not required under RCW 34.05.328. Required by RCW 28B.10.293.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: To bring chapter 495B-168 WAC into compliance with RCW 28B.10.293 regarding collection of debts.

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024

Ronda Laughlin

Executive Assistant to the President

OTS-5281.1

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-168-030 Fines.** In cases where damage or loss of library material occurs, the patron will be assessed the replacement cost. In other instances where library-media materials are retained by the borrower beyond the designated due date, fines will be levied as a sanction to effect the prompt return of items which may be in demand by others. When materials are not returned, or fines not paid, holds are placed on the (~~transcript records~~) borrowing privileges of those involved. (~~In extreme cases,~~) When expensive or valuable items are involved(, the provisions of RCW 27.12.340 may be invoked) and reasonable attempts to advise and notify the debtor have been made, outstanding fines and fees may be assigned to a collection agency (RCW 19.16.500).

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-168-040 ((~~Student handbook.~~)) Library information.** Detailed information governing the operation of the library-media center and the rules for loaning books, other print materials, and nonprint materials is (~~included in the student handbook of~~) located on Bellingham Technical College's website.

**WSR 24-21-146**  
**PROPOSED RULES**  
**BIG BEND**  
**COMMUNITY COLLEGE**

[Filed October 22, 2024, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-124.

Title of Rule and Other Identifying Information: Student code of conduct, chapter 132R-04 WAC.

Hearing Location(s): On December 2, 2024, at 2:30 p.m., at Big Bend Community College (college), 7662 Chanute Street N.E., Moses Lake, WA, ATEC Building, Hardin Community Room.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Chandra Rodriguez, 7662 Chanute Street N.E., Moses Lake, WA 98837, email chandrar@bigbend.edu.

Assistance for Persons with Disabilities: Contact Aaron Glenn, phone 509-793-2027, TTY 509-793-2325, email aarong@bigbend.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to bring the college's student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: Revisions to bring the college's code into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), as implemented through 34 C.F.R. § 106.

Rule is necessary because of federal law, 20 U.S.C. § 1681.

Name of Proponent: Big Bend Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Chandra Rodriguez, 7662 Chanute Street N.E., Moses Lake, WA, Administrative Building (1400), 509-793-2001; Implementation and Enforcement: André Guzman, 7662 Chanute Street N.E., Moses Lake, WA, Administrative Building (1400), 509-793-2077.

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

A cost-benefit analysis is not required under RCW 34.05.328. The college is not required to complete a cost-benefit analysis by the terms of RCW 34.05.328.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Portions of this rule making are being adopted to comply with federal statute and regulations, Title IX of the Education Amendments of 1972 (20

U.S.C. § 1681), as implemented through 34 C.F.R. § 106. These federal regulations were updated on April 19, 2024, and institutions of higher education were required to come into compliance by August 1, 2024. Failure to adopt rule making to keep the agency in compliance with Title IX could result in the loss of federal funding..

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The proposed rules are necessary to remain compliant with federal statute and regulation (as indicated above), and address the student code of conduct, including hearings for alleged violations of the student conduct code.

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency].

October 22, 2024

Chandra Rodriguez

Executive Assistant to the President

## OTS-5634.1

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

**WAC 132R-04-015 Definitions.** For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The vice president of learning and student success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for ~~((receiving and facilitating))~~ reviewing or referring appeals ~~((from))~~ of student disciplinary actions ~~((and for reviewing initial decisions issued in a brief adjudicative proceeding. The conduct review officer shall be designated by the president and shall be authorized to grant appropriate relief upon review))~~ as specified in this code. The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

(3) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary and to reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a viola-

tion of the student conduct code. A written or verbal warning is not disciplinary action.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or ~~((an expulsion))~~ dismissal from the college are heard by the ~~((disciplinary))~~ student conduct committee. Appeals of all other ~~((appealable))~~ disciplinary action may be reviewed through brief adjudicative proceedings.

(6) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(7) "Program" or "programs and activities" means all operations of the college.

(8) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(9) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(10) "Respondent" is the student ~~((against whom disciplinary action is being taken))~~ who is alleged to have violated the student conduct code.

~~((7))~~ (11) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document ~~((to the college assigned))~~ by email, once one has been generated, and by certified mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed, if possible, and deposited into the mail.

~~((8))~~ (12) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review by a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by email and first class mail to the recipient's college-assigned email and office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

~~((9))~~ (13) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

~~((10))~~ (14) "Student" is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses (excluding those trainings occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

~~((11))~~ (15) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(16) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(17) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

~~((12))~~ (18) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations, and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

(19) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

~~((13))~~ (20) "Complainant" means ~~((any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the col-~~



~~lege when the college files the complaint))~~ the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a person or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

~~((14))~~ (21) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

**WAC 132R-04-017 Statement of jurisdiction.** (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises; or

(b) At or in connection with ~~((college-sponsored))~~ college programs or activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college programs or activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-053 Authority.** The Big Bend Community College (BCC) board of trustees, acting according to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. Administration of the student disciplinary procedures is the responsibility of the vice president of learning and student success. The vice president of learning and student success will serve as the student conduct officer, or appoint a designee,

except in the cases involving allegations of sex discrimination including sex-based harassment when the Title IX coordinator or designee will serve as the student conduct officer. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

**WAC 132R-04-057 (~~(Student code of conduct violations.)~~) Prohibited student conduct.** The college may impose sanctions against a student or student group who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct, which includes, but is not limited to, any of the following:

- (1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, or fabrication.
  - (a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.
  - (b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.
  - (c) Fabrication includes falsifying data, information, or citations in completing an academic assignment, and also includes providing false or deceptive information in an instructional course concerning the completion of an assignment.
  - (d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.
  - (e) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.
- (2) **Other dishonesty.** Acts of dishonesty include, but are not limited to:
  - (a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;
  - (b) Tampering with an election conducted by or for college students; (~~(e)~~)
  - (c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee; or
  - (d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.
- (3) **Obstructive or disruptive conduct.** Conduct not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, bullying is repeated or aggressive unwanted behavior, not otherwise protected by law, that humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive(s) of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be

in writing and shall be subject to such terms or conditions incorporated in the written permission.

(9) **Hazing.**

~~((a) Hazing is any act committed as part of:~~

~~(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or~~

~~(ii) Any pastime or amusement engaged in with respect to such a student group; or~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

~~(b) Examples of hazing include, but are not limited to:~~

~~(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(ii) Humiliation by ritual act;~~

~~(iii) Striking another person with an object or body part;~~

~~(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions. See RCW 28B.10.900.~~

~~(d) Consent is not a valid defense against hazing.) Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:~~

~~(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;~~

~~(b) Humiliation by ritual act;~~

~~(c) Striking another person with an object or body part;~~

~~(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or~~

~~(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.~~

(10) **Alcohol, cannabis, drug, and tobacco violations.**

(a) Alcohol. The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) ((Marijuana)) Cannabis. The use, possession, delivery, or sale of ((marijuana)) cannabis or the psychoactive compounds found in ((marijuana)) cannabis intended for human consumption, regardless of form, or being observably under the influence of ((marijuana)) cannabis or the psychoactive compounds found in ((marijuana)) cannabis and intended for human consumption, regardless of form. While state law

permits the recreational use of ((marijuana)) cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, production, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132R-04-103.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcomed sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs or activities;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex. This includes, but is not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal

penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.

(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(viii) Consent. Clear, knowing, and voluntary permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Discriminatory harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently (~~serious~~) severe, persistent, or pervasive, so as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program and/or social programs and/or student housing; alter the terms of an employee's employment; or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; (~~gender~~) sex, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity or expression; veteran's or military status; HIV/AIDS and hepatitis C status; or membership in any other ((legally)) group protected ((classification)) by federal, state, or local law. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications not otherwise protected by law.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation of federal, state, or local law, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering

with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Abuse of process.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena or order to appear at a hearing;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student disciplinary committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(20) **Unsafe vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(21) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college housing, traffic and parking rules.

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(23) **Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(24) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively



offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

**WAC 132R-04-061 Hazing (~~(prohibited)~~) sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 132R-04-057.

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor. See RCW 28B.10.901 (2) and (3).

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. RCW 28B.10.901(3).

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college. RCW 28B.10.902(1).

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college. RCW 28B.10.902(2).

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 19-21-080, filed 10/14/19, effective 11/14/19)

**WAC 132R-04-063 Corrective action, disciplinary ((actions)) sanctions terms and conditions.** One or more corrective actions or disciplinary ((actions)) sanctions include, but are not limited to, the following sanctions that may be imposed alone or in conjunction upon students found to have committed the violations in WAC 132R-04-057. The college may impose additional sanctions on a student who fails to comply with any imposed sanctions including, but not limited to, preventing that student from registering for classes.

(1) Warning: A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(2) Reprimand: Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Other conditions and restrictions may include, but not be limited to, restrictions from being present on certain parts of the campus or in certain college buildings; restriction from attending certain college activities or participation in extra-curricular activities; orders of no contact between the student under probation and other students, college employees, or other persons.

(4) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(5) **Education.** The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(6) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(7) **No contact ((order)) directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(8) **Restitution:** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(9) **Disciplinary suspension:** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(10) **Professional evaluation:** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(11) **Expulsion:** Permanent separation of the student from the college with no promise (implied or otherwise) that the student may return at any future time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student will also be barred from college premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice of trespass pursuant to WAC 132R-117-020(2). The notice of trespass may be given by any manner specified in chapter 9A.52 RCW.

(12) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(13) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-064 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer (or designee) may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or
- (c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with written notice or oral notice of the summary suspension at the time of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two (~~business~~) calendar days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension Proceedings" and shall include:

(a) The reasons for imposing the summary suspension, including reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the chair of the student disciplinary committee for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or designee, or to attend a disciplinary hearing.

(5) (a) The conduct review officer or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the notice of summary suspension proceedings has been served upon the respondent in accordance with these rules and the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief statement of findings of fact and conclusions of law, the policy reasons justifying imposition of the summary suspension. If summary suspension is upheld and/or other discipline imposed, the order shall inform the respondent of the duration of the summary suspension or the nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the order may be appealed.

(f) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension.

(g) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices whom may be bound or protected by it.

(6) In cases involving allegations of sexual (~~misconduct~~) discrimination, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-112 Initiation of disciplinary action.** (~~((1) All disciplinary proceedings will be initiated by the student conduct officer or a designee. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

~~(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing the respondent to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is charged with violating, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to appear after proper notification, the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) The student conduct officer, prior to initiating taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the specific student conduct code provisions alleged to have been violated, the action taken, and a notice of appeal rights (if any).~~

~~(5) The student conduct officer may take any of the following actions:~~

- ~~(a) Exonerate the respondent and terminate the proceeding;~~
- ~~(b) Dismiss the case after providing appropriate counseling and advice to the respondent. Such action is final and is not subject to review on appeal;~~
- ~~(c) Issue a verbal warning to the respondent directly. Such action is final and is not subject to review on appeal;~~
- ~~(d) Impose a disciplinary action(s), as described in WAC 132R-04-063. Such actions are subject to review on appeal as provided in this chapter. Any decision imposing a disciplinary action(s) must state the facts and conclusions supporting the student conduct officer's decision, the specific student conduct code provision(s) found to have been violated, the details of the discipline imposed, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal;~~
- ~~(e) Refer the matter directly to the student disciplinary committee for such action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the disciplinary committee, with a copy served on the respondent.~~

~~(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.)~~ (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student

conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132R-04-063; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such



referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-113 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132R-04-057, the respondent may appeal (~~the results of~~) a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's order shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student disciplinary committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) In the event of a conflict between this student conduct code and the Administrative Procedure Act, chapter 34.05 RCW, this student conduct code will govern.

~~((6))~~ (7) The college hereby adopts the Model rules of procedure, chapter 10-08 WAC, by reference. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

~~((7))~~ (8) Imposition of discipline for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

~~((8))~~ (9) The student disciplinary committee shall hear the following cases as fully adjudicated proceedings:

- (a) Appeals from suspensions in excess of ten instructional days;
- (b) Appeals from dismissals;
- (c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president; and
- (d) Cases in which students request to have their discipline case heard by the committee.

~~((9))~~ (10) Student conduct appeals involving the following disciplinary actions shall be reviewed as brief adjudicative proceedings:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-116 Brief adjudicative proceedings—Initial hearing.**

(1) Brief adjudicative proceedings shall be conducted by the student conduct officer. The presiding officer shall not participate in any

case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the college's view of the matter and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon all the parties within (~~ten business~~) 10 calendar days of consideration of the initial hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) 21 calendar days of service of the initial decision, the initial decision shall be deemed the final order.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension (~~of more than ten~~) in excess of 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The conduct review officer may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-1170 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or his or her designee, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the initial decision.

(2) The president or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the proceedings must be referred to the student disciplinary committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 20 calendar days of the initial decision or of the request for review, whichever is later. The order on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the reviewing officer does not make a disposition of the matter within (~~twenty~~) 20 calendar days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The president or designee may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-125 Student ((disciplinary)) conduct committee—General.** (1) The student ((disciplinary)) conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
  - (b) Two faculty members recommended by the faculty association and appointed by the president;
  - (c) The conduct review officer or other member of the administration appointed by the president at the beginning of the academic year.
- (2) The conduct review officer shall serve as the committee chair and may take action on preliminary hearing matters prior to the appointment of the committee. The committee chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.
- (3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.
- (4) Members of the student disciplinary committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exer-

cise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-130 Student disciplinary committee—((Hearing)) Pre-hearing.** (1) The student conduct administrative panel will conduct full adjudicative proceedings in accordance with the provisions of this standards of conduct for students code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, conclusions, and sanctions. To the extent there is a conflict between the conduct code and the model rules, this student conduct code shall control.

(2) The committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(4) Upon request filed at least five business days before the hearing by either party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present in their respective cases. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, unless the party can show good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (i) the student conduct officer's notification of imposition of discipline (or referral to the committee) and (ii) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate; any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of their choice. A respondent or complainant in a case in-

volving allegations of sexual misconduct may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings upon request by a party.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-131 Student disciplinary committee hearing—Presentation of evidence.** (~~(1) Upon the failure of any party to attend or participate in a hearing, the committee may either (a) proceed with the hearing and issuance of its order or (b) serve an order of default in accordance with RCW 34.05.440. If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.~~

~~(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record or in writing that some or all of the proceedings should be open, the committee chair shall determine any extent to which the hearing will be open. For hearings involving sexual misconduct allegations, complainant, accused student, and their respective attorney representatives may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student disciplinary committee. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.~~

~~(3) The committee chair shall cause the hearing to be recorded by a method that the committee chair selects, in accordance with RCW 34.05.449. Panel deliberations are not recorded. The recording, or a copy, is property of the college, but will be made available to the respondent upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.~~

~~(4) The committee chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee, and make rulings on the admissibility of evidence, motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. These rulings shall be made on the record. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence, in conjunction with the Administrative Procedure Act, chapter 34.05 RCW. Questions related to the order of the proceedings are also determined by the committee chair.~~

~~(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action.~~

The facts justifying any such action must be established by a preponderance of the evidence.

~~(6) All testimony shall be given under oath or affirmation. The panel chair determines which records, exhibits, and written statements may be accepted as information for consideration by the panel. These rulings shall be made on the record. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.~~

~~(7) The president of the college or designee, the chair of the student disciplinary committee, the administrators assigned to the student disciplinary committee, deans, and/or the student conduct officer have the authority to issue subpoenas.~~

~~(8) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student disciplinary committee. Each party is responsible for informing their witnesses of the time and place of the hearing.~~

~~(9) The committee chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.~~

~~(10) In cases involving allegations of sexual misconduct, neither party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be submitted in writing to the committee chair, who in his or her discretion shall pose the questions on the party's behalf.~~

~~(11) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee may also permit each party to propose findings, conclusions, and/or an order for its consideration.)~~ (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.



AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-150 Appeal from student ((disciplinary)) conduct committee initial decision.** ((1) A respondent who is aggrieved by the findings or conclusions issued by the student disciplinary committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty calendar days of service of the committee's initial decision.

(2) The notice of appeal must assign error to specific findings of fact and/or conclusions of law in the initial decision and must contain argument regarding why the appeal should be granted. The president's review on appeal shall be limited to a review of those issues and arguments raised in the notice of appeal. Review shall be restricted to the record created below.

(3) The president shall provide a written order to all parties within forty-five calendar days after receipt of the notice of appeal. The president's decision shall be final.

(4) The president may exercise discretion to suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

(6) Respondents and complainants in a case involving allegations of sexual misconduct shall have the right to be accompanied by an attorney or nonattorney assistant of their choosing during the appeal process, but will be deemed to have waived that right unless they file with the president a written notice of the attorney's identity and participation within twenty calendar days of service of the committee's initial decision.

(7) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(a) In addition to the appeal rights provided to the respondent above, a complainant may also appeal the following actions by the student conduct officer:

(i) The dismissal of a sexual misconduct complaint; or

(ii) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(b) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal, and provide the complainant an opportunity to intervene as a party to the appeal.

(c) The president will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the respondent. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.) (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

**WAC 132R-04-320 Prehearing procedure.** (~~((1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132R-04-130. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.~~

~~(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.~~

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.)~~ (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice pe-

riod if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The chair may provide to the committee members in advance of the hearing copies of:

- (a) The student conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) (Optional: The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.)

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) (Optional: In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.)

(10) (Optional: For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing.) The committee will ordinarily be advised by an assistant attorney general or their designee. If the re-

spondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the

hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

## WSR 24-21-147

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed October 22, 2024, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-24-101.

Title of Rule and Other Identifying Information: Physical therapists and physical therapist assistants; reducing licensure barriers. The board of physical therapy (board) is proposing amendments to WAC 246-915-030, 246-915-040, 246-915-085, and 246-915-120 in order to comply with section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, and to make general and housekeeping updates to these sections. Additionally, the board is proposing amendments to WAC 246-915-040 to further expand upon the endorsement pathway required under 2SHB 1724 and amendments to WAC 246-915-120 to streamline the foreign educated applicant application process.

Hearing Location(s): On December 9, 2024, at 10:00 a.m., at Washington State Labor and Industries, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. Microsoft Teams meeting [url=%2F%23%2F1%2Fmeetup-](https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_YjlkYTg0NTMtMTgxZC00MzFiLWFjZDctNzkxOTY0NTQ3MWNh%40thread.v%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522b0a413cc-861e-438f-ad33-52df6d9a4283%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=47fb7984-3add-4c15-a935-9bd8ba2e745b&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true, Meeting ID 256 753 416 51, Passcode 9EZj3m; or call in (audio only) +1 564-999-2000,,75167904# United States, Olympia, 833-322-1218,,75167904# United States (toll-free), Phone Conference ID 751 679 04#. The public hearing will be hybrid. You may attend virtually or in person. You may also submit comments in writing.</p>
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join%2F19%3Ameeting\_YjlkYTg0NTMtMTgxZC00MzFiLWFjZDctNzkxOTY0NTQ3MWNh%40thread.v%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522b0a413cc-861e-438f-ad33-52df6d9a4283%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=47fb7984-3add-4c15-

a935-9bd8ba2e745b&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true, Meeting ID 256 753 416 51, Passcode 9EZj3m; or call in (audio only) +1 564-999-2000,,75167904# United States, Olympia, 833-322-1218,,75167904# United States (toll-free), Phone Conference ID 751 679 04#. The public hearing will be hybrid. You may attend virtually or in person. You may also submit comments in writing.

Date of Intended Adoption: December 9, 2024.

Submit Written Comments to: Allyson McIver, Department of Health, P.O. Box 47852, Olympia, WA 98504-7582 [7852], email <https://fortress.wa.gov/doh/policyreview>, [physical.therapy@doh.wa.gov](mailto:physical.therapy@doh.wa.gov), beginning the day and time of this filing, by December 2, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Allyson McIver, phone 360-236-2878, TTY 711, email [physical.therapy@doh.wa.gov](mailto:physical.therapy@doh.wa.gov), by November 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing revisions to existing rules to waive education, training, experience, and examination requirements for applicants that qualify for licensure by endorsement to implement RCW 18.130.077. Specifically, the board is proposing to:

- Remove unnecessary language in WAC 246-915-030.
- Amend WAC 246-915-040 to create a faster pathway to licensure for out-of-state physical therapists and physical therapy assistants that have been credentialed in another state or states with substantially equivalent standards for two years or more, with no interruption in licensure for longer than 90 days, provided that they also meet the requirements in RCW 18.130.077(3).
- Remove the jurisprudence examination requirement in WAC 246-915-120.

- Amend the continuing education (CE) requirements in WAC 246-915-085 to add the jurisprudence examination as free CE hour that must be completed within their first full CE cycle after initial licensure.

Additional proposed amendments to WAC 246-915-040 add a new a licensure by endorsement pathway for applicants who have been actively licensed for less than two years in a state or states with substantially equivalent standards to Washington. The board is also proposing further amendments to the foreign educated applicants section to clarify the requirements in WAC 246-915-120.

Reasons Supporting Proposal: Under RCW 18.130.077, all disciplining authorities shall waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days. The statute also allows disciplining authorities to choose to waive education, training, experience, and exam requirements for applicants who have achieved the national credential for their profession. However, the physical therapy professions do not have a national certification that the board could consider as a pathway to licensure.

The intent of the statute is to make disciplining authorities review and adjust licensure requirements to remove barriers to entering and remaining in the health care workforce and shorten the credentialing process.

The board is proposing to move the jurisprudence requirement from initial licensure requirements to a CE. The jurisprudence exam is training that is Washington state specific. The board believes it is important that all physical therapy credential holders new to the state are aware of Washington's laws and rules pertaining to their profession. While it may not be necessary to have the education prior to being licensed in Washington state, by having all providers take the jurisprudence examination within the first full CE cycle, all providers will have knowledge of where to find laws and rules regarding their professions.

Establishing expedited pathways to Washington licensure for out-of-state professionals meets the intent of RCW 18.130.077 by reducing barriers for out-of-state health care professionals seeking certification in Washington, to expand the availability of qualified providers, and streamline the credentialing process.

The proposed amendments go beyond the requirements of RCW 18.130.077 by creating a faster pathway to licensure for applicants who have been practicing less than two years in a state with substantially equivalent standards.

These proposed amendments would create consistency throughout the chapter, provide faster pathways to licensure, and ease the burden on licensees and applicants while still maintaining sufficient standards of training and care. Rule making is necessary to amend licensure requirements throughout chapter 246-828 WAC to align with RCW 18.130.077 and create enforceable licensing standards.

Statutory Authority for Adoption: RCW 18.74.023 and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Statute Being Implemented: RCW 18.130.077.

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

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allyson McIver, Program Manager, 111 Israel Road S.W., Tumwater, WA 98501, 360-236-2878.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allyson McIver, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2878, TTY 711, email physical.therapy@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impact rules regulating individual professional licenses, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 21, 2024  
Kathryn Dale, PT, DSc, Chair  
Board of Physical Therapy

## OTS-5852.2

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

**WAC 246-915-030 Examination.** The examination acceptable and approved for use under the provisions of RCW 18.74.035 is the NPTE.

(1) For a physical therapist a passing score is considered to be one of the following:

(a) Beginning November 8, 1995, the criterion referenced passing point shall be set to equal a scaled score of (~~six hundred~~) 600 based on a scale ranging from (~~two hundred to eight hundred~~) 200 to 800.

(b) Beginning February 28, 1991, through July 12, 1995, not less than (~~sixty eight~~) 68 percent of the raw score.

(c) Prior to February 28, 1991, not less than (~~sixty~~) 60 percent raw score on each of the three examination parts.

(2) For a physical therapist assistant a passing score is considered to be one of the following:

(a) Beginning November 8, 1995, the criterion referenced passing point shall be set to equal a scaled score of (~~six hundred~~) 600 based on a scale ranging from (~~two hundred to eight hundred~~) 200 to 800.

(b) Prior to November 8, 1995, a passing score is answering correctly (~~seventy~~) 70 percent of the total number of questions.

(3) If a physical therapist or physical therapist assistant candidate fails to receive a passing score, he or she will be required to retake the NPTE.

(4) (~~The department will issue a license by endorsement to an applicant who is currently licensed as a physical therapist or physical therapist assistant under the laws of another state provided the requirements for registration or licensure under the appropriate cate-~~



gory in that state, including minimal education and passing score on the NPTE, were substantially equal to the requirements in force in this state on the date of the applicant's initial licensure in the other state.

(5)) An applicant may take the NPTE a maximum of six times, except that applicants who receive two very low scores on the exam will not be allowed to test again. A very low score is defined as performing at or below chance level (scale score ((four hundred) 400 and below).

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

**WAC 246-915-040 Licensure by endorsement.** ((~~(1) An applicant for licensure as a physical therapist or physical therapist assistant who is currently registered, certified, or licensed under the laws of another state or territory, or the District of Columbia, with substantially equal requirements of this chapter shall file an application and submit to the department:~~

~~(a) Documentation verifying graduation from a board approved school as described in WAC 246-915-100 and 246-915-105; and~~

~~(b) Verification of passing NPTE scores as described in WAC 246-915-030.~~

~~(2) If the applicant took an examination other than the NPTE, the board shall determine if such examination is equivalent to that required by the laws of this state.~~

~~(3) If an applicant has not been actively engaged in lawful practice in another state, territory, or District of Columbia in the last three years, the applicant may be granted licensure by endorsement under the following conditions:~~

~~(a) The board may require the applicant to retake and pass the NPTE; or~~

~~(b) The board may waive reexamination in favor of evidence of continuing competency satisfactory to the board.~~

~~(4) If the applicant has not been actively engaged in lawful practice in another state, territory, or District of Columbia in the last five years or longer, the applicant may be granted licensure by endorsement under the following conditions:~~

~~(a) The applicant completes the continuing competency requirements found in WAC 246-915-085; and~~

~~(b) The applicant retakes and passes the NPTE.)~~

(1) A physical therapist or physical therapist assistant applicant who has been licensed for two years or longer may qualify for licensure by endorsement providing the applicant meets the requirements in RCW 18.130.077 (1) and (3). A physical therapist or physical therapist assistant who applies for licensure by endorsement shall submit:

(a) A completed application on forms provided by the department;

(b) The application fee required under WAC 246-915-990 or 246-915-99005; and

(c) Proof of licensure under the laws of another state that the board has deemed to have substantially equivalent licensure requirements.

(2) A physical therapist or physical therapist assistant applicant who has been actively licensed for less than two years in a state that the board has deemed to have substantially equivalent licensure

requirements may qualify for licensure by endorsement providing the applicant:

(a) Is not subject to denial of a license or issuance of a conditional license;

(b) Has not been subject to disciplinary action for unprofessional conduct or impairment in any jurisdiction during the time of licensure including the pendency of their application;

(c) Is not under investigation or subject to charges in any jurisdiction during the pendency of their application;

(d) Has no interruption in licensure lasting longer than 90 days;

(e) Submits the following to the department:

(i) A completed application on forms provided by the department;

(ii) Proof of active licensure under the laws of another jurisdiction that the board has deemed to have substantially equivalent licensure requirements;

(iii) A signed attestation verifying the applicant graduated from a board approved school as described in WAC 246-915-100 or 246-915-105;

(iv) A signed attestation verifying the applicant took and passed the National Physical Therapy Examination;

(v) An employer verification form signed by their employer attesting that the applicant has been actively engaged in lawful practice in the state where the applicant is licensed for at least 200 hours within the last two years immediately preceding an application; and

(vi) The application fee required under WAC 246-915-990 or 246-915-99005.

(3) An applicant who does not meet the requirements of this section shall follow the requirements under WAC 246-915-030, and either WAC 246-915-100 or 246-915-105, and follow the initial eligibility and application procedure under WAC 246-915-039.

AMENDATORY SECTION (Amending WSR 23-21-075, filed 10/13/23, effective 11/13/23)

**WAC 246-915-085 Continuing competency.** (1) Every two years, a physical therapist (PT) shall complete 32 hours of continuing education (CE) through any of the following means:

	<b>CE Type</b>	<b>Maximum Hours Allowed</b>	<b>Documentation Requirements</b>
a.	Participation in a course, live or online, including recorded.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media relating to the practice of physical therapy that does not include specific goals and objectives.	Four hours	Instead of course goals, objectives and certificate of completion, the PT shall write and submit to the department a minimum of two takeaways for each hour of running time.

	CE Type	Maximum Hours Allowed	Documentation Requirements
c.	Books or articles reviewed.	Eight hours (reading time only)	The PT shall write and submit to the department a one-page synopsis in <del>((twelve))</del> <u>12</u> -point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	<del>((Sixteen))</del> <u>16</u> hours	The PT shall submit to the department a description and objectives of the presentation, date, and location of presentation.
e.	Written preparation and publication of original scholarly research or work published in a peer-review journal.	<del>((Ten))</del> <u>10</u> hours	The PT shall submit to the department proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapy students enrolled in a physical therapy educational program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	<del>((Ten))</del> <u>10</u> hours	The PT shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each <del>((thirty-two))</del> <u>32</u> hours of student mentorship equals one hour for purposes of CE credit.
g.	Courses required for professional certification such as to work in public schools.	<del>((Fifteen))</del> <u>15</u> hours	The PT shall submit a copy of the completion certificate to the department.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PT's competence.	No limit	The PT shall submit a transcript to the department verifying courses taken. One quarter credit is equal to <del>((ten))</del> <u>10</u> hours; one trimester is equal to <del>((twelve))</del> <u>12</u> hours; and one semester credit is equal to <del>((fifteen))</del> <u>15</u> hours.
i.	Attendance at science-based conferences.	No limit	Certificate of attendance.
j.	Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.	No limit	Certificate of certification.
k.	<u>Passing the Washington state jurisprudence examination.</u>	<u>One hour</u>	<u>Certificate of completion.</u>

(2) Every two years a physical therapist who holds a spinal manipulation endorsement shall complete at least 10 hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant (PTA) shall complete 24 hours of continuing education through any of the following means:

	CE Type	Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, including recorded.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.

	CE Type	Hours Allowed	Documentation Requirements
b.	Live or recorded instructional electronic media relating to the practice of physical therapy that does not include specific goals and objectives.	Four hours	Instead of course goals, objectives and certificate of completion, the PTA shall submit to the department a minimum of two takeaways for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PTA shall write and submit a one-page synopsis in <del>((twelve))</del> 12-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	<del>((Sixteen))</del> 16 hours	The PTA shall submit to the department a description and objectives of the presentation, date, and location of presentation.
e.	Written preparation and publication of original scholarly research or work published in a peer-review journal.	<del>((Ten))</del> 10 hours	The PTA shall submit proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	<del>((Ten))</del> 10 hours	The PTA shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each <del>((thirty-two))</del> 32 hours of student mentorship equals one hour for purposes of CE credit.
g.	Courses required for professional certification such as to work in public schools.	<del>((Fifteen))</del> 15 hours	The PTA shall submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PTA's competence.	No limit	The PTA shall submit a transcript verifying courses taken. One quarter credit is equal to <del>((ten))</del> 10 hours; one trimester credit is equal to <del>((twelve))</del> 12 hours; and one semester credit is equal to <del>((fifteen))</del> 15 hours.
i.	Attendance at science-based conferences.	No limit	Certificate of attendance.
j.	Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.	No limit	Certificate of certification.
k.	<u>Passing the Washington state jurisprudence examination.</u>	<u>One hour</u>	<u>Certificate of completion.</u>

(4) Every two years, each physical therapist and physical therapist assistant shall complete two hours of health equity continuing competency training as described in WAC 246-12-800 through 246-12-830. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing health equity training continuing education count toward meeting any applicable continuing competency requirements.

(5) Each physical therapist and physical therapist assistant shall complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

(6) Each physical therapist and physical therapist assistant shall take and pass the Washington state jurisprudence examination within their first full continuing education cycle after initial licensure. Fulfilling this requirement will count as one hour towards the physical therapist or physical therapist assistant's CE requirements.

(7) Every two years, each physical therapist and physical therapist assistant shall complete 200 hours involving the application of physical therapy knowledge and skills which may be obtained in the

clinical practice of physical therapy or in the nonclinical activities which include, but are not limited to, the following:

	<b>Clinical Activities</b>	<b>Hours Allowed</b>	<b>Documentation</b>
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the PT or PTA shall provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.
	<b>Nonclinical Activities</b>	<b>Hours Allowed (within the ((two hundred)) 200 hours required)</b>	<b>Documentation</b>
b.	Physical therapy teaching of: <ul style="list-style-type: none"> <li>• Patient/client management, prevention and wellness.</li> <li>• Physical therapy ethics and standards of practice.</li> <li>• Professional advocacy/involvement.</li> </ul>	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
c.	Active service on boards or participation in professional or government organizations, or attendance at professional or government organizations meetings specifically related to the practice of physical therapy.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
d.	Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
e.	Physical therapy research as a principal or associate researcher.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
f.	Physical therapy consulting.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
g.	Management of physical therapy services.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
h.	Physical therapy volunteer hours or observation in physical therapy practice.	No limit	The PT or PTA shall provide documentation verifying volunteer or observation hours.

AMENDATORY SECTION (Amending WSR 23-16-125, filed 8/1/23, effective 9/1/23)

**WAC 246-915-120 Foreign educated applicants.** (1) An applicant whose professional degree in physical therapy was awarded from a foreign physical therapy program that is not or was not accredited by the CAPTE shall submit:

(a) ~~((An application for review by the board))~~ A completed application on forms provided by the department;

(b) A credentials evaluation report of professional education and training prepared by a board-approved credentials evaluation agency. The report must be sent directly from the credentialing agency to the board. It is the responsibility of the applicant to pay the expenses associated with the credentials evaluation:

(i) The report must provide evidence and documentation that the applicant completed education outside a state or territory of the United States that is substantially equivalent to the education of a

physical therapist who graduated from a physical therapy education program accredited by CAPTE.

(ii) To be approved as a credentialing agency, the agency must use the appropriate course work tool (CWT) adopted by the Federation of State Boards of Physical Therapy to determine substantial equivalency. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist earned their (~~first~~) professional degree in physical therapy.

(c) Evidence of English language proficiency:

(i) Verification that English is the native language of the country of origin (~~, and~~) of the applicant; or

(ii) Verification the physical therapy program the applicant completed employs English as the language of training; or

~~((iii))~~ (iii) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than four and one-half on the Test of Written English (TWE); or

~~((iii))~~ (iv) Verification that the applicant has achieved an overall score of not less than 89, and the following minimum scores for each category of the internet-based TOEFL (ibTOEFL) examination: Writing, 22; speaking, 24; reading, 22; listening, 21.

(d) Verification of a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(e) Official transcripts from the physical therapy program showing degree date;

~~(f) ((Passing scores for the Washington jurisprudence examination;~~

~~(g))~~ Passing scores for the National Physical Therapy Examination (NPTE) as described in WAC 246-915-030; (~~and~~)

(g) The application fee required under WAC 246-915-990; and

(h) Any additional supporting documentation as requested by the board.

(2) The applicant shall have received a grade of "C" or higher (or equivalent) in all professional education course work;

(3) The applicant may apply for the college-level education program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency;

(4) The board may allow applicants to correct general education and professional education course work deficiencies by:

(a) Completing course work (~~(pre-approved)~~) preapproved by the board. To obtain course work preapproval, the applicant shall submit a written request along with the course description/syllabus for the proposed course; or

(b) Obtaining a new passing education evaluation from a board-approved credentials evaluation agency after correcting deficiencies as recommended by the credentialing agency. The report must be sent directly from the credentialing agency to the board; and

(5) An applicant whose professional degree in physical therapy was awarded from a foreign physical therapy program that is or was accredited by the CAPTE shall follow the requirements under WAC 246-915-030 and 246-915-100.

## WSR 24-21-148

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed October 22, 2024, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-080.

Title of Rule and Other Identifying Information: WAC 308-100-005 Definitions, 308-100-036 Reporting training results, 308-108-020 Definitions, 308-108-140 Reporting requirements, and 308-109-010 Definitions; and a new section in chapter 308-109 WAC, Motorcycle permit and endorsement requirements.

Hearing Location(s): On November 26, 2024, at 9:30 a.m., Microsoft Teams [contact agency for link], Meeting ID 250 290 806 056, Passcode AuKrQt; or dial in by phone +1 564-999-2000,,994018907# United States, Olympia, Phone conference ID 994 018 907#. Please note that there is both an in-person and a virtual option. If you are not able to sign in using Teams, your only option may be phone. Please plan on attending in person if the call in option is not a preferred method of participating.

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, beginning October 23, 2024, by November 26, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (DOL) is pursuing rule making to outline the process for motorcycle safety, commercial driver's license, and driver training schools to submit required information to DOL, per SB 5583 passed during the 2023 legislative session. All provided information will be used to populate the interactive map displayed on DOL's website.

Reasons Supporting Proposal: This rule making is necessary to successfully implement SB 5583.

Statutory Authority for Adoption: SB 5583 Young driver safety; RCW 46.01.110 Rule-making authority.

Statute Being Implemented: SB 5583 Young driver safety.

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

Name of Proponent: Washington state legislature, governmental.

Name of Agency Personnel Responsible for Drafting: Bryan Jackson, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3854; Implementation: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; and Enforcement: Sarann Sinthavong, 1125 Washington Street S.E., Olympia, WA 98504, 360-634-5422.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024

**OTS-5888.1**

AMENDATORY SECTION (Amending WSR 23-23-180, filed 11/22/23, effective 12/23/23)

**WAC 308-100-005 Definitions.** The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind-the-wheel (BTW) range training" means training provided by a BTW instructor when a student has actual control of the power unit during a driving lesson conducted for backing, street driving, and proficiency development. BTW range training does not include time a student spends observing the operation of a CMV when he or she is not in control of the vehicle.

(2) "Behind-the-wheel (BTW) instructor" means an individual who provides BTW training involving the actual operation of a CMV by a student on a range or a public road and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exception applicable to (a) and (b) of this definition:** A BTW instructor who provides training solely on a range which is not a public road is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, as long as the instructor previously held a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated.

(3) "Certified test route" means:

(a) Test route that is approved and assigned by the department.

(b) The areas for completing the pretrip inspection, basic controls and road test as approved by the department for the administration of a commercial driver license skills test.

(4) "Classroom" means a space dedicated to and used exclusively by an instructor for the instruction of students. With prior department approval, a classroom may be located within alternative facili-



ties, such as a public or private library, school, community college, college or university, public agency, or a business training facility. "Classroom," may also include a virtual classroom environment when video conferencing technology is capable of two-way communication between the instructor and all students.

(5) "Classroom/theory instruction" means knowledge instruction on the operation of a CMV and related matters provided by a theory instructor through lectures, demonstrations, audiovisual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom is included if it does not involve actual operation of a commercial motor vehicle and its components by the student.

(6) "Commercial driver license (CDL) third-party examiner" means a person or entity that is authorized by the state to administer commercial driver's license (CDL) skills tests.

(7) "Course cost" means the price charged for a course offering before any taxes, subsidies, discounts, or other price reductions or additional fees.

(8) "Demonstration of proficiency" means driver-trainee must demonstrate proficiency in required skills over time. Demonstration of proficiency of state and federal entry level driver training standards is not met by the completion of minimum hours of training. Nor is it limited to a single standardized assessment result.

~~((7))~~ (9) "Department" means the department of licensing.

(10) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

~~((8))~~ (11) "Employer" means a person or entity that hires one or more individuals to operate a commercial motor vehicle on a regular basis during their normal course of employment and whose primary purpose is not to train operators of commercial motor vehicles.

~~((9))~~ (12) "English proficiency" means applicants for a commercial motor vehicle skills test must be able to understand and respond to verbal commands and instructions in English by a skills test examiner per 49 C.F.R. 383.133(5).

~~((10))~~ (13) "Entry-level driver training schools for commercial driver licenses (CDL)" means an entity that is approved by the department, to provide training as required by RCW 46.25.060 (1) (a) (ii).

(14) "Hour," as used in connection with training requirements, means no less than 50 minutes of training or instruction.

~~((11))~~ (15) "Instructor-led" means person-to-person learning where students can ask questions, receive feedback in real-time, and interaction and discussion are enabled. Some classroom instruction may include self-paced, online components as authorized and certified by the department of licensing. Completely self-paced, online training courses are not authorized.

~~((12))~~ (16) "Lab" means a teaching environment involving a non-moving vehicle for hands on instruction supported by classroom material.

~~((13))~~ (17) "License or endorsement test" means a skills test that is required to obtain a commercial learner's permit, commercial driver license, or endorsement.

(18) "Observation" means the careful watching, as a passenger in a commercial motor vehicle, of street driving during the hours of

course instruction, recording lessons learned and applying classroom material.

~~((14))~~ (19) "Proficiency development" means driving exercises that will allow more time to develop the skills needed to demonstrate proficiency, competence, and confidence in the street driving and backing maneuvers portions of a course.

~~((15))~~ (20) "Proficiency-based learning" means:

(a) Learning outcomes emphasize competencies that include application and creation of knowledge along with the development of skills and abilities;

(b) Competency criteria and standards are explicit, measurable, transferable learning objectives that equip driver-trainees with necessary knowledge, skills, and abilities;

(c) Assessments are meaningful and directly related to driver-trainees' accomplishment of objectives;

(d) Driver-trainees receive rapid, differentiated support based on their individual learning needs; and

(e) Driver-trainees are given specific and actionable feedback that allows them to advance upon demonstrated proficiency of content in all required areas of the curriculum.

~~((16))~~ (21) "Range" means an area closed from the public where driving activities are practiced, free of obstructions, enables the driver to maneuver safely and free from interference from other vehicles and hazards, and has adequate sight lines.

~~((17))~~ (22) "Street driving" means driving a commercial motor vehicle on a public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

~~((18))~~ (23) "Theory instructor" means an individual who provides knowledge instruction on the operation of a CMV and meets one of these qualifications:

(a) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience driving a CMV requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable state qualification requirements for CMV instructors; or

(b) Holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least two years of experience as a BTW CMV instructor and meets all applicable state qualification requirements for CMV instructors.

(c) **Exceptions applicable to (a) and (b) of this definition:** An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, if the instructor previously held a CDL of the same (or higher) class and complies with the other requirements set forth in (a) or (b) of this definition.

(d) If an instructor's CDL has been canceled, suspended, or revoked due to any of the disqualifying offenses identified in C.F.R. 383.51, the instructor is prohibited from engaging in theory instruction for two years following the date his or her CDL is reinstated.

~~((19))~~ (24) "Training institute/provider" means an entity that is approved by the department, to provide training as required by RCW 46.25.060 (1)(a)(ii):

(a) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(b) A licensed private vocational school as that term is defined by RCW 28C.10.020(7);

(c) An entity in another state that the department has determined provides training or instruction equivalent to that required under WAC 308-100-033 or 308-100-035; or

(d) An entity that the state has determined provides on-site contracted training or instruction equivalent to that required under WAC 308-100-033.

~~((20))~~ (25) "Without a CDL" means any period of cancellation, expiration, revocation, surrender, or suspension.

AMENDATORY SECTION (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

**WAC 308-100-036 Reporting training results.** (1) A training provider and employer must provide electronic notification to the department when a student successfully completes a course of instruction described in WAC 308-100-033 for schools and WAC 308-100-035 for employers.

(2) The notification of course completion must consist of:

(a) A certification that the student/employee demonstrated proficiency in all elements of the curriculum required in subsection (1) of this section;

(b) Driver license number;

(c) Phone number;

(d) Type of training;

(e) Classroom hours completed;

(f) Backing hours completed;

(g) Street driving hours completed;

(h) Proficiency hours completed;

(i) Range hours completed;

(j) Course start date;

(k) Course completion date; and

(l) Instructor.

(3) The department must receive an electronic notification of successful completion prior to a student/employee taking a skills test.

(4) All entry-level driver training schools for commercial driver licenses and commercial driver license third-party examiners must report the following information to the department at time of license or contract application, license or contract renewal, and no less than once per year unless otherwise specified in this or another chapter:

(a) Name of business;

(b) Location(s) where services are provided, in standard USPS format;

(c) Contact information, including:

(i) Phone number;

(ii) Email address;

(iii) Website (if applicable);

(d) Language(s) services are offered in;

(e) All course offerings;

(f) Course cost; and

(g) License or endorsement test offerings.

OTS-5889.1

AMENDATORY SECTION (Amending WSR 22-22-075, filed 10/31/22, effective 12/1/22)

**WAC 308-108-020 Definitions.** The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Adult course" means the course offered to adults who do not need the comprehensive driver training education required for minor drivers.

(2) "Behind the wheel instruction" means that portion of a traffic safety education course that consists of on-street, dual-controlled vehicle operation or similar instruction given under simulated conditions that has been approved by the director.

~~((2))~~ (3) "Branch office" or "branch classroom" means a facility within a 35-mile radius of a driver training school's established place of business, except where the 35-mile radius requirement has been waived or extended by the department as provided by RCW 46.82.360 (6)(c), that has been approved by the department for use by the driver training school.

~~((3))~~ (4) "Classroom," defined in RCW 46.82.280(2), may also include a virtual classroom environment when video conferencing technology is capable of two-way communication between the instructor and all students.

~~((4))~~ (5) "Course cost" means the price charged for a course offering before any taxes, subsidies, discounts, or other price reductions or additional fees.

(6) "Department" means the department of licensing.

(7) "Driver training education course" means the driver training education course as defined in RCW 46.82.280 and following the required curriculum.

(8) "Engage in a course of instruction" means to enroll in, schedule, collect a fee for, or sign an application for an instruction permit in order to attend or take part in a driver training education course.

~~((5))~~ (9) "Inactive instructor" means an instructor with a valid Washington instructor's license who is no longer employed by or otherwise associated with a licensed driver training school.

~~((6))~~ (10) "Instructor-led" means person-to-person learning where students can ask questions, receive feedback in real-time, and interaction and discussion are enabled.

~~((7))~~ (11) "Instructor-trainer" means a currently licensed instructor who is training traffic safety education instructors and who has not less than:

(a) One thousand hours of experience in providing traffic safety education in the past year;

(b) Five years of previous experience in providing traffic safety education; or

(c) One thousand hours or five years experience in the field of traffic safety and proof of training acceptable to the director in how to teach and train others, and not less than 300 hours of previous experience in training others.

~~((8))~~ (12) "License or endorsement test" means a test that is required to obtain a personal or commercial driver license or permit or a motorcycle permit or endorsement.

(13) "Records" means all documents, papers and reports required to own a driver training school, including but not limited to:

(a) Vehicle registration, title, insurance policy, and maintenance information;

(b) Business financial documents, such as franchise agreements, corporate documents, bank records, partnership agreements, lease agreements, and purchase and sale agreements; and

(c) Student classroom and behind-the-wheel instruction reports.

~~((9))~~ (14) "Student" means any person enrolled in an approved driver training education course who is at least 15 years of age.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

**WAC 308-108-140 Reporting requirements.** (1) All driver training school owners shall:

~~((1))~~ (a) Report to the department within ~~((ten))~~ 10 days any driving or traffic-related incidents involving an instructor employed by the school ~~((7))~~ including, but not limited to:

~~((a))~~ (i) Conviction for a traffic violation;

~~((b))~~ (ii) Finding that a traffic infraction has been committed;

~~((e))~~ (iii) Entry into a deferred prosecution agreement; or

~~((d))~~ (iv) Suspension, revocation, cancellation, or denial of driving privileges.

~~((2))~~ (b) Report to the department within ~~((twenty-four))~~ 24 hours following any traffic safety education vehicle involved in a traffic collision for which an accident report must be or has been made under the provisions of RCW 46.52.030. Prior to the return to service of any traffic safety education vehicle that has been involved in a collision, the school owner must forward a vehicle inspection report to the department.

~~((3))~~ (c) Forward to the department by the seventh day of each month, a report of student enrollment in traffic safety education courses provided by the school, including but not limited to:

~~((a))~~ (i) The start date and end date of any courses provided by the school that are initiated during the reporting period, including the total number of students enrolled in each course;

~~((b))~~ (ii) The names and certificate numbers of all instructors providing classroom and/or behind the wheel instruction for each course;

~~((e))~~ (iii) The names and instruction permit or driver's license numbers or dates of birth of all students enrolled in each course, along with the identifying number of the traffic safety education certificate reserved for each student for issuance upon successful completion of the course.

~~((4))~~ (d) Not less than annually, have completed and have on file at the main school location a vehicle inspection report as required under WAC 308-108-110 (1)(b) for all traffic safety education vehicles in use by the school.

~~((5))~~ (e) Report to the department within ~~((ten))~~ 10 days any new vehicles used by the school for instructional purposes or any vehicles taken out of service.

(2) All driver training schools must report the following information to the department at time of license application, license re-

newal, and no less than once per year unless otherwise specified in this or another chapter:

- (a) Name of business;
- (b) Location(s) where services are provided, in standard USPS format;
- (c) Contact information, including:
  - (i) Phone number;
  - (ii) Email address;
  - (iii) Website (if applicable);
- (d) Language(s) training course services are offered in;
- (e) Course offerings, including:
  - (i) Driver training education course;
  - (ii) Adult course;
  - (iii) Course cost; and
- (f) License or endorsement test offerings.

## OTS-5890.2

AMENDATORY SECTION (Amending WSR 24-03-114, filed 1/19/24, effective 3/1/24)

**WAC 308-109-010 Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Contracted training provider" means an agency, firm, provider, organization, individual, or other entity performing services as outlined in RCW 46.20.520 and 46.81A.020 and is under contract with the department.

(2) "Course cost" means the price charged for a course offering before any taxes, subsidies, discounts, or other price reductions or additional fees.

(3) "Department" means the department of licensing.

(4) "License or endorsement test" means a test that is required to obtain a personal or commercial driver license or permit or a motorcycle permit or endorsement.

(5) "Motorcycle safety course" means any course offered by a contracted training provider and approved by the department of licensing. This also includes approved out-of-state courses.

(6) "Student" means persons who receive a pass, fail or incomplete status on a course completion report furnished to the department.

~~((3))~~ (7) "2-wheel novice course" means a 2-wheel motorcycle safety course intended for new riders and approved by the department.

(8) "2-wheel advanced course" means a 2-wheel motorcycle safety course intended for experienced riders and approved by the department.

(9) "2-wheel permit level knowledge test" is a test created/approved by the department of licensing to determine an acceptable novice knowledge level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((4))~~ (10) "2-wheel permit level skills test" is a test created/approved by the department of licensing to determine an acceptable novice skill level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((5))~~ (11) "2-wheel endorsement level knowledge test" is a test created/approved by the department of licensing to determine an acceptable knowledge level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((6))~~ (12) "2-wheel endorsement level skills test" is a test created/approved by the department of licensing to determine an acceptable skill level for operating a two-wheel motorcycle. This test is valid for 365 days.

~~((7))~~ (13) "3-wheel novice course" means a 3-wheel motorcycle safety course intended for new riders and approved by the department.

(14) "3-wheel advanced course" means a 3-wheel motorcycle safety course intended for new riders and approved by the department.

(15) "3-wheel knowledge test" is a test created/approved by the department of licensing to determine an acceptable knowledge level for operating a three-wheel motorcycle. This test is valid for 365 days.

~~((8))~~ (16) "3-wheel skills test" is a test created/approved by the department of licensing to determine an acceptable skill level for operating a three-wheel motorcycle. This test is valid for 365 days.

~~((9))~~ "Motorcycle safety course" means any course offered by a contracted training provider and approved by the department of licensing. This also includes approved out-of-state courses.

~~(10))~~ (17) "2-wheel motorcycle instruction permit" means authorization to ride a two-wheel motorcycle on the roads and highways of Washington. With limitations found in RCW 46.20.510.

~~((11))~~ (18) "3-wheel motorcycle instruction permit" means authorization to ride a three-wheel motorcycle on the roads and highways of Washington. With limitations found in RCW 46.20.510.

## NEW SECTION

**WAC 308-109-070 Reporting requirements.** All motorcycle safety contracted training providers must report the following information to the department at time of contract application, contract renewal, and no less than once per year unless otherwise specified in this or another chapter:

- (1) Name of business;
- (2) Location(s) where services are provided, in standard USPS format;
- (3) Contact information, including:
  - (a) Phone number;
  - (b) Email address;
  - (c) Website (if applicable);
- (4) Language(s) training course services are offered in;
- (5) Course offerings, including:
  - (a) 2-wheel novice course;
  - (b) 2-wheel advanced course;
  - (c) 3-wheel novice course;
  - (d) 3-wheel advanced course;
- (6) Course cost; and
- (7) License or endorsement test offerings.

## WSR 24-21-149

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed October 22, 2024, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-083.

Title of Rule and Other Identifying Information: WAC 308-66-110  
Definitions.

Hearing Location(s): On December 6, 2024, at 11:00 a.m., join the Teams meeting here [contact agency for link], Meeting ID 215 301 082 920, Passcode v5d4A4; or dial in by phone 1-564-999-2000,,462745124# United States, Olympia. Find a local number, Phone conference ID 462 745 124#. If you are having trouble accessing the virtual meeting, please call 360-902-3486 at the time of the hearing to request assistance. Please email rulescoordinator@dol.wa.gov if you would like to request an interpreter, or other accommodations, at least one week in advance of the public hearing.

PLEASE NOTE: Hearing participants are encouraged to attend in person or be prepared to use the telephonic option (call in) if they experience technical difficulties. In-person attendance will take place at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 7, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by December 6, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule seeks to improve regulatory compliance for vehicle dealers and manufacturers by clarifying definitions related to certain vehicle dealer and manufacturer activities under chapter 46.70 RCW, Dealers and manufacturers. The proposed amendment further defines the "soliciting" of a sale and creates a new definition for the act of "public education." Additionally, the proposed amendment adds examples of what constitutes "public education."

Reasons Supporting Proposal: Currently, there is ambiguity around what constitutes the "soliciting" of a sale and "public education." This has created difficulties for vehicle dealers and manufacturers operating within Washington state with respect to compliance. These amendments will clarify what qualifies as the "soliciting" of a sale and "public education."

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.70.160 Rules and regulations.

Statute Being Implemented: RCW 46.70.011 Definitions.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; Implementation: Bill Dutra, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-6510; and Enforcement: Robert Jelvick, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1448.

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



A cost-benefit analysis is not required under RCW 34.05.328. These rules do not grant or revoke a benefit for any individual that was not already established in law. These rules clarify existing requirements in law without imposing new fees or penalties.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not grant or revoke a benefit for any individual that was not already established in law. These rules clarify existing requirements in law without imposing new fees or penalties.

October 22, 2024

Ellis Starrett

Rules and Policy Manager

## OTS-5912.1

AMENDATORY SECTION (Amending WSR 07-03-119, filed 1/22/07, effective 2/22/07)

**WAC 308-66-110 Definitions.** For the purpose of administering chapter 46.70 RCW, the following terms shall be construed in the following manner:

(1) "Offering" the sale of a vehicle shall include the distribution by any means of a list, with or without prices, of vehicles for sale.

(2) "Soliciting" the sale of a vehicle (~~shall include~~) means:

(a) An offer to effect the purchase or sale of a vehicle on behalf of another person.

(b) Discussing any of the following topics on behalf of another person:

(i) The price of a vehicle;

(ii) Terms of purchase;

(iii) Prospective financing;

(iv) Availability of vehicles for purchase; or

(v) Vehicle trade-ins.

(3) "Normal business hours" or "reasonable times" shall include, but not be limited to, the hours from 10:00 a.m. through 4:00 p.m. for five days each week. When a dealer closes the place of business during normal business hours, a sign must be posted on the main door of the business stating the time that the dealer will next be open for business and how the dealer may be contacted provided that this is not permission to routinely avoid maintaining normal business hours.

(4) An "employee" of a dealer is a person on the payroll who appears on the record of the dealer as an employee for whom Social Security, withholding tax, and all deductions required by law have been made.

(5) A "broker" shall mean any person acting independently, who for a commission, fee or any other form of compensation arranges or

engages in the wholesale or retail purchase, sale or lease with option to purchase, of a vehicle.

(6) A "vehicle dealer identification card" is a card, prescribed by the department and issued by a licensed dealer, that is used to identify the principal of a dealership, including a corporate officer, a partner of a partnership, or sole proprietor, or a member of a limited liability company, or an "employee," for purposes of driving a vehicle bearing dealer license plates.

(7) A "demonstration permit" is a permit issued by a dealer to a prospective customer entitling the prospective customer to operate a particular vehicle for demonstration purposes.

(8) Current service agreement - The agreement between a vehicle manufacturer or vehicle distributor and a seller, stipulating that the seller will provide warranty adjustments for the owners of that manufacturer's or distributor's new vehicles which qualify for adjustments under the manufacturer's or distributor's warranty.

(9) New vehicle warranty - The warranty extended by a manufacturer or distributor to the first retail purchaser.

(10) "Closing" shall mean the process of completion of sale transaction.

(11) "Completion of sale" in the case of a consigned vehicle shall mean that the purchaser has possession of the vehicle, all liens against the vehicle are paid, the seller has the proceeds of sale, and title to the vehicle has been transferred to the retail purchaser.

(12) "Listing" shall mean a contract between a seller of a used mobile/manufactured home and a listing dealer for the dealer to locate a willing purchaser for that home.

(13) "Consignment" shall mean an arrangement whereby a vehicle dealer accepts delivery or entrustment of a vehicle and agrees to sell the vehicle on behalf of another.

(14) "Remanufactured" shall mean to remake or reprocess into a finished product by a large scale industrial process.

(15) "Guaranteed title" as it relates to a consigned vehicle shall mean a guarantee by the consignor to convey title to the consignee upon sale of the vehicle. The consignment agreement between the consignor and consignee shall comply with the provisions of WAC 308-66-155.

(16) "Used vehicle" in keeping with RCW 46.04.660, and for purposes of the requirement for a service agreement in RCW 46.70.101

(1) (a) (vii), a vehicle will be considered used if it meets the following requirements:

(a) It has been titled or registered to a bona fide retail purchaser/lessee for a period of 90 days or more; and

(b) The vehicle has been operated (driven) to the extent that its odometer registers 3,000 miles or more.

However, the requirements of (a) and (b) of this subsection will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met those requirements. To document such an exemption, the subsequent wholesaling and retailing dealer must keep, as a dealer business record, a notarized affidavit from either the bona fide retail purchaser/lessee, or in the case of an imported vehicle, a notarized affidavit from the importer of the vehicle. That affidavit will be prescribed by the department and must confirm that the retail purchaser/lessee was a bona fide retail purchaser/lessee.

(17) A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purposes of resale or lease.

(18) The "principal" of a business as used herein means a true party of interest, including:

- (a) The proprietor of a sole proprietorship;
- (b) A partner of a partnership or a limited liability partnership;
- (c) An officer of a corporation;
- (d) A member or manager of a limited liability company;
- (e) A spouse, if he or she is a true party of interest;
- (f) In addition, any owner of ~~((ten))~~ 10 percent or more of the assets who is not already listed.

(19) "Public education" means increasing the public's knowledge of a vehicle's specifications, features, and capabilities, but does not include any activities in RCW 46.70.011(17).

(a) When displaying or demonstrating vehicles for public education purposes, a licensed manufacturer must take reasonable steps to inform the public that the manufacturer may not engage in any motor vehicle dealer business activity, as defined in RCW 46.70.011(17).

(b) The following activities are examples of public education:

(i) The display of vehicles in a facility owned, leased, rented, or operated by a licensed manufacturer that prominently posts legible signs throughout such facility stating that the vehicles cannot be sold.

(ii) The display of vehicles by a museum.

(iii) A representative from a licensed manufacturer driving a vehicle that is clearly marked as "not for sale" for the sole purpose of displaying, discussing, or demonstrating the vehicle's specifications, features, and capabilities.

(c) Public education is not considered a motor vehicle dealer business activity that requires licensure.

**WSR 24-21-152**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2024-01—Filed October 22, 2024, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-117.

Title of Rule and Other Identifying Information: Implementation of SSB 5986 and updates to the Balance Billing Protection Act (BBPA).

Hearing Location(s): On November 26, 2024, at 9:00 a.m., Pacific Time Zone, virtual hearing. Information can be found on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/implementation-ssb-5986-and-updates-balance-billing-protection-act-bbpa-r-2024-01>. Written comments are due to OIC by 12:00 p.m. on November 26, 2024. Written comments can be emailed to [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov).

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Sydney Rogalla, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, beginning October 23, 2024, at 12:00 a.m. Pacific Time Zone, by November 26, 2024, at 12:00 p.m. Pacific Time Zone.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, TTY 360-586-0241, email [katie.bennett@oic.wa.gov](mailto:katie.bennett@oic.wa.gov), by November 25, 2024, at 12 p.m. Pacific Time Zone.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is necessary to update existing chapter 284-43B WAC to include ground ambulance services in the BBPA under SSB 5986 (chapter 218, Laws of 2024). The rule ensures that affected entities understand their rights and obligations under the new law. The rule updates the BBPA rules including, but not limited to, arbitrator fees and processes authorized under RCW 48.49.135. The rule also adds a new section to chapter 284-170 WAC to address network access standards and contracting for behavioral health providers as it relates to patient transport to emergency crisis behavioral health centers as alternatives to emergency departments.

Reasons Supporting Proposal: With the enactment of SSB 5968 it is necessary to update the existing balance billing WAC chapter to follow the new law. These rules will facilitate implementation of the new law and ensure affected entities understand their rights and obligations.

Statutory Authority for Adoption: RCW 48.02.060, 48.49.100, 48.49.060; chapter 218, Laws of 2024.

Statute Being Implemented: Chapter 218, Laws of 2024.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Sydney Rogalla, 302 Sid Snyder Avenue S.W., Suite 200 Olympia, WA 98501, 360-725-7000; Implementation: Ned Gaines, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon

Casson, P.O. Box 40260 Olympia, WA 98504, phone 360-725-7000, email rulescoordinator@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: OIC has found that none of the existing insurance companies may be considered small businesses under RCW 19.85.020(3).

Direct Health and Medical Insurance Carriers: OIC determined that health carriers are impacted by the implementation of this rule. Based on 2022 WA Employment Security Department (ESD) Covered Employment data, health carriers are not considered small businesses, as they have on average 112 employees per firm (7,163 total employees in Washington/64 average number of firms in Washington). Small business is defined as a business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees (RCW 19.85.020).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The small business exemption identified above applies only to health carriers. Ground ambulance service organizations (GASOs) are considered small businesses for the purpose of this analysis. Please see the section below detailing the minor cost analysis.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. GASOs: OIC assumed most GASOs are small businesses, based on information gathered from members of the ground ambulance advisory committee convened by OIC.

OIC determined the cost of compliance for GASOs to include the following: Submitting the locally set rate form annually to the commissioner; and sending and posting the balance billing consumer protection notice.

The estimated annual costs for each of these components is seen in the table below:

Cost component	One-time cost	Annual cost
Submitting the locally set rate form to OIC	\$0	\$28.16
Sending consumer notices to patients	\$0	\$4.10
Posting consumer notices on website	\$111.39	\$0

The average annual cost over three years for a GASO as a direct result of this rule is estimated to be **\$69.39**.

OIC identified several North America Industry Classification System (NAICS) codes to fully capture organizations that provide ground ambulance services. The table below shows the NAICS codes used, the estimated cost of compliance, and the minor cost estimate.

Industry NAICS Code	Industry Description	Estimated Cost of Compliance	Minor Cost Estimate
922160	Fire protection	\$69.39	\$1,205.00
621910	Ambulance services	\$69.39	\$39,580.37
622	Hospitals	\$69.39	\$915,976.13
624230	Emergency and Other Relief Services	\$69.39	\$11,298.07

Using the fire protection NAICS code, as most GASOs are local fire districts providing ground ambulance services, the threshold under which a full small business economic impact statement is not triggered is \$1,205. The estimated cost of compliance for this rule is \$69.39. The estimated cost of compliance is below the minor cost threshold. The figures used for this calculation are drawn from relevant data from the United States Bureau of Labor Statistics, ESD, and the Washington department of revenue.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7000, email rulescoordinator@oic.wa.gov.

October 22, 2024  
Mike Kreidler  
Insurance Commissioner

### OTS-5920.3

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-010 Definitions.** (1) The definitions in RCW 48.43.005 apply throughout this chapter unless the context clearly requires otherwise, or the term is defined otherwise in subsection (2) of this section.

(2) The following definitions shall apply throughout this chapter:

(a) "Air ambulance service" has the same meaning as defined in RCW 48.43.005.

(b) "Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable enrollee cost-sharing responsibility, for a covered health care service or item rendered by a participating provider or facility or by a nonparticipating provider or facility.

(c) "Balance bill" means a bill sent to an enrollee by a nonparticipating provider, facility, behavioral health emergency services provider or air ambulance service provider for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the carrier, exclusive of cost-sharing allowed under WAC 284-43B-020.

(d) "Behavioral health emergency services provider" has the same meaning as defined in RCW 48.43.005.

(e) "Cost-sharing" has the same meaning as defined in RCW 48.43.005.

(f) "De-identified" means, for the purposes of this rule, the removal of all information that can be used to identify the patient from whose medical record the health information was derived.

~~((f))~~ (g) "Emergency medical condition" has the same meaning as defined in RCW 48.43.005.

~~((g))~~ (h) "Emergency services" has the same meaning as defined in RCW 48.43.005.

~~((h))~~ (i) "Facility" or "health care facility" means:

(i) With respect to the provision of emergency services, a hospital or freestanding emergency department licensed under chapter 70.41 RCW (including an "emergency department of a hospital" or "independent freestanding emergency department" described in section 2799A-1(a) of the Public Health Service Act (42 U.S.C. Sec. 300gg-111(a) and 45 C.F.R. Sec. 149.30)) or a behavioral health emergency services provider; and

(ii) With respect to provision of nonemergency services, a hospital licensed under chapter 70.41 RCW, a hospital outpatient department, a critical access hospital or an ambulatory surgical facility licensed under chapter 70.230 RCW (including a "health care facility" described in section 2799A-1(b) of the Public Health Service Act (42 U.S.C. Sec. 300gg-111(b) and 45 C.F.R. Sec. 149.30)).

~~((i))~~ (j) "Ground ambulance service" has the same meaning as defined in RCW 48.43.005.

(k) "Ground ambulance services organization" has the same meaning as defined in RCW 48.43.005.

(l) "Hospital outpatient department" means an entity or site that provides outpatient services and:

(i) Is a provider-based facility under 42 C.F.R. Sec. 413.65;

(ii) Charges a hospital facility fee in billing associated with the receipt of outpatient services from the entity or site; or

(iii) Bills the consumer or their health plan under a hospital's national provider identifier or federal tax identification number.

~~((j))~~ (m) "Local governmental entity" has the same meaning as defined in RCW 48.43.005.

(n) "In-network" or "participating" means a provider or facility that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing obligations. A single case reimbursement agreement between a provider or facility and a carrier used for the purpose described in WAC 284-170-200 constitutes a contract exclusively for purposes of this definition under the Balance Billing Protection Act and is limited to the services and parties to the agreement.

~~((k))~~ (o) "Mutual aid" means aid rendered by a ground ambulance services organization outside of their primary geographic area to aid a resident of another geographic service area at the request of local emergency responders or dispatch.

(p) "Nonemergency health care services performed by nonparticipating providers at certain participating facilities" has the same meaning as defined in RCW 48.43.005.

~~((l))~~ (q) "Offer to pay," "carrier payment," or "payment notification" means a claim that has been adjudicated and paid by a carrier to a nonparticipating provider for emergency services or for non-emergency health care services performed by nonparticipating providers at certain participating facilities.

~~((m))~~ (r) "Out-of-network" or "nonparticipating" has the same meaning as defined in RCW 48.43.005.

~~((n))~~ (s) "Provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law, or an employee or agent of a person acting in the course and scope of his or her employment, that provides emergency services, or nonemergency health care services at certain participating facilities.

NEW SECTION

**WAC 284-43B-025 Balance billing prohibition and consumer cost-sharing for ground ambulance services.** If an enrollee receives covered ground ambulance services:

(1) The enrollee satisfies their obligation to pay for the ground ambulance services if they pay the in-network cost-sharing amount specified in the enrollee's applicable health plan contract. The enrollee's obligation must be calculated using the allowed amount determined under WAC 284-43B-027. The carrier shall provide an explanation of benefits to the enrollee and the nonparticipating ground ambulance services organization that reflects the cost-sharing amount determined under this subsection;

(2) The carrier, nonparticipating ground ambulance services organization, and any agent, trustee, or assignee of the carrier or nonparticipating ground ambulance services organization shall ensure that the enrollee incurs no greater cost than the amount determined under subsection (1) of this section;

(3) The nonparticipating ground ambulance services organization and any agent, trustee, or assignee of the nonparticipating ground ambulance services organization may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under subsection (1) of this section. This does not impact the ground ambulance services organization's ability to collect a past due balance for that cost-sharing amount with interest;

(4) The carrier shall treat any cost-sharing amounts determined under subsection (1) of this section paid by the enrollee for a nonparticipating ground ambulance services organization's services in the same manner as cost-sharing for health care services provided by a participating ground ambulance services organization and must apply any cost-sharing amounts paid by the enrollee for such services toward the enrollee's maximum out-of-pocket payment obligation; and

(5) A ground ambulance services organization shall refund any amount in excess of the in-network cost-sharing amount to an enrollee within 30 business days of receipt if the enrollee has paid the nonparticipating ground ambulance services organization an amount that exceeds the in-network cost-sharing amount determined under subsection (1) of this section. Interest must be paid to the enrollee for any unrefunded payments at an annual rate of 12 percent beginning on the first calendar day after the 30 business days.

NEW SECTION

**WAC 284-43B-027 Payments to nonparticipating ground ambulance services organizations.** (1) Except for mutual aid transports as provided in subsection (2) of this section, until December 31, 2027, the allowed amount paid to a nonparticipating ground ambulance services organization for covered ground ambulance services under a health plan issued by a carrier must be one of the following amounts:

(a)(i) The rate established by the local governmental entity where the covered health care services originated for the provision of ground ambulance services by ground ambulance services organizations owned or operated by the local governmental entity and submitted to the office of the insurance commissioner; or



(ii) Where the ground ambulance services were provided by a private ground ambulance services organization under contract with the local governmental entity where the covered health care services originated, the contracted rate submitted to the office of the insurance commissioner;

(b) If a rate has not been established under (a) of this subsection, the lesser of:

(i) 325 percent of the current published rate for ambulance services as established by the federal Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act for the same service provided in the same geographic area; or

(ii) The ground ambulance services organization's billed charges.

(2) Until December 31, 2027, when a ground ambulance services organization provides a ground ambulance transport outside of their primary geographic service area, also referred to as mutual aid, the rate paid is:

(a) The locally set rate for the ground ambulance services organization that provided the transport; or

(b) If there is no locally set rate, the lesser of:

(i) 325 percent of the current published rate for ambulance services as established by the federal Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act for the same service provided in the same geographic area; or

(ii) The ground ambulance services organization's billed charges.

(3) A carrier may rely in good faith upon the applicable locally set rate submitted to the insurance commissioner under WAC 284-43B-029. Except to the extent provided otherwise in WAC 284-43B-029 (4)(b), if a local governmental entity's updated rates are not submitted 60 days in advance of the effective date of the updated rate, as provided in WAC 284-43B-029, the carrier may rely upon the most recent previous rate submission by that local governmental entity for a period of 60 days following the date the updated rate is published in the insurance commissioner's publicly accessible database.

(4) A carrier shall make payments for ground ambulance services provided by nonparticipating ground ambulance services organizations directly to the organization, rather than the enrollee.

(5) The allowed amount established under this section constitutes payment in full for the services rendered. A ground ambulance services organization may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of this section.

(6) For purposes of this section "contracted rates" means rates established in a contract or contracts between a local governmental entity and a private ground ambulance services organization to provide ground ambulance services in their geographic service area.

#### NEW SECTION

**WAC 284-43B-029 Local governmental entity rate reporting to the insurance commissioner.** (1) Each local governmental entity that has established rates for ground ambulance services provided in their geographic area must submit the rates to the office of the insurance commissioner in the form and manner prescribed by the commissioner. Rates established for ground ambulance transports include rates for services

provided directly by the local governmental entity and contracted rates.

(2) Local governmental entities must include the following rate information in their submission to the commissioner for each locally set rate or contracted rate submitted to the commissioner:

(a) The local governmental entity's full legal name and address;  
 (b) The national provider identifier(s) (NPI) for any ground ambulance services organization to which the rate applies;

(c) The effective date of the rate and any known expiration date of the rate;

(d) The service area of the local governmental entity, described by listing the geographic zone improvement plan (ZIP) codes established by the United States Postal Service that are included in the entity's service area;

(e) The applicable transport codes to which the rate applies, including any separate mileage code or codes;

(f) If applicable, the locally set rate for services provided to nonresidents of the local governmental entity's service area, if a distinction is made in rates between services provided to residents and those provided to nonresidents.

(3) The information must be submitted electronically through the website of the office of the insurance commissioner.

(4) Local governmental entities must submit their rates to the commissioner on the following schedule:

(a) Updated rates must be submitted by November 1st for an effective date of January 1st of the following year.

(b) A rate may be updated by a local governmental entity outside of the time frame established in (a) of this subsection if the local governmental entity finds that there is an emergent risk to the financial viability of the ground ambulance services organization if the rate update is delayed to a January 1st effective date. To apply for rate update exception a local governmental entity must:

(i) Follow their local rate setting rules and procedures and be approved in the manner prescribed by their governing entity.

(ii) Allow 60 days from approval of the new rate to its effective date.

(iii) Submit the updated rate to the office of the insurance commissioner at least 30 days prior to its effective date.

(5) For purposes of this section "contracted rates" means rates established in a contract or contracts between a local governmental entity and a private ground ambulance services organization to provide ground ambulance services in their geographic service area.

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-035 Arbitration initiation and selection of arbitrator.** (1)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than 10 calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) using the arbitration initiation request form (~~(found in Appendix A of this rule)~~) designated by the commissioner. A request must be submitted electronically through the website of the office of the insurance commissioner. When multiple claims are addressed in a single arbitra-

tion proceeding, subsection (3) of this section governs calculation of the 10 calendar days. Each arbitration initiation request must be submitted to the commissioner individually and constitutes a distinct arbitration proceeding unless consolidation of requests is authorized by a court under chapter 7.04A RCW. The commissioner will assign a unique number or designation to each arbitration initiation request. The parties must include that designation in all communication related to that request. Any information submitted to the commissioner with the arbitration initiation request must be included in the notice to the noninitiating party under RCW 48.49.040. A provider or facility initiating arbitration must send the arbitration initiation request form to the email address appearing on the website established by the ~~((designated lead organization for administrative simplification in Washington state))~~ commissioner under (c) of this subsection. Any patient information submitted to the commissioner with an arbitration initiation request form must be de-identified to ensure that protected health information is not disclosed.

(b) The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in WAC 284-43B-030 (1) through (3) and subsection (1)(a) of this section. The commissioner's review of the arbitration initiation request form is limited to the information necessary to determine that the request has been timely submitted and is complete. The commissioner's review does not include a review of whether particular claims included in the request are subject to chapter 48.49 RCW or whether claims are appropriately bundled under subsection (3) of this section. A party seeking to challenge whether a claim is subject to chapter 48.49 RCW or whether claims are appropriately bundled may raise those issues during arbitration.

(c) Each carrier must provide the ~~((designated lead organization for administrative simplification in Washington state))~~ commissioner with the email address and telephone number of the carrier's designated contact for receipt of notices to initiate arbitration. The email address and phone number provided must be specific to the carrier staff responsible for receipt of notices or other actions related to arbitration proceedings. ~~((The initial submission of information to the designated lead organization must be made on or before November 10, 2020.))~~ The carrier must keep its contact information accurate and current by submitting updated contact information to the ~~((designated lead organization))~~ commissioner as directed by ~~((that organization))~~ the commissioner.

(2) Within 10 business days of a party notifying the commissioner and the noninitiating party of intent to initiate arbitration, both parties shall agree to and execute a nondisclosure agreement. The nondisclosure agreement must prohibit either party from sharing or making use of any confidential or proprietary information acquired or used for purposes of one arbitration in any subsequent arbitration proceedings. The nondisclosure agreement must not preclude the arbitrator from submitting the arbitrator's decision to the commissioner under RCW 48.49.040 or impede the commissioner's duty to prepare the annual report under RCW 48.49.050.

(3) If a nonparticipating provider or nonparticipating facility chooses to address multiple claims in a single arbitration proceeding as provided in RCW 48.49.040, notification must be provided no later than 10 calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) for the most recent claim that is

to be addressed through the arbitration. All of the claims at issue must:

(a) Involve identical carrier and provider, provider group or facility parties. Items and services are billed by the same provider, provider group or facility if the items or services are billed with the same national provider identifier or tax identification number;

(b) Involve the same or similar items and services. The services are considered to be the same or similar items or services if each is billed under the same service code, or a comparable code under a different procedural code system, such as current procedural terminology (CPT) codes with modifiers, if applicable, health care common procedure coding system (HCPCS) with modifiers, if applicable, or diagnosis-related group (DRG) codes with modifiers, if applicable; and

(c) Occur within the same 30-business-day period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than 30 business days prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the service is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.

(4) A notification submitted to the commissioner later than 10 calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. Any revision to a previously timely submitted arbitration initiation request form must be submitted to the commissioner within the 10 calendar day period applicable to submission of the original request. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.

(5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The commissioner will use the email addresses for the initiating party and the noninitiating party indicated on the arbitration initiation request form for all communication related to the arbitration request. The arbitrator selection process must be completed within 20 calendar days of receipt of the original list of arbitrators from the commissioner, as follows:

(a) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of two individual arbitrators and three arbitration entities within five calendar days of receipt of notice from the parties under this subsection. Each party is responsible for reviewing the list of five arbitrators and arbitration entities and notifying the commissioner and the other party within three calendar days of receipt of the list:

(i) Whether they are taking the opportunity to veto up to two of the five arbitrators or arbitration entities on this list, and if so, which arbitrators or arbitration entities have been vetoed; and

(ii) If there is a conflict of interest as described in subsection (6) of this section with any of the arbitrators or arbitration entities on the list, to avoid the commissioner assigning an arbitrator or arbitration entity with a conflict of interest to an arbitration.

(b) If, after the opportunity to veto up to two of the five named arbitrators or arbitration entities on the list of five arbitrators

and arbitration entities sent by the commissioner to the parties, more than one arbitrator or arbitration entity remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators or arbitration entities. The commissioner will choose the arbitrator from among the remaining arbitrators on the list. If a party fails to timely provide the commissioner with notice of their veto, the commissioner will choose the arbitrator from among the remaining arbitrators or arbitration entities on the list.

(6) Before accepting any appointment, an arbitrator shall ensure that there is no conflict of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration. A conflict of interest includes (a) current or recent ownership or employment of the arbitrator or a close family member by any health carrier; (b) serves as or was employed by a physician, health care provider, or a health care facility; (c) has a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned.

(7) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.

(8) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.

(9) Where a dispute resolution matter initiated under sections 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those provisions of P.L. 116-260 (enacted December 27, 2020) results in a determination by a certified independent dispute resolution entity that such process does not apply to the dispute or to portions thereof, RCW 48.49.040 (3)(b) governs initiation of arbitration under this chapter.

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-037 Arbitration proceedings.** (1) For purposes of calculating the date that written submissions to the arbitrator under RCW 48.49.040 are due, final selection of the arbitrator occurs on the date that the commissioner sends by electronic transmittal the notice of selection to the arbitrator. The parties must be copied on such notice.

(2) Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.

(3) If the parties agree on an out-of-network rate for the services at issue or a contract rate for arbitration under RCW 48.49.135 after submitting an arbitration initiation request but before the arbitrator has made a decision, they must provide notice to the commissioner as provided in RCW 48.49.040(7).

(4) If an initiating party withdraws an arbitration initiation request at any point before the arbitrator has made a decision, the

party must submit to the commissioner notice of the date of the withdrawal of the request, as soon as possible, but no later than three business days after the date of the withdrawal.

(5) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.

(6) The decision of the arbitrator is final and binding on the parties and is not subject to judicial review. The arbitrator must submit to the commissioner:

(a) Their decision, including an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision; and

(b) The information required in RCW 48.49.050 using the form (~~found in Appendix B to this rule~~) designated by the commissioner, or for arbitration proceedings under RCW 48.49.135, using the form (~~found in Appendix C to this rule~~) designated by the commissioner.

(7) (a) For the calendar year beginning January 1, (~~2023~~) 2025, arbitrators must charge a fixed fee for single claim proceedings within the range of (~~(\$200-\$650)~~) \$200 to \$1,000. If an arbitrator chooses to charge a different fixed fee for bundled claim proceedings, that fee must be within the range of (~~(\$268-\$800)~~) \$268 to \$1,500. As part of the bundled determination fee, arbitrators are permitted to charge an additional tiered fee within the range of \$75 to \$250 for every additional 25 line items within a bundled claims dispute beginning with the 26th line item. Beginning January 1, 2024, and January 1st of each year thereafter, the arbitrator may adjust the fee range by the annual consumer price index-urban as determined annually by the United States Bureau of Labor Statistics.

(b) Expenses incurred during arbitration, including the arbitrator's expenses and fees, but not including attorneys' fees, must be divided equally among the parties to the arbitration. Arbitrator fees must be paid to the arbitrator by the parties within 30 calendar days of receipt of the arbitrator's decision by the parties.

(c) If the parties reach an agreement before the arbitrator makes their decision, the arbitrator fees must be paid by the parties within 30 calendar days of the date the settlement is reported to the commissioner as required under RCW 48.49.040.

(8) RCW 48.49.040(13) governs arbitration proceedings initiated under RCW 48.49.135. The determination of the rate to be paid to the out-of-network or nonparticipating provider must be accomplished through a single arbitration proceeding.

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-040 Determining whether an enrollee's health plan is subject to the requirements of the act.** (1) To implement RCW 48.49.170, carriers must make information regarding whether an enrollee's health plan is subject to the requirements of chapter 48.49 RCW or section 2799A-1 et seq. of the Public Health Service Act (42 U.S.C. Sec. 300gg-111 et seq.) and federal regulations implementing those provisions of P.L. 116-260 available to providers (~~and~~) facilities, and ground ambulance services organizations by:

(a) Using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Eligi-

bility Benefit Response (271) transaction information through use of the most appropriate standard message that is placed in a standard location within the 271 transaction;

~~(b) ((Beginning April 1, 2021, and until December 31, 2022, using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the X12 industry standard Remark Code N830 to indicate that the claim was processed in accordance with this state's balance billing rules;~~

~~(c) Beginning January 1, 2023,))~~ Using the appropriate version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the applicable X12 industry standard Remark Code to indicate whether a claim was processed in accordance with this state's balance billing rules or the federal No Surprises Act.

(2) The ~~((designated lead organization for administrative simplification in Washington state))~~ commissioner:

(a) After consultation with carriers, providers and facilities through a new or an existing workgroup or committee, must post the language of the most appropriate standard message and the location within the 271 transaction in which the message is to be placed on its website ~~((on or before November 1, 2022));~~

~~(b) ((Must post on its website on or before December 1, 2020, instructions on compliant use of the X12 industry standard Remark Code N830 in the X12 Health Care Claim Payment and Remittance Advice (835) transaction;~~

~~(e))~~ Must post on its website ~~((on or before December 1, 2022,))~~ instructions on compliant use of the appropriate X12 industry standard Remark code or codes as provided in subsection (1) ~~((e))~~ (b) of this section; and

~~((d))~~ (c) Must post on its website ~~((on or before December 1, 2020,))~~ the information reported by carriers under WAC 284-43B-035(1).

(3) A link to the information referenced in subsection (2) of this section also must be posted on the website of the office of the insurance commissioner.

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-050 Notice of consumer rights and transparency.** (1)

The commissioner shall develop a standard template for a notice of consumer protections from balance billing under the Balance Billing Protection Act and the federal No Surprises Act (P.L. 116-260). The notice may be modified periodically, as determined necessary by the commissioner. The notice template will be posted on the public website of the office of the insurance commissioner.

(2) The standard template for the notice of consumer protections developed under subsection (1) of this section must be provided to consumers enrolled in any health plan issued in Washington state as follows:

(a) Carriers must:

(i) Include the notice in the carrier's communication to an enrollee, in electronic or any other format, that authorizes nonemergency services to be provided at facilities referenced in WAC 284-43B-010

~~((h))~~ (i) (ii);

(ii) Include the notice in each explanation of benefits sent to an enrollee for items or services with respect to which the requirements of RCW 48.49.020 and WAC 284-43B-020 apply;

(iii) Post the notice on their website in a prominent and relevant location, such as in a location that addresses coverage of emergency services and prior authorization requirements for nonemergency health care services performed by nonparticipating providers at certain participating facilities; and

(iv) Provide the notice to any enrollee upon request.

(b) Health care facilities (~~and~~), providers, and ground ambulance services organizations must:

(i) For any facility (~~or~~), provider, or ground ambulance services organization that is owned and operated independently from all other businesses and that has more than 50 employees, upon confirming that a patient's health plan is subject to the Balance Billing Protection Act or the federal No Surprises Act (P.L. 116-260):

(A) Include the notice in any communication to a patient, in electronic or any other format related to scheduling of nonemergency health care services performed by nonparticipating providers at certain participating facilities. Text messaging used as a reminder or follow-up after a patient has already received the full text of the notice under this subsection may provide the notice through a link to the provider's webpage that takes the patient directly to the notice. Telephone calls to patients following the patient's receipt of the full text of the notice under this subsection do not need to include the notice; and

(B) For facilities providing emergency services, including behavioral health emergency services providers or ground ambulance services organizations, provide or mail the notice to a patient within 72 hours following a patient's receipt of emergency services.

(ii) Post the notice on their website, if the provider, behavioral health emergency services provider (~~or~~), facility, or ground ambulance services organization maintains a website, in a prominent and relevant location near the list of the carrier health plan provider networks with which the provider, behavioral health emergency services provider (~~or~~), facility, or ground ambulance services organization is an in-network provider;

(iii) If services were provided at a health care facility or in connection with a visit to a health care facility, provide the notice to patients no later than the date and time on which the provider or facility requests payment from the patient, or with respect to a patient from who the provider or facility does not request payment, no later than the date on which the provider or facility submits a claim to the carrier; and

(iv) Provide the notice upon request of a patient.

(3) The notice required in this section may be provided to a patient or an enrollee electronically if it includes the full text of the notice and if the patient or enrollee has affirmatively chosen to receive such communications from the carrier, provider, or facility electronically. Except as authorized in subsection (2)(b)(i)(A) of this section, the notice may not be provided through a hyperlink in an electronic communication.

(4) For claims processed on or after July 1, 2020, when processing a claim that is subject to the balance billing prohibition in RCW 48.49.020 or 48.49.200, the carrier must indicate on any form used by the carrier to notify enrollees of the amount the carrier has paid on the claim:



(a) Whether the claim is subject to the prohibition in the act; and

(b) The federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number.

(5) Carriers must ensure that notices provided under this subsection are inclusive for those patients who may have disabilities or limited-English proficiency, consistent with carriers' obligations under WAC 284-43-5940 through 284-43-5965. To assist in meeting this language access requirement, carriers may use translated versions of the notice of consumer protections from balance billing posted on the website of the office of the insurance commissioner.

(6) A facility, behavioral health emergency services provider (~~(☞)~~), health care provider, or ground ambulance services organization meets its obligation under RCW 48.49.070 or 48.49.080, to include a listing on its website of the carrier health plan provider networks in which the facility or health care provider participates by posting this information on its website for in-force contracts, and for newly executed contracts within 14 calendar days of receipt of the fully executed contract from a carrier. If the information is posted in advance of the effective date of the contract, the date that network participation will begin must be indicated.

(7) Not less than 30 days prior to executing a contract with a carrier:

(a)(i) A hospital, freestanding emergency department, behavioral health emergency services provider or ambulatory surgical facility must provide the carrier with a list of the nonemployed providers or provider groups that have privileges to practice at the hospital, freestanding emergency department, behavioral health emergency services provider or ambulatory surgical facility;

(ii) A hospital, hospital outpatient department, critical access hospital or ambulatory surgical center must provide the carrier with a list of the nonemployed providers or provider groups that are contracted to provide nonemergency health care services at the facility.

(b) The list must include the name of the provider or provider group, mailing address, federal tax identification number or numbers and contact information for the staff person responsible for the provider's or provider group's contracting.

(c) Any facility providing carriers information under this subsection must notify the carrier within 30 days of a removal from or addition to the nonemployed provider list. The facility also must provide an updated list of these providers within 14 calendar days of a written request for an updated list by a carrier.

(8) A participating provider must submit accurate information to a carrier regarding the provider's network status in a timely manner, consistent with the terms of the contract between the provider and the carrier.

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-060 Enforcement.** (1)(a) If the commissioner has cause to believe that any health facility, behavioral health emergency services provider (~~(☞)~~), provider, or ground ambulance services or-

ganization has engaged in a pattern of unresolved violations of RCW 48.49.020 ((~~or~~)), 48.49.030, or 48.49.200 the commissioner may submit information to the department of health or the appropriate disciplining authority for action.

(b) In determining whether there is cause to believe that a health care provider, behavioral health emergency services provider ((~~or~~)), facility, or ground ambulance services organization has engaged in a pattern of unresolved violations, the commissioner shall consider, but is not limited to, consideration of the following:

(i) Whether there is cause to believe that the health care provider, behavioral health emergency services provider ((~~or~~)), facility, or ground ambulance services organization has committed two or more violations of RCW 48.49.020 ((~~or~~)), 48.49.030, or 48.49.200;

(ii) Whether the health care provider, behavioral health emergency services provider or facility has failed to submit claims to carriers containing all of the elements required in WAC 284-43B-030(1) on multiple occasions, putting a consumer or consumers at risk of being billed for services to which the prohibition in RCW 48.49.020 or 48.49.200 applies;

(iii) Whether the health care provider, behavioral health emergency services provider or facility has been nonresponsive to questions or requests for information from the commissioner related to one or more complaints alleging a violation of RCW 48.49.020 ((~~or~~)), 48.49.030, or 48.49.200; and

(iv) Whether, subsequent to correction of previous violations, additional violations have occurred.

(c) Prior to submitting information to the department of health or the appropriate disciplining authority, the commissioner may provide the health care provider, behavioral health emergency services provider ((~~or~~)), facility, or ground ambulance services organization with an opportunity to cure the alleged violations or explain why the actions in question did not violate RCW 48.49.020 ((~~or~~)), 48.49.030, or 48.49.200.

(2) In determining whether a carrier has engaged in a pattern of unresolved violations of any provision of this chapter, the commissioner shall consider, but is not limited to, consideration of the following:

(a) Whether a carrier has failed to timely respond to arbitration initiation request notifications from providers or facilities;

(b) Whether a carrier has failed to comply with the requirements of WAC 284-43-035 related to choosing an arbitrator or arbitration entity;

(c) Whether a carrier has met its obligation to maintain current and accurate carrier contact information related to initiation of arbitration proceedings under WAC 284-43-035;

(d) Whether a carrier has complied with the requirements of WAC 284-43-040;

(e) Whether a carrier has complied with the consumer notice requirements under WAC 284-43-050; and

(f) Whether a carrier has committed two or more violations of chapter 48.49 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 23-01-110, filed 12/19/22, effective 1/19/23)

**WAC 284-43B-070 Self-funded group health plan opt in.** (1) A self-funded group health plan that elects to participate in RCW 48.49.020 through 48.49.040 (~~and~~), 48.49.160, and 48.49.200, shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by RCW 48.49.020 through 48.49.040, 48.49.160, 48.49.200 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least 15 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in balance billing protections as provided in RCW 48.49.130 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by Washington state employer has elected to participate in balance billing protections under RCW 48.49.130 and has employees that reside in other states, those employees are protected from balance billing when receiving care from a Washington state provider.

(5) Self-funded group health plan sponsors and their third party administrators may develop their own internal processes related to member notification, member appeals and other functions associated with their fiduciary duty to enrollees under the Employee Retirement Income Security Act of 1974 (ERISA).

NEW SECTION

**WAC 284-43B-105 Forms.** All required forms referenced in this chapter, shall be on forms designated by the commissioner for that purpose. The forms will be available on the commissioner's website. Any new or updated forms will be posted on the commissioner's website at least 30 days before their effective date.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-43B-085	Appendix A.
WAC 284-43B-090	Appendix B.
WAC 284-43B-095	Appendix C.
WAC 284-43B-100	Appendix D.

**OTS-5949.1**NEW SECTION

**WAC 284-170-205 Behavioral health emergency services provider contracting.** (1) Issuers must meet the network access standards of this chapter related to emergency mental health services and substance use disorder services, including services provided by behavioral health emergency services providers. An issuer that is unable to meet these standards must file an alternative access delivery request as provided in this chapter.

(2) In accepting and reimbursing billing for behavioral health crisis services provided by nonparticipating behavioral health emergency services providers for behavioral health emergency services under RCW 48.43.093, issuers must:

(a) Accept and reimburse billing for behavioral health crisis services submitted by behavioral health agencies that are licensed in good standing and certified to provide crisis services by the Washington state department of health under chapter 246-341 WAC and are defined as behavioral health emergency services providers under RCW 48.43.005, or from behavioral health administrative services organizations, as described in RCW 71.24.045. Issuers, providers, and behavioral health administrative organizations may, by mutual agreement, define payment methodologies for payment of behavioral health crisis services;

(b) Accept and reimburse billing codes for behavioral health crisis services included in the service encounter reporting instructions issued and periodically updated by the Washington state health care authority.

(3) In contracting with behavioral health emergency services providers, issuers must:

(a) To reduce administrative burden on behavioral health emergency services providers, initially engage in good faith efforts to contract with behavioral health administrative service organizations, as described in RCW 71.24.045, that have contracts with a sufficient number of behavioral health emergency services providers in their region. If a behavioral health administrative services organization is unwilling or unable to contract with an issuer, the issuer must engage in good faith efforts to contract directly with a sufficient number and type of behavioral health emergency services providers to meet the network access standards of this chapter;

(b) Contract with behavioral health emergency services providers as licensed behavioral health agencies, as provided in (c) of this subsection. RCW 48.43.005 defines "health care provider" as a person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law. As such, contracting for behavioral health emergency services cannot be limited to health care providers whose scope of practice includes independent practice. If a health care provider holding, for example, an associate license under RCW 18.225.145 or an agency-affiliated counselor license under chapter 18.19 RCW is employed by a behavioral health emergency services provider, that license holder or the provider, on their behalf, must be allowed to bill the issuer for emergency services, as defined in RCW 48.43.005.

(c) With respect to credentialing:

(i) For contracts with behavioral health administrative services organizations, the carrier must delegate credentialing of behavioral health emergency services providers to the behavioral health administrative service organization; and

(ii) For contracts directly with behavioral health emergency services providers, and for credentialing delegated to behavioral health administrative service organizations under (c)(i) of this subsection, the issuer's credentialing standards must be satisfied by a showing that the behavioral health emergency services provider is licensed in good standing and certified to provide crisis services by the Washington state department of health under chapter 246-341 WAC. The issuer may not impose additional credentialing requirements.

## WSR 24-21-154

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed October 22, 2024, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-015.

Title of Rule and Other Identifying Information: Medication assistance; the pharmacy quality assurance commission (commission) and the department of health (department) are jointly proposing adding five new sections, WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, and 246-945-718, to establish standards for the practice of medication assistance. The proposed rules describe definitions, actions, and restrictions pertaining to the provision of medication assistance in accordance with chapter 69.41 RCW.

Hearing Location(s): On December 12, 2024, at 9:30 a.m., at the Labor and Industries Building, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. To access the meeting on December 12, 2024, at 9:30 am, go to <https://zoom.us/join> or <https://us02web.zoom.us/j/87143495001> and use the Webinar ID 871 4349 5001. The access options include one-tap mobile US +12532158782,,87149465001# or +16699009128,,87149465001#; or dial (for higher quality, dial a number based on your current location): US: +1-253-215-8782 US (Tacoma) or +1-253-205-0468 U.S. International numbers available <https://us02web.zoom.us/j/87143495001>.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, beginning the date and time of filing, by November 25, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-503-5058, fax 360-236-2901, TTY 711, email [PharmacyRules@doh.wa.gov](mailto:PharmacyRules@doh.wa.gov), by November 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to reestablish and update regulatory guidelines around the practice of medication assistance under the commission's jurisdiction. The proposed rule establishes criteria for medication assistance in community-based and in-home care settings in accordance with chapter 69.41 RCW. The definition for medication assistance provided in RCW 69.41.010(15) states:

"Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual to take their medication, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, handing an individual their prefilled insulin syringe, transferring an individual's medication from one container to another in order to prepare an individual dose, and medication alteration, provided the individual is aware their medication is being altered.

Reasons Supporting Proposal: The commission conducted a rule consolidation project resulting in the formation of a new chapter, chapter 246-945 WAC, which went into effect in July 2020. The old rules,

including the former rules on medication assistance (chapter 246-888 WAC), were repealed in March 2021. The commission's repeal of chapter 246-888 WAC resulted in unintended disruptions for medication assistance in the community-based and in-home care settings permitted under chapter 69.41 RCW. Emergency rule making was conducted to immediately restore medication assistance regulations to preserve patient safety and welfare while the commission and the department began work on permanent rule making. The CR-101 preproposal statement of inquiry was filed on December 27, 2021, under WSR 22-02-015.

The commission largely retained the medication assistance rule language formerly in chapter 246-888 WAC as its emergency rule language while the standard rule-making process is ongoing. Each filing of the emergency rules remained the same while the goal of the standard rule making was to update and streamline the language. The purpose for doing so was so individuals involved in providing medication assistance services would not need to regularly change their standards of practice around medication assistance regularly with each filing of a new emergency rule. The commission worked in collaboration with and received feedback from the Washington state board of nursing (WABON), the department of social and health service (DSHS), and interested parties such as the Washington health care association as it drafted updated rule language for this proposal. The proposed rule is different than the current emergency rules. This collaboration allowed the commission to craft language within its jurisdiction that meets the needs of the impacted community and will not disrupt the existing practice of medication assistance in Washington state when the proposed rule language is enacted.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.010(15), and 69.41.075.

Statute Being Implemented: RCW 18.64.005, 69.41.010(15), and 69.41.075.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joshua Munroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed WAC 246-945-710 provides definitions for key terms used in clarifying the practice of medication assistance in community-based and in-home care facilities without materially changing how those practices are allowed or restricted in rule.

Scope of exemption for rule proposal:

Is partially exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. **The following is a brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule:** The purpose of the proposed rule is to reestablish and update regulatory guidelines around the practice of medication assistance under the commission's jurisdiction. This rule establishes criteria for medication assistance in community-based and in-home care settings in accordance with chapter 69.41 RCW. The definition for medication assistance provided in RCW 69.41.010(15) states:

"Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual to take their medication, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, handing an individual their prefilled insulin syringe, transferring an individual's medication from one container to another in order to prepare an individual dose, and medication alteration, provided the individual is aware their medication is being altered.

The commission conducted a rule consolidation project resulting in the formation of new chapter 246-945 WAC, which went into effect in July 2020. The old rules, including the former rules on medication assistance (chapter 246-888 WAC), were repealed in March 2021. The commission's repeal of chapter 246-888 WAC resulted in unintended disruptions for medication assistance in the community-based and in-home care settings permitted under chapter 69.41 RCW. Emergency rule making was conducted to immediately restore medication assistance regulations to preserve patient safety and welfare while the commission and the department began work on permanent rule making. The CR-101 rules inquiry package was filed on December 27, 2021, under WSR 22-02-015.

The commission largely retained the medication assistance rule language formerly in chapter 246-888 WAC as its emergency rule language while the standard rule-making process is ongoing. Each filing of the emergency rules remained the same while the goal of the standard rule making was to update and streamline the language. The purpose for doing so was so individuals involved in providing medication assistance services would not need to regularly change their standards of practice around medication assistance regularly with each filing of a new emergency rule. The commission worked in collaboration with and with feedback from WABON, DSHS, and interested parties such as the Washington Health Care Association as it drafted updated rule language for the CR-102 rules proposal package. This collaboration allowed the commission to craft language within its jurisdiction that meets the need of the impacted community and will not disrupt the existing practice of medication assistance in Washington state when the proposed rule language is enacted.

**Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).**

**Table 1. Summary of Businesses Required to comply to the Proposed Rule**



NAICS Code (4, 5, or 6 digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
623312	Assisted living facilities for the elderly without nursing care	1869	\$3,244.87

The following is an analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

**WAC 246-945-714 Medication assistance by nonpractitioners.**

**Description:** Per RCW 69.41.010, nonpractitioners, individuals who do not fall into the category of practitioner defined in RCW 69.41.010(17), may provide medication assistance to individuals. The proposed rule outlines the actions that qualify as medication assistance. Nonpractitioners may only provide medication assistance in circumstances where a practitioner determines that it is "necessary and appropriate." Lastly, medication assistance involving intravenous or injectable medications, except prefilled insulin syringes, may not be provided by nonpractitioners.

**Cost(s):** As WAC 246-945-714 describes who may provide medication assistance and under what circumstances that assistance may be provided, there are no measurable financial costs associated with the requirements outlined in the proposed section of rule. This rule is permissive and does not require these settings to utilize nonpractitioners for medication assistance. The proposed parameters for medication assistance would not require entities such as community-based or in-home care settings to incur additional costs to comply with the medication assistance rules.

**WAC 246-945-716 Self-administration in licensed assisted living facilities.**

**Description:** The proposed rule allows "self-administration" under circumstances in which an individual in a licensed assisted living facility is physically unable to administer their own medications but is able to accurately direct others to do so.

**Cost(s):** WAC 246-945-716 is also a permissive rule and there are no known costs of compliance with the rule. Assisting in self-administration per this proposed section of rule would be included in existing duties performed by the nonpractitioner or facility personnel in the care setting in which medication assistance occurs.

**WAC 246-945-718 Medication assistance—restrictions.**

**Description:** The proposed rule limits medication assistance to only be provided if the individual is cognitively aware they are receiving the medication and must occur immediately prior to the individual's self-administration of the medication. Only persons legally authorized to administer medication to an individual may do so, and only if the individual is not able to administer their medication independently or with assistance. The proposed rule also clarifies that WAC 246-945-710 through 246-945-718 do not limit the rights of people with functional disabilities to self-direct care in accordance with chapter 74.39 RCW.

**Cost(s):** There are no anticipated financial costs to entities that must comply with WAC 246-945-718. Commission staff believe that facilities already have persons available to provide the medication assistance services described in rule.

**Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs**

**were calculated:** The proposed rules do not impose any probable costs and therefore are **less than** the minor cost threshold of \$3,244.87 for assisted living facilities. The proposed rules potentially save money for entities providing medication assistance services should an entity choose to employ a nonpractitioner in place of a registered nurse.

**Summary of how the costs were calculated:** None of the proposed changes described in WAC 246-945-714, 246-945-716, and 246-945-718 have probable costs associated with them.

A copy of the detailed cost calculations may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

October 22, 2024  
Hawkins DeFrance, PharmD  
Pharmacy Quality Assurance Commission Chair  
and Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary of Health

OTS-5724.3

## PART 5 - MEDICATION ASSISTANCE

### NEW SECTION

**WAC 246-945-710 Scope and applicability.** WAC 246-945-710 through 246-945-718 only apply to medication assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or an in-home care setting.

### NEW SECTION

**WAC 246-945-712 Definitions.** The definitions in this section apply to WAC 246-945-710 through 246-945-718 unless the context clearly requires otherwise:

(1) "Community-based care settings" has the same meaning as RCW 69.41.010.

(2) "Enabler" means a physical device or devices used to facilitate an individual's self-administration of a medication including, but not limited to, a medicine cup, glass, cup, spoon, bowl, prefilled insulin syringe, a specially adapted table surface, straw, piece of cloth, fabric, or the individual's hand.

(3) "Hand-over-hand administration" means a person is providing total physical assistance to an individual when administering the individual's medication.

(4) "In-home care settings" has the same meaning as RCW 69.41.010.

(5) "Individual" means a person residing in a community-based setting or in-home care setting.

(6) "Medication" means legend drugs, including controlled substances, prescribed to an individual residing in a community-based care setting and an in-home care setting. Medication does not include oxygen.

(7) "Medication alteration" means alteration of a medication by a nonpractitioner to prepare a medication for an individual's self-administration and includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, mixing tablets or capsules with foods or liquids, or altering an oral medication for administration via enteral tube.

(8) "Practitioner" has the same meaning as RCW 69.41.010.

#### NEW SECTION

##### **WAC 246-945-714 Medication assistance by nonpractitioners. (1)**

An individual may receive medication assistance from nonpractitioners. Medication assistance only includes:

(a) Reminding or coaching the individual to take their medication;

(b) Handing the individual their medication container;

(c) Opening the individual's medication container;

(d) Using an enabler, except if a nonpractitioner uses the individual's hand as an enabler, the nonpractitioner may only steady or guide an individual's hand while the individual administers a medication to themselves and may not engage in "hand-over-hand" administration;

(e) Placing the individual's medication in their hand;

(f) Handing an individual their prefilled insulin syringe;

(g) The transfer of an individual's medication from one container to another container for the purpose of preparing an individual dose; or

(h) Medication alteration. An individual must be aware that their medication has been altered.

(2) A nonpractitioner shall only perform the medication assistance described in subsection (1)(g) and (h) of this section, where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate.

(3) A nonpractitioner shall not provide medication assistance to individuals that involves intravenous medications or injectable medications, except handing an individual their prefilled insulin syringes.

NEW SECTION

**WAC 246-945-716 Self-administration in licensed assisted living facilities.** In licensed assisted living facilities, self-administration may include situations in which an individual cannot physically self-administer medications but can accurately direct others.

NEW SECTION

**WAC 246-945-718 Medication assistance—Restrictions.** (1) Medication assistance must only be provided if the individual is cognitively aware they are receiving medications.

(2) Medication assistance must occur immediately prior to the individual's self-administration of the medication.

(3) If an individual is not able to administer a medication to themselves independently or with assistance, then the medication must be administered to the individual by a person legally authorized to do so.

(4) WAC 246-945-710 through 246-945-718 do not limit the rights of people with functional disabilities to self-direct care according to chapter 74.39 RCW.

**WSR 24-21-156**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed October 22, 2024, 4:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-001.

Title of Rule and Other Identifying Information: WAC 388-106-1021  
Private duty nurse holiday pay. The proposed rule clarifying holiday pay for contracted private duty nurses.

Hearing Location(s): On November 26, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: No earlier than November 27, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on October 23, 2024, by 5:00 p.m. on November 26, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on November 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is considering adding a new section to WAC 388-106-1000 through 388-106-1055 in the paid private duty nursing (PDN) section of WAC. The new section will be under WAC 388-106-1021, which is related PDN paid holidays. Currently, PDN providers have been receiving holiday pay and referring to a Washington state employee WAC. PDN providers are not Washington state employees and therefore need to have clarity in this WAC section for paid holidays.

Reasons Supporting Proposal: To identify the holidays for which PDN contracted nurses will receive holiday pay.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, and 74.39A.030.

Statute Being Implemented: RCW 74.08.090 and 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kaila O'Dell, 4500 Blake East Building, Lacey, WA, 360-725-3549.

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

A cost-benefit analysis is not required under RCW 34.05.328. DSHS determined this rule is not a significant legislative rule under RCW 34.05.328. Currently, PDN contracted nurses receive holiday pay. This WAC is specifying holidays for contracted nurses rather than referring to state employee holidays.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct ty-

pographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.310 (4)(b) and (d).

Explanation of exemptions: This is an internal process that is already in practice, that is being clarified in rule. RCW 34.05.310 (4)(d) states in part "... or clarify language of a rule without changing its effect."

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

October 18, 2024  
Katherine I. Vasquez  
Rules Coordinator

### SHS-5057.3

#### NEW SECTION

**WAC 388-106-1021 What days are considered holidays for private duty nursing providers?** The following dates are holidays solely for the purpose of contracted services rates for private duty nursing providers:

- (1) The first day of January (New Year's Day);
- (2) The third Monday of January (Martin Luther King, Jr.'s birthday);
- (3) The third Monday of February (Presidents' Day);
- (4) The last Monday of May (Memorial Day);
- (5) The 19th day of June (Juneteenth);
- (6) The fourth day of July (Independence Day);
- (7) The first Monday in September (Labor Day);
- (8) The 11th day of November (Veteran's Day);
- (9) The fourth Thursday in November (Thanksgiving Day);
- (10) The Friday immediately following the fourth Thursday in November (Native American Heritage Day); and
- (11) The 25th day of December (Christmas Day).

**WSR 24-21-158**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2024-02—Filed October 22, 2024, 7:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-126.

Title of Rule and Other Identifying Information: Relating to health care benefit managers (HCBM) including, but not limited to, implementation of E2SSB 5213 (chapter 242, Laws of 2024).

Hearing Location(s): On November 26, 2024, at 11:00 a.m. PST, virtual meeting via Zoom. Detailed information for attending the Zoom meeting is posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/relating-health-care-benefit-managers-r-2024->. Written comments are due to OIC by 2:00 p.m. on November 26, 2024. Written comments can be emailed to [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov).

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Jane Beyer, 302 Sid Snyder Avenue S.W., Olympia, WA 98504, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, beginning Wednesday, October 23, 2024, at 12:00 a.m. PST, by November 26, 2024, by 2:00 p.m. PST.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [Katie.Bennett@oic.wa.gov](mailto:Katie.Bennett@oic.wa.gov), by November 25, 2024, by 12:00 p.m. PST.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5213 (chapter 242, Laws of 2024) amends state law concerning the business practices of HCBMs and pharmacy benefit managers (PBMs, which are a type of HCBM). The law's provisions address, among other issues, PBM reimbursement to pharmacies for dispensing prescription drugs; consumer access to mail order and retail pharmacies; consumer out-of-pocket costs for prescription drugs; HCBM registration and reporting; and oversight authority of OIC regarding HCBM registration and operations. Rule making is necessary to revise existing HCBM rules at chapter 284-180 WAC and ensure that all affected entities understand their rights and obligations under the new law.

In addition, rule making related to HCBMs beyond the scope of E2SSB 5213 is necessary to ensure that OIC can effectively oversee HCBMs in light of recent health care industry developments like the Change Healthcare cyber attack in early 2024 and OIC's experience regulating HCBMs.

Reasons Supporting Proposal: Revisions to current rules are needed to implement E2SSB 5213 and ensure all affected entities understand their rights and obligations under chapter 48.200 RCW.

Statutory Authority for Adoption: RCW 48.200.900, 48.02.060.

Statute Being Implemented: E2SSB 5213 (chapter 242, Laws of 2024).

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7043; Implementation: John Hayworth and Ned Gaines, P.O. Box 40255, Olympia, WA 98504-0255,

360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7038, fax 360-586-3109, email rulescoordinator@oic.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: OIC determined that both health carriers and HCBMs are impacted by the implementation of this rule. Based on 2022 WA Employment Security Department (ESD) Covered Employment data, health carriers are not considered small businesses, as they have on average 112 employees per firm (7,163 total employees in WA/64 average number of firms in Washington). Small business is defined as a business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees (RCW 19.85.020). Health carriers are not considered small businesses.

OIC also considered the impact of this rule on small pharmacies. The NAIC's system classifies pharmacies as having an average of 38 employees under code 456110 - pharmacies and drug retailers. Provisions of the rule (WAC 284-180-505 and 284-180-507) make changes to the process that small pharmacies must use to appeal reimbursements from PBMs. However, the small pharmacy appeals process is voluntary on the part of pharmacies. Therefore, OIC concluded that the rule provisions related to pharmacies do not constitute a cost to small businesses.

Portions of the proposal are exempt from requirements of the Regulatory Fairness Act. The following table identifies rule sections or portions of rule sections that have been determined exempt based on the exemptions provided in RCW 34.05.310.

WAC Section and Title	Description of Adopted Changes	Rationale for Exemption Determination
WAC 284-180-120 Applicability and scope.	Clarification of who the chapter applies to; adopting or incorporating by reference statutory provisions.	RCW 34.05.310 (4)(e) and (d)
WAC 284-180-130 Definitions.	Clarification of definitions used within the chapter; dictated by statute.	RCW 34.05.310 (4)(e) and (d)
WAC 284-180-210 Registration and renewal fees.	Clarifying the gross income definition, clarifying applicability.	RCW 34.05.310 (4)(d)
WAC 284-180-220 Health care benefit manager registration.	Dictated by statute.	RCW 34.05.310 (4)(e)
WAC 284-180-240 Providing and updating registration.	Clarifying language; dictated by statute.	RCW 34.05.310 (4)(d) and (e)
WAC 284-180-325 Required notices.	Does not impact small businesses as health carriers are not deemed to be small businesses.	RCW 19.85.025(4)
WAC 284-180-405 Definitions.	Clarifying language.	RCW 34.05.310 (4)(d)
WAC 284-180-411 Purpose of this subchapter.	Clarifying language.	RCW 34.05.310 (4)(d)



WAC Section and Title	Description of Adopted Changes	Rationale for Exemption Determination
WAC 284-180-455 Carrier filings related to health care benefit managers.	Does not impact small businesses as health carriers are not deemed to be small businesses.	RCW 19.85.025(4)
WAC 284-180-465 Self-funded group health plan opt-in.	No requirement for self-funded group health plans to opt in. Therefore, no cost of compliance is calculated.	RCW 19.85.025(4)
WAC 284-180-500 Applicability and scope.	Clarifying language; dictated by statute.	RCW 34.05.310 (4)(e) and (d)
WAC 284-180-515 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner.	OIC has determined that this section does not have additional costs for businesses.	RCW 19.85.025(4)
WAC 284-180-517 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner.	OIC has determined that this section does not have additional costs for businesses.	RCW 19.85.025(4)
WAC 284-180-520 Appeals by network pharmacies to the commissioner.	Clarifying language.	RCW 34.05.310 (4)(d)
WAC 284-180-522 Appeals by network pharmacies to the commissioner.	OIC has determined that this section does not have additional costs for businesses and is dictated by statute.	RCW 34.05.310 (4)(e)

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Section 1 above details the identified exemptions and for which sections they apply to. Portions of the proposed rule are not exempt. Those sections are described in detail in section 3 below.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

**A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule:**

E2SSB 5213 (chapter 242, Laws of 2024) amends state law concerning the business practices of HCBMs and PBMs. The law's provisions address, among other issues, PBM reimbursement to pharmacies for dispensing prescription drugs; consumer access to mail order and retail pharmacies; consumer out-of-pocket costs for prescription drugs; HCBM registration and reporting; and oversight authority of OIC regarding HCBM registration and operations. Rule making is necessary to revise existing HCBM rules at chapter 284-180 WAC and to ensure that all affected entities understand their rights and obligations under the new law.

In addition, rule making related to HCBMs is necessary to ensure that OIC can effectively oversee HCBMs in light of recent developments in the health care industry.

OIC was unable to definitively determine whether HCBMs should be classified as large businesses (more than 50 employees). OIC used the North American Industry Classification System (NAICS) code 524292, "Pharmacy benefit management and other third-party administration of insurance and pension funds," to estimate the number of employees per

firm. However, this NAICS code includes entities in addition to HCBMs and PBMs, as it captures third-party administrators of insurance and pension funds; accordingly, the code could misrepresent the true average firm sizes of HCBMs and PBMs.

Additionally, OIC reviewed evidence suggesting that a small number of large PBM firms dominate the PBM market in Washington state and nationally. The Washington state health care authority's (HCA) Drug Price Transparency Program Annual Report 2023<sup>1</sup> found that "the top four PBMs in Washington account for approximately 99 percent of the total dollar value of prescription drug claims, with the top two accounting for 68 percent of statewide dollars." This report also found that the bottom 10 PBMs account for just one percent of Washington's PBM market. The Federal Trade Commission (FTC)'s 2024 report titled Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies<sup>2</sup> found that a few large, integrated firms dominate the pharmacy benefit management market in the United States. The FTC report stated: "Over the past two decades, the PBM industry has undergone substantial change as a result of horizontal consolidation and vertical integration. The top three PBMs processed nearly 80 percent of the approximately 6.6 billion prescriptions dispensed by United States pharmacies in 2023, while the top six PBMs processed more than 90 percent. All of the top six PBMs are vertically integrated downstream, operating their own mail order and specialty pharmacies, while one PBM owns and operates the largest chain of retail pharmacies in the nation. Pharmacies affiliated with the three largest PBMs now account for nearly 70 percent of all specialty drug revenue."

There is evidence to suggest that, in addition to PBMs specifically, many HCBMs are large and vertically integrated businesses. For example, the United States House of Representatives' Committee on Energy and Commerce found that Change Healthcare, a subsidiary of UnitedHealth Group that performs HCBM functions nationally and in Washington state, "acts as a clearing house for 15 billion medical claims each year - accounting for nearly 40 percent of all claims."<sup>3</sup>

Although these findings indicate that many HCBMs and PBMs are indeed large businesses, OIC acknowledges that there may also be a subset of firms providing HCBM and PBM services who are small businesses. Because of this, OIC assumed that HCBMs are classified as small businesses for purposes of this analysis.

OIC also considered the impact of this rule on small pharmacies. The NAIC's system classifies pharmacies as having an average of 38 employees under code 456110 - pharmacies and drug retailers. Provisions of the rule (WAC 284-180-505 and 284-180-507) make changes to the process that small pharmacies must use to appeal reimbursements from PBMs. However, the small pharmacy appeals process is voluntary on the part of pharmacies. Therefore, OIC concluded that the rule provisions related to pharmacies do not constitute a cost to small businesses.

This analysis evaluates the cost of compliance and any potential impacts on revenue associated with the proposed rule. Impacts on small businesses are discussed in sections 4 and 5, and steps to reduce the impacts to small businesses are discussed in section 6.

Parts of this analysis refer to HCBMs where others reference PBMs. Under RCW 48.200.020, "health care benefit manager" includes, but is not limited to, HCBMs that specialize in specific types of health care benefit management such as PBMs. Chapter 48.200 RCW and E2SSB 5213 include provisions that are limited in application to PBMs.

**Identification and summary of which businesses are required to comply with the adopted rule using NAICS:**

**Table 1. Summary of Businesses Required to comply to the Adopted Rule:**

NAICS Code	NAICS Business Description	Number of Businesses in Washington	Minor Cost Threshold
524292	Pharmacy Benefit Management and Other Third Party Administration of Insurance and Pension Funds	160	\$28,510.46

The number of HCBMs in Washington is determined from the list of entities that have registered with OIC. To conduct business in Washington, an HCBM must register with the commissioner and annually renew the registration (RCW 48.200.030). HCBMs are a subset of the businesses included in the NAICS code 524292, which includes third party administration of insurance and pension funds.

**Analysis of probable costs of businesses in the industry to comply to the adopted rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the adopted rule will cause businesses in the industry to lose sales or revenue:**

WAC 284-180-230 Health care benefit manager renewal.

Description: This section amends how HCBMs should report information related to Washington state annual gross income when completing the annual registration renewal. Under current regulation, HCBMs must submit their Washington state annual gross income for HCBM business for the previous calendar year. The proposed rule requires the renewing HCBM to submit their Washington state annual gross income broken down by Washington state annual gross income received from each entity with which the HCBM has contracted during the previous calendar year.

Cost(s): OIC calculated the cost associated with providing the Washington state annual gross income received from each contracted entity by assuming the number of hours it will take HCBM staff to compile and submit the information, and by relying upon legal and clerical worker labor rates as published by the United States Department of Labor Employee Benefits Security Administration.<sup>4</sup> Using these components, OIC estimated the cost of submitting the annual gross income broken down by contracted entity for year one after the proposed rule would go into effect, and the cost in subsequent years.

Currently, OIC requires HCBMs to submit an annual report at renewal. The annual report asks HCBMs to enter the following information:

- The amount of Washington state annual gross HCBM income for the year.
- The number of entities that the registrant provides HCBM services to in the state of Washington.
- Whether the registrant has any new entities that they provide HCBM services to that were not previously reported.
- Whether the registrant has any new persons and entities with ownership or controlling interests.
- Whether there are any changes in ownership interests that have not been previously reported.
- Any updates to the contact persons.
- Any other material changes to report.

- Whether the registrant has committed any violations in Washington or any other state or has been the subject of an order from a department of insurance or other federal or state agency.

- Whether the HCBM committed any act not previously reported in the renewal application that would result in denial, suspension, or revocation of a registration.

OIC will develop an updated reporting template to capture Washington state annual gross income broken down by Washington state annual gross income received from each entity with which the HCBM has contracted during the previous calendar year. OIC estimates that each HCBM will file three to five contracts.<sup>5</sup> Each reported income document is estimated to take 30 minutes for a lawyer to review, and an additional 30 minutes for a clerical worker to submit to OIC via the annual report. This equates to (five contracts) x (0.5 hours) x (\$165.71) = \$414.28 for a lawyer's services, and (five contracts) x (0.5 hours) x (\$65.99) = \$164.98 for a clerical worker's services, per submitting HCBM.

Average number of contracts	Lawyer labor rate	Clerical worker labor rate	Total average cost per HCBM
5	\$165.71 * 0.5 hrs	\$65.99 * 0.5 hrs	\$579.26

WAC 284-180-460 Health care benefit manager filings.

Description: Under the proposed rule, HCBMs would be required to file all contracts to directly or indirectly provide health care benefit management services on behalf of a carrier. This requirement is implementing RCW 48.200.040, which requires HCBMs to file with OIC "in the form and manner prescribed by the commissioner, every benefit management contract and contract amendment between the HCBM and a health carrier, provider, pharmacy, pharmacy services administration organization, or other HCBM, entered into directly or indirectly in support of a contract with a carrier or employee benefits programs, within 30 days following the effective date of the contract or contract amendment." The proposed rule restates the statutory requirement and adds an illustrative example of which contracts must be filed.

Cost(s): OIC currently receives all contract filings in the System for Electronic Rate and Form Filing (SERFF). This is a system developed and maintained by the National Association of Insurance Commissioners (NAIC). HCBMs currently each submit approximately three contract filings per year. OIC is unable to accurately determine how many contract filings this rule would require, given the current statutory obligation of HCBMs to file contracts entered into directly or indirectly in support of a contract with a carrier or employee benefits program. For this analysis, OIC assumes that the filing of the additional contracts will require a lawyer three hours to review and a clerical worker two hours to upload into SERFF.

Occupation	Labor Rate	Hours	Total Cost
Lawyer	\$165.71	3	\$497.13
Clerical worker	\$65.99	2	\$131.98
			\$629.11 <sup>6</sup>

WAC 284-180-505 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services.

Description: The rule language proposed by OIC would amend several subsections within WAC 284-180-505. The proposed rule requires:

- That a PBM allow a pharmacy to appeal a reimbursement if the claim was adjudicated by the PBM within the past 90 days.
- A PBM to have a phone number available 9 a.m. to 5 p.m. Pacific Time, Monday through Friday, except national holidays, for purposes of pharmacy appeals.
- A PBM to provide the pharmacy with the price of a drug purchased by other network pharmacies, for purposes of denying a pharmacy appeal.
- A PBM to provide documentation to show that a claim is not subject to chapter 48.200 RCW when the PBM is denying a claim for this reason. RCW 48.200.280 (4)(b) requires a PBM to provide the reason that an appeal is denied; therefore, the PBM already has an obligation to provide a reason. If the denial is based upon the fact that an appeal is for a plan not subject to the chapter, the PBM will have made that determination already. The proposed rule merely requires that the PBM specifically share the results of their research with the pharmacy.
- That when a pharmacy's appeal is upheld, the PBM must make a "reasonable adjustment" that includes, at minimum, the payment of the claims at the net amount the pharmacy paid the supplier. The proposed rule provides that OIC will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period.

Cost(s): The proposed rule sets a clear and uniform time frame or "lookback period" by allowing pharmacies to appeal a reimbursement if the claim was adjudicated by the PBM within 90 days of the claim's adjudication (and otherwise meets the requirements for appeals). To determine the marginal cost to PBMs resulting from this requirement, OIC would need to know the length of the lookback period that pharmacies generally use in appealing a reimbursement to a PBM. In other words, OIC would need to know whether, and how, the proposed 90-day lookback period is different from current practice in the absence of this provision. However, OIC understands that for this type of appeal (first tier appeal), the lookback period the pharmacy may use is determined by contractual arrangement between the PBM and the pharmacy. Because these contract terms are not well known, OIC could not estimate the cost of this proposed amendment to PBMs.

OIC did review a sample of final orders and decisions for "second tier" appeals from the office of administrative hearings (OAH) from 2019-2024. This sample suggested, but did not prove, that the "lookback period" used by pharmacies was approximately 30 days in 2024 and longer from 2019-2023. However, this review was not definitive and did not capture the "first tier" appeals, in which a pharmacy appeals directly to a PBM. Therefore, OIC did not have enough information to estimate the cost of this amendment on PBMs.

Currently, under WAC 284-180-505 (1)(a)(i), PBMs are required to have a telephone number by which the pharmacy may contact the PBM during "normal business hours" and speak with an individual responsible for processing appeals. OIC assumes that normal business hours include

9 a.m. - 5 p.m. Pacific Time. Therefore, there is no marginal cost associated with this provision.

OIC considers the cost to a PBM of providing a network pharmacy with the price of a drug that has been purchased by other network pharmacies located in Washington at a price less than or equal to the predetermined reimbursement cost for a drug to be minimal. RCW 48.200.280 (4)(b) already requires, for denied appeals, that the PBM provide "the national drug code of a drug that has been purchased by other network pharmacies located in Washington at a price that is equal to or less than the predetermined reimbursement cost ..." Under the proposed rule, the PBM would be sharing the results of its research with the pharmacy. This change could potentially impact the market for PBM services by changing the relative leverage that pharmacies, their representatives, and PBMs have in negotiating contracts. However, OIC is unable to quantify the precise impact of this change.

The proposed language specifically defines what the reasonable adjustment must include if the PBM upholds the network pharmacy's appeal. RCW 48.200.280 (5)(a) already requires a PBM to make a reasonable adjustment; the proposed language stipulates that the reasonable adjustment must include, at a minimum, payment of the claim or claims at issue at the net amount paid by the pharmacy to the supplier of the drug. The proposed rule provides that OIC will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period.

According to public information released by HCA, as of 2020, a vast majority of pharmacy appeals to PBMs were denied (96 percent), meaning that this amended language would only apply to a small subset of upheld appeals, assuming the denial rate remains relatively stable.<sup>7</sup> OIC is unable to establish the baseline for how the "reasonable adjustment" as described in WAC 284-280-505(6) is currently interpreted. For second tier appeals, OIC reviewed administrative law judge (ALJ) orders to determine how ALJs interpret reasonable adjustments. From the orders reviewed, the reasonable adjustment is the difference between the original payment by the PBM to the pharmacy and the price the pharmacy paid the wholesaler or supplier. The sample OIC reviewed does not indicate what "reasonable adjustment" a PBM is making as a part of the first tier appeals. However, OIC's review of these orders does indicate that the proposed rule's definition of reasonable adjustment is in line with current practice as seen in the OAH orders. Therefore, there is a cost associated with the provision explicitly defining reasonable adjustment, although OIC is unable to accurately estimate the cost. OIC assumes that the cost is not significant, considering that second tier appeal practices are already in line with the proposed language.

It is important to note that any cost associated with this provision is based on the number of appeals made to the PBMs. Between 2018 and 2020, 38 percent of appeals were made to only two PBMs.<sup>8</sup> Smaller PBMs are less likely to receive as many appeals compared to larger PBMs and, therefore, the smaller PBMs are less likely to bear a significant cost due to this provision.

WAC 284-180-505 Proposed Rule Cost Elements	Annual Cost Per PBM
A claim must be adjudicated within the past 90 days	Undetermined
Phone number available 9-5 PT on weekends and holidays	No cost
PBM must provide pharmacy with the price of a drug	Undetermined - low cost of compliance, with unknown impacts to PBM revenue
Defining "reasonable adjustment"	Undetermined - likely low cost, with reduced cost burden for smaller businesses

WAC 284-180-507 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services.

Description: This section goes into effect January 1, 2026, at which point WAC 284-180-505 is no longer effective.

This section allows a pharmacy services administrative organization (PSAO) to submit an appeal to a PBM on behalf of multiple pharmacies under certain conditions. Under RCW 48.200.280(3), as amended by E2SHB 5213, a pharmacy or its representative may submit an appeal. This proposed rule language clarifies how a representative of a pharmacy may submit an appeal. It is possible that allowing a PSAO to submit an appeal for multiple pharmacies would have the effect of increasing the overall number of appeals that PBMs receive, because they could be receiving appeals from multiple pharmacies instead of one.

Prior to a pharmacy filing an appeal, upon request by a pharmacy or pharmacist, a PBM must provide, within four business days of receiving the request, a current and accurate list of bank ID numbers, processor control numbers, and pharmacy group identifiers for health plans and for self-funded group health plans that have elected to participate. The language in the proposed rule is incorporated into the rule directly from RCW 48.200.280(4), as amended by E2SHB 5213, with the exception of the addition of a four-day time frame for the PBM to provide the information to the pharmacy. Because the requirement to provide the information upon request is statutory, the only possible additional cost to a PBM would be providing the information in four days, rather than a longer prior of time. OIC is unable to determine whether the four day standard creates any cost obligation that would be in addition to the costs associated with implementing the statutory requirement.

Cost(s): Because the enacting statute states that a pharmacy's representative may submit an appeal, and given the fact that cost associated with this provision on PBMs is likely minimal, OIC is unable to precisely determine the cost to PBMs. OIC assumes that any marginal cost above what is already dictated under statute is minimal.

The four-day timeline imposed by this rule could have cost impacts that include:

- Increased labor costs: Hiring additional staff or reallocating existing staff;
- Administrative costs: Changes to internal work flows, automation, or software that may be required to accelerate the document submission process;
- Opportunity costs: If staff are reallocated from their other duties to meet the deadline, the cost of their foregone time performing other tasks.

Because OIC is unable to determine the baseline cost, OIC could not quantify the cost associated with this section of the proposed rule. OIC does assume there is a cost associated with this requirement.

Summary of all Cost(s) :

WAC Section and Title	Probable Cost (or Cost Range)
284-180-230 Health care benefit manager renewal.	\$579.26
284-180-460 Health care benefit manager filings.	\$629.11

**Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated:** While some of the costs of the proposed rule can be estimated, there are some that are indeterminate and variable, given several unknown parameters. Because of the unknown costs, OIC assumes that the proposed rule imposes more-than-minor costs for businesses in the industry.

**Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule:** Explanation of the determination: OIC examined the potential cost on small and large businesses. Based on data from ESD, OIC used the average of 15 employees to represent employment at an average small business, and 195 employees to represent employment at an average large business (greater than 50 employees).

WAC Section and Title	Avg Cost Per Employee at Small Businesses	Avg Cost Per Employee at Large Businesses
284-180-230 Health care benefit manager renewal.	\$38.62	\$2.97
284-180-460 Health care benefit manager filings.	\$41.94	\$3.23
284-180-505 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services.	"reasonable adjustment" cost per appeal	"reasonable adjustment" cost per appeal

For the potential cost of providing a reasonable adjustment under the proposed language, OIC assumes that the cost is "per appeal." Larger PBMs that control a significant portion of the marketplace received many more appeals from pharmacies. Because of this, smaller businesses are more likely to have fewer or no appeals and, therefore, have a reduced or no cost associated with the reasonable adjustment language. Therefore, OIC determined that this cost element does not have a disproportionate impact on small businesses. The other cost elements, including the requirement to submit annual gross income broken out by each entity with which the HCBM has contracted during the previous calendar year, the requirement to file all contracts to provide HCBM services, and the requirement to have a pharmacy appeal phone available do have a disproportionate impact on smaller businesses.

**If the proposed rule has a disproportionate impact on small businesses, the following steps have been identified and taken to reduce the costs of the rule on small businesses:**



RCW 19.85.030(2) Requirements		OIC Response
Subsection	Method	
(a)	Reducing, modifying, or eliminating substantive regulatory requirements	OIC considered reducing, modifying, or eliminating substantive regulatory requirements in the proposal. None of these elements can be further reduced and still meet the stated objective of the implementing statute upon which the rule is based. OIC does not specify how many employees are necessary to ensure a phone number is available for pharmacy appeals in an attempt to minimize the burden. Additionally, in considering potential costs to small HCBMs and PBMs as the result of this rule, OIC reviewed external research in Section 1 showing that Washington's market for HCBM services is highly concentrated among large businesses, with small HCBMs affecting a very small share of the market. Accordingly, OIC generally expects the costs associated with this rule to fall primarily on large businesses, with a much smaller impact on small businesses.
(b)	Simplifying, reducing, or eliminating recordkeeping and reporting requirements	OIC is developing a streamlined reporting process to simplify the requirement of reporting gross income. Additionally, the reporting of HCBM contracts is done through SERFF, an existing framework that health carriers and HCBMs already utilize. OIC is using familiar reporting tools and attempting to streamline the reporting process as much as possible to reduce the reporting burden for small businesses.
(c)	Reducing the frequency of inspections	The rule serves to clarify reporting requirements and the pharmacy appeal process. The rule does not address the frequency of inspections.
(d)	Delaying compliance timetables	The rule does not address compliance timetables.
(e)	Reducing or modifying fine schedules for noncompliance; or	The rule does not affect fines for noncompliance.
(f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates.	OIC will continue to work with HCBMs/PBMs to identify and implement actions to lessen impacts to small businesses.

**Additional steps OIC has taken to lessen impacts:** Several steps were taken during the preproposal period to reduce costs to comply with the proposed rule:

- OIC will not change the HCBM registration and renewal fees as described in WAC 284-180-210. The first prepublication draft contemplated increasing the initial registration fee from \$200 to \$750, and increasing the renewal fee to a minimum of \$1,000 up from a minimum of \$500. These changes were not incorporated into the proposed rule (CR-102).
- OIC will not require PBMs to have an appeal phone number available on the weekends and during national holidays.
- The second prepublication draft contemplated allowing pharmacies to use a "lookback period" of 24 months after a claim is adjudicated to appeal a drug reimbursement (WAC 284-180-505 and 284-180-507). OIC revised this lookback period to 90 days, which may lessen the impact of appeals on PBMs.
- OIC has added rule language in WAC 284-180-505 and 284-180-507 specifying that pharmacy appeals may use secure online portals, a more administratively efficient method of sending information that PBMs indicated they currently use for appeals.
- Regarding the reasonable adjustment that a PBM must provide to a pharmacy, WAC 284-180-505 and 284-180-507 contain provisions that may protect a PBM from having to field repeated appeals and from being at risk of violating chapter 48.200 RCW after the original reasonable adjustment is made.

**Description of how small businesses were involved in the development of the proposed rule:** OIC engaged in fully transparent rule making, involving all interested parties. OIC developed and shared draft proposed rules and circulated them for interested party feedback. The feedback received was taken into consideration and incorporated where feasible. All businesses within an industry, including small businesses, were involved throughout these processes. Feedback was submitted by interested parties and trade associations representing interested parties.

**The estimated number of jobs that will be created or lost in result of the compliance with the proposed rule:** OIC does not anticipate that the compliance with the proposed rule will lead to a significant number of job creations or cuts. Employers will be able to meet the proposed requirements using existing staff without new hires. Similarly, it is unlikely that employers would need to dismiss employees as a direct result of the proposed rule amendments.

- 1 **Washington State Health Care Authority, Drug Price Transparency Annual Report**(Olympia, WA: Washington State Health Care Authority, 2023),<https://www.hca.wa.gov/assets/billers-and-providers/drug-price-transparency-annual-report-2023.pdf>.
- 2 **Federal Trade Commission, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies**, July 2024, <https://www.ftc.gov/reports/pharmacy-benefit-managers-report>.
- 3 United States House of Representatives, Committee on Energy and Commerce, *What We Learned: Change Healthcare Cyber Attack*, May 2024, <https://energycommerce.house.gov/posts/what-we-learned-change-healthcare-cyber-attack>.
- 4 **U.S. Department of Labor, "Rulemaking for 2024"** (April 2024), <https://public-inspection.federalregister.gov/2024-08068.pdf>.
- 5 Based on 572 HCBM contract filings received in 2023, from 172 submitting HCBMs.  $572/172 = 3.3$ . With additional rule language requiring entities that are both directly and indirectly contracted, this number could be higher; therefore the OIC estimates five filings per HCBM.
- 6 Labor rates based on 2023 labor cost data. 2023 wage rates estimated from the published 2019 labor costs by the U.S. Department of Labor: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.
- 7 **Washington State Health Care Authority, Drug Price Transparency Annual Report** (Olympia, WA: Washington State Health Care Authority, 2023), <https://www.hca.wa.gov/assets/billers-and-providers/drug-price-transparency-annual-report-2023.pdf>.
- 8 Ibid.

A copy of the statement may be obtained by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7038, fax 360-586-3109, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov).

October 22, 2024  
Mike Kreidler  
Insurance Commissioner

### OTS-5883.3

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-120 Applicability and scope.** (1) This chapter applies to:

(a) Health care benefit managers as defined in RCW 48.200.020, and health carriers who contract with health care benefit managers; and

(b) Pharmacy benefit managers who contract with pharmacies on behalf of health carriers, medicaid managed care organizations, and employee benefits programs as defined in RCW 48.200.020.

(2) Effective January 1, 2026, RCW 48.200.280, 48.200.310, and 48.200.320 and WAC 284-180-500, 284-180-507, 284-180-517, and 284-180-522 apply to self-funded group health plans that have elected to participate under RCW 48.200.330.

(3) This chapter does not apply to the actions of health care benefit managers providing services to, or acting on behalf of (~~(a) Self-insured health plans;~~  
~~(b) Medicare plans;~~  
~~(c) Medicaid; and~~  
~~(d) Union plans)) medicare supplement or medicare advantage plans.~~

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-130 Definitions.** Except as defined in other sub-chapters and unless the context requires otherwise, the following definitions apply throughout this chapter:

(1) "Affiliate" or "affiliated employer" has the same meaning as the definition of affiliate or affiliated employer in RCW 48.200.020.

(2) "Annual gross income" means the sum of all amounts paid during a calendar year by any entities with which a health care benefit manager has contracted for the provision of health care benefit management services in Washington state.

(3) "Certification" has the same meaning as the definition of certification in RCW 48.43.005.

~~((3))~~ (4) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, such as through ownership of voting securities, membership rights, or by contract.

(5) "Corporate umbrella" means an arrangement consisting of, but not limited to, subsidiaries and affiliates operating under common ownership or control.

~~((4))~~ (6) "Covered person" has the same meaning as in RCW 48.43.005.

(7) As used in RCW 48.200.020 and 48.200.280, "credentialing" means the collection, verification, and assessment of whether a health care provider meets relevant licensing, education, and training requirements.

(8) "Employee benefits programs" has the same meaning as the definition of employee benefits program in RCW 48.200.020.

~~((5))~~ (9) "Generally available for purchase" means available for purchase by multiple pharmacies within the state of Washington from national or regional wholesalers.

~~((6))~~ (10) "Health care benefit manager" has the same meaning as the definition of health care benefit manager in RCW 48.200.020.

~~((7))~~ (11) "Health care provider" or "provider" has the same meaning as the definition of health care provider in RCW 48.43.005.

~~((8))~~ (12) "Health care services" has the same meaning as the definition of health care services in RCW 48.43.005.

~~((9))~~ (13) "Health carrier" or "carrier" has the same meaning as the definition of health carrier in RCW 48.43.005.

~~((10))~~ (14) "Laboratory benefit manager" has the same meaning as the definition of laboratory benefit manager in RCW 48.43.020.

~~((11))~~ (15) Effective January 1, 2026, "list" has the same meaning as the definition of list in RCW 48.200.280, as amended by section 5, chapter 242, Laws of 2024.

(16) "Mail order pharmacy" has the same meaning as the definition of mail order pharmacy in RCW 48.200.020.

(17) "Mental health benefit manager" has the same meaning as the definition of mental health benefit manager in RCW 48.200.020.

~~((12))~~ (18) Effective January 1, 2026, "multiple source drug" has the same meaning as the definition of multiple source drug in RCW 48.200.280, as amended by section 5, chapter 242, Laws of 2024.

(19) "Net amount" means the invoice price that the pharmacy paid to the supplier for a prescription drug that it dispensed, plus any taxes, fees or other costs, minus the amount of all discounts and other cost reductions attributable to the drug.

~~((13))~~ (20) "Network" has the same meaning as the definition of network in RCW 48.200.020.

~~((14))~~ (21) "Network pharmacy" has the same meaning as the definition of network pharmacy in RCW 48.200.280.

(22) "Oversight activities" includes all work done by the commissioner to ensure that the requirements of chapter 48.200 RCW are properly followed and in fulfilling its duties as required under chapter 48.200 RCW.

~~((15))~~ (23) "Person" has the same meaning as the definition of person in RCW 48.200.020.

~~((16))~~ (24) "Pharmacy benefit manager" has the same meaning as the definition of pharmacy benefit manager in RCW 48.200.020.

~~((17))~~ (25) "Pharmacy network" has the same meaning as the definition of pharmacy network in RCW 48.200.020.

(26) "Predetermined reimbursement cost" means maximum allowable cost, maximum allowable cost list, or any other benchmark price utilized by the pharmacy benefit manager, including the basis of the methodology and sources utilized to determine multisource generic drug reimbursement amounts. However, dispensing fees are not included in the calculation of predetermined reimbursement costs for multisource generic drugs.

~~((18))~~ (27) "Radiology benefit manager" has the same meaning as the definition of radiology benefit manager in RCW 48.200.020.

~~((19))~~ (28) "Readily available for purchase" means manufactured supply is held in stock and available for order by more than one pharmacy in Washington state when such pharmacies are not under the same corporate umbrella.

~~((20) "Retaliate"))~~ (29) (a) Through December 31, 2025, "retaliate" means action, or the implied or stated threat of action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has filed or intends to file an appeal under RCW 48.200.280.

~~((21))~~ (b) Effective January 1, 2026, "retaliate" means action, or the implied or stated threat of action, to cancel, restrict, or refuse to renew or offer a contract to a pharmacy, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has:

(i) Filed or intends to file an appeal under RCW 48.200.280;

(ii) Disclosed information in a court, in an administrative hearing, or legislative hearing, if the pharmacist or pharmacy has a good faith belief that the disclosed information is evidence of a violation of a state or federal law, rule, or regulation; or

(iii) Disclosed information to a government or law enforcement agency, if the pharmacist or pharmacy has a good faith belief that the disclosed information is evidence of a violation of a state or federal law, rule, or regulation.

(30) "Union plan" means an employee welfare benefit plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) in which an employee organization participates and that exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare benefit plan.

(31) "Unsatisfied" means that the network pharmacy did not receive the reimbursement that it requested at the first tier appeal.

~~((22))~~ (32) "Utilization review" has the same meaning as the definition of utilization review in RCW 48.43.005.

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

**WAC 284-180-210 Registration and renewal fees.** (1) The commissioner must establish fees for registration and renewal in an amount that ensures the program for the registration, renewal, and oversight activities of the health care benefit managers is self-supporting. Each health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay for the reasonable costs, including overhead, of regulating health care benefit managers.

(2) The initial registration fee is \$200.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of the insurance commissioner's renewal and oversight activities of health care benefit managers. Each health care benefit managers' proportional share of the program annual operating costs will be based on their Washington state annual gross income of their health care benefit manager business for the previous calendar year. The renewal fee is \$500, at a minimum, and may increase based on a proportional share of each health care benefit ~~((managers))~~ manager's Washington state annual gross income as reported to the insurance commissioner.

(4) If an unexpended balance of health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

(5) Carriers are exempt from the definition of health care benefit manager under RCW 48.200.020.

(a) An entity that is owned or controlled by a holding company that owns or controls a carrier is not exempt from registration as a health care benefit manager.

(b) Under RCW 48.200.050, when a carrier, i.e., "carrier A," acts as a health care benefit manager for another carrier, i.e., "carrier B," carrier B is responsible for the conduct of carrier A with respect to its action as a health care benefit manager on carrier B's behalf.

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

**WAC 284-180-220 Health care benefit manager registration.** (1) Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must ~~((register and))~~ have an ap-

proved registration with the commissioner as required in RCW 48.200.030 and 48.200.300. The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation required by the commissioner, and the \$200 registration fee.

(2) Health care benefit managers must apply for registration using the commissioner's electronic system, which is available at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(3) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

~~((4) The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation if required by the commissioner, and paid the \$200 registration fee.~~

~~(5) A health care benefit manager may conduct business in this state after receiving notice of approval of the registration application from the commissioner.)~~

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

**WAC 284-180-230 Health care benefit manager renewal.** (1) Health care benefit managers must annually renew their registration~~((s))~~ and pay their renewal fee ~~((using))~~ as required by RCW 48.200.030. Registration renewal must be submitted through the commissioner's electronic system, which is available at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2) Health care benefit managers renewing their registrations must, no later than March 1st of each year, submit an electronic renewal report and supporting documents for approval to include:

(a) Their Washington state annual gross income for health care benefit manager business for the previous calendar year, broken down by Washington state annual gross income received from each contracted entity, whether a carrier or another health care benefit manager, that has made payments to the health care benefit manager for services provided to covered persons in Washington state during the previous calendar year; and

(b) Any additional information, including supporting documents, as required by the commissioner.

(3) Health care benefit managers ~~((may amend their annual gross income report for the previous year after the date of submission, but))~~ may not amend ~~((the))~~ their Washington state annual gross income report for the previous year later than ~~((May 31st))~~ April 15th, of the submission year.

(4) On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the next July 1st through June 30th fiscal year. Invoices for the renewal fees and electronic payments will be available through the insurance commissioner's electronic filing and payment center. Renewal fee payments are due by July 15th of each year.

(5) The renewal application is not complete until the commissioner receives the complete renewal report, supporting documentation if required by the commissioner, and the payment of the invoiced renewal fee.

(6) Upon successful completion, the health care benefit manager will receive notice of approval of the renewal application from the commissioner.

(7) Failure to timely submit a completed renewal report and fee may result in a delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.

(8) Each renewed registration is valid for one fiscal year from July 1st through June 30th fiscal year.

AMENDATORY SECTION (Amending WSR 23-23-141, filed 11/20/23, effective 12/21/23)

**WAC 284-180-240 Providing and updating registration information.**

(1) When registering, a health care benefit manager must (~~apply with~~) submit with its application an affidavit affirming (~~its~~) the application's accuracy. An application for registering as a health care benefit manager must (~~provide for~~) include:

(a) The legal name as well as any additional names that it uses to conduct business;

(b) The names of persons and entities with any ownership or controlling interests, including stockholders, officers and directors, or limited liability company members, managers and officers in the health care benefit manager, and the identity of any entity for which the health care benefit manager has a controlling interest;

(c) A list of tax identification numbers and business licenses and registrations that are active;

(d) Identifying any areas of specialty, such as a pharmacy benefit management, radiology benefit management, laboratory benefit management, mental health care benefit management, or any other areas of specialty identified in the application;

(e) A copy of the health care benefit manager's certificate of registration with the Washington state secretary of state;

(~~f~~) Contact information for communications regarding registration, renewal and oversight activities, to include name of the contact person, address, phone number, and valid email address;

(~~g~~) (g) Name and contact information for the person the health care benefit manager has designated as responsible for compliance with state and federal laws to include name of the contact person, address, phone number, and valid email address;

(~~h~~) (h) Identify if the health care benefit manager has committed any violations in this or any state or been the subject of an order from (a) any federal or state agency or court; and

(~~h~~) (i) Any additional information requested by the commissioner.

(2) Registered health care benefit managers must provide any material change in the information filed with the commissioner.

(a) This information includes, but is not limited to:

(i) Any additional names that the health care benefit manager uses to conduct business; and

(ii) The contact's name and email address for official communications between the commissioner and the health care benefit manager as required in subsection (1) (f) of this section.

(b) Any change in the information provided to obtain, renew, non-renew, or surrender a registration as a health care benefit manager is

a material change and must be reported to the commissioner within 30 days of the change.

(c) Any amendments to its annual renewal reports including the reported annual gross income must be reported to the commissioner no later than May 31st. Amended annual renewal reports may be accepted after review by the commissioner.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-325 Required notices.** (1) Carriers must post on their website information that identifies each health care benefit manager contracted with the carrier, either directly or indirectly through subcontracting with a health care benefit manager or other entity, and identify the services provided by ~~((the))~~ each health care benefit manager. The information must be ~~((easy to find))~~ visually prominent and easily located on the carriers' website with a link from the web page utilized for enrollees. The carrier is required to update the information on their website within ~~((thirty))~~ 30 business days of any change, such as addition or removal of a health care benefit manager or a change in the services provided by a health care benefit manager.

(2) Carriers must notify enrollees in writing and at least annually, including at plan enrollment and renewal, of each health care benefit manager contracted with the carrier to provide any health care benefit management services, either directly or indirectly through subcontracting with a health care benefit manager or other entity. For example, written notices include disclosure in the policy or member handbook. This notice must identify the website address where enrollees can view an updated listing of all health care benefit managers utilized by the carrier.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-405 Definitions in this subchapter.** The definitions in this section apply throughout this subchapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for a carrier or health care benefit manager; or

(b) A person employed by a carrier or health care benefit manager to file under this chapter.

(4) ~~(("Form" means a))~~ "Health care benefit management contract form" or "contract" ~~((and))~~ or "form" means any written agreement describing the rights and responsibilities of the parties, such as carriers, health care benefit managers, providers, pharmacy, pharmacy



services administration organization, and employee benefit program conforming to chapter 48.200 RCW and this chapter including:

- (a) All forms that are part of the contract; and
- (b) All amendments to the contract.
- (5) "NAIC" means the National Association of Insurance Commissioners.
- (6) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:
  - (a) Requests clarification, documentation, or other information; or
  - (b) Explains errors or omissions in the filing.
- (7) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule, and form filings electronically to the commissioner.
- (8) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at [www.naic.org](http://www.naic.org).

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-411 Purpose of this subchapter.** The purpose of this subchapter is to:

- (1) Adopt processes and procedures for filers to use when submitting electronic forms and rates to the commissioner by way of SERFF.
- (2) Designate SERFF as the method by which filers, including ~~((health care service contractors, health maintenance organizations, insurers as defined in RCW 48.01.050,))~~ carriers and health care benefit managers, must submit all health care benefit management contract forms to the commissioner.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-455 Carrier filings related to health care benefit managers.** (1) (a) A carrier must file all contracts and contract amendments ~~((with))~~ between a health care benefit manager and a carrier within ~~((thirty))~~ 30 days following the effective date of the contract or contract amendment.

(b) To meet its obligations under RCW 48.200.050(5), a carrier must, for any health care benefit manager that provides services to or acts on behalf of the carrier and is not directly contracted with the carrier:

- (i) File all contracts to provide health care benefit management services to or on behalf of a carrier such as, but not limited to, health care benefit management services contracts that result from a carrier contracting with a health care benefit manager who then contracts or subcontracts with another health care benefit manager; or
- (ii) Identify all contracts to provide health care benefit management services to or on behalf of the carrier, ensure that contracted health care benefit managers have filed all required contracts

with the commissioner, whether the health care benefit manager is directly or indirectly contracted with the carrier, as required in RCW 48.200.040 and WAC 284-180-460, and submit to the commissioner, as required by the "Washington State SERFF Carrier Provider Agreement and HCBM Contract Filing General Instructions," as a supporting document to the carrier's filings, a list of all health care benefit manager contracts. The list must include the SERFF tracker identifier for each contract.

(2) If a carrier negotiates, amends, or modifies a contract or a compensation agreement that deviates from a previously filed contract, then the carrier must file that negotiated, amended, or modified contract or agreement with the commissioner within ~~((thirty))~~ 30 days following the effective date. The commissioner must receive the filings electronically in accordance with this subchapter.

~~((+2))~~ (3) Carriers must maintain health care benefit manager contracts at its principal place of business in the state, or the carrier must have access to all contracts and provide copies to facilitate regulatory review upon ~~((twenty))~~ 20 days prior written notice from the commissioner.

~~((+3))~~ (4) Nothing in this section relieves the carrier of the responsibility detailed in WAC 284-170-280 (3)(b) to ensure that all contracts are current and signed if the carrier utilizes a health care benefit manager's providers and those providers are listed in the network filed for approval with the commissioner.

~~((+4))~~ (5) If a carrier enters into a reimbursement agreement that is tied to health outcomes, utilization of specific services, patient volume within a specific period of time, or other performance standards, the carrier must file the reimbursement agreement with the commissioner within ~~((thirty))~~ 30 days following the effective date of the reimbursement agreement, and identify the number of enrollees in the service area in which the reimbursement agreement applies. Such reimbursement agreements must not cause or be determined by the commissioner to result in discrimination against or rationing of medically necessary services for enrollees with a specific covered condition or disease. If the commissioner fails to notify the carrier that the agreement is disapproved within ~~((thirty))~~ 30 days of receipt, the agreement is deemed approved. The commissioner may subsequently withdraw such approval for cause.

~~((+5))~~ (6) Health care benefit manager contracts and compensation agreements must clearly set forth the carrier provider networks and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

AMENDATORY SECTION (Amending WSR 23-24-034, filed 11/30/23, effective 1/1/24)

**WAC 284-180-460 Health care benefit manager filings.** (1) A health care benefit manager must file all contracts and contract amendments between the health care benefit manager and a health carrier, provider, pharmacy, pharmacy services administration organization,

or other health care benefit manager entered into directly or indirectly in support of a contract with a carrier or employee benefits program within 30 days following the effective date of the contract or contract amendment. Contracts that must be filed by a health care benefit manager shall include all contracts to provide health care benefit management services to or on behalf of the carrier, whether the health care benefit manager is directly or indirectly contracted with the carrier such as, but not limited to, health care benefit management services contracts that result from a carrier contracting with a health care benefit manager who then contracts or subcontracts with another health care benefit manager.

(2) If a health care benefit manager negotiates, amends, or modifies a contract or a compensation agreement that deviates from a filed agreement, then the health care benefit manager must file that negotiated, amended, or modified contract or agreement with the commissioner within 30 days following the effective date. The commissioner must receive the filings electronically in accordance with this chapter.

~~((2))~~ (3) Contracts or contract amendments that were executed prior to July 23, 2023, and remain in force, must be filed with the commissioner no later than 60 days following July 23, 2023.

~~((3))~~ (4) A health care benefit manager ~~((s))~~ must maintain health care benefit management contracts at its principal place of business in the state, or the health care benefit manager must have access to all contracts and provide copies to facilitate regulatory review upon 20 days prior written notice from the commissioner.

~~((4))~~ (5) Health care benefit manager contracts and compensation agreements must clearly set forth provider network names and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

#### NEW SECTION

**WAC 284-180-465 Self-funded group health plan opt-in.** (1)(a) A self-funded group health plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) that elects under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. Election decisions are effective beginning January 1, 2026. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by RCW 48.200.280, 48.200.310, and 48.200.320 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(b) A pharmacy benefit manager may not, by contract or otherwise, prohibit a self-funded group health plan from electing to participate under RCW 48.200.330.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least 15 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in pharmacy benefit manager regulation as provided in RCW 48.200.330 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by a Washington state employer has elected under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 and has employees that reside in other states, those employees are protected by RCW 48.200.330 in RCW 48.200.280, 48.200.310, and 48.200.320 when filling a prescription ordered by a provider in Washington state or at a pharmacy located in Washington state.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-500 Applicability and scope.** This subchapter applies to ~~((health care benefit managers providing pharmacy benefit management services, referred to as))~~ pharmacy benefit managers ~~((in this subchapter))~~ as defined in RCW 48.200.020.

(1) Specifically, this subchapter applies to the actions of pharmacy benefit managers regarding contracts with pharmacies on behalf of ~~((an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060))~~ a carrier, employee benefits program, or medicaid managed care program in regard to:

(a) Fully insured health plans; and

(b) Medicaid managed care plans. However, the appeal requirements of RCW ~~((19.340.100))~~ 48.200.280 do not apply to medicaid managed care plans.

(2) This subchapter does not apply to:

(a) The actions of pharmacy benefit managers ((acting as)) contracting with third-party administrators ((regarding contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:

~~(a) Self-insured))~~ to administer prescription drug benefits for self-funded group health plans or union plans, unless a self-funded group health plan or union plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) has elected to participate in RCW 48.200.280, 48.200.310, and 48.200.320 under WAC 284-180-465; and

(b) The actions of pharmacy benefit managers contracting to administer prescription drug benefits for medicare plans.

NEW SECTION

**WAC 284-180-501 Pharmacy reimbursement.** A pharmacy benefit manager may not reimburse a pharmacy in the state an amount less than the amount the pharmacy benefit manager reimburses an affiliate for dispensing the same prescription drug as dispensed by the pharmacy, calculated on a per unit basis.

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-505 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services.** A network pharmacy may appeal a reimbursement to a health care benefit manager providing pharmacy benefit management services (first tier appeal) if the reimbursement for the drug is less than the net amount the network pharmacy paid to the supplier of the drug and the claim was adjudicated by the pharmacy benefit manager within the past 90 days. "Network pharmacy" has the meaning set forth in RCW ((19.340.100-1)-(d)) 48.200.280. "Pharmacy benefit manager" is a health care benefit manager that offers pharmacy benefit management services and has the meaning set forth in RCW 48.200.020. A pharmacy benefit manager must process the network pharmacy's appeal as follows:

(1) A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, then this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager ((during normal business hours)) between 9 a.m. and 5 p.m. Pacific Time Zone Monday through Friday, except national holidays, and speak with an individual responsible for processing appeals;

(ii) ((A summary of the specific times when the pharmacy benefit manager will answer calls from network pharmacies at that telephone number;

~~(iii))~~) A fax number that a network pharmacy can use to submit information regarding an appeal; and

((~~iv~~)) (iii) An email address or a link to a secure online portal that a network pharmacy can use to submit information regarding an appeal. If the pharmacy benefit manager chooses to use a link to a secure online portal to satisfy the requirement of this subsection, the contract must include explicit and clear instructions as to how a pharmacy can gain access to the portal. Submission by a pharmacy of an appeal that includes the claim adjudication date or dates consistent with this subsection and documentation or information described in

subsection (2) of this section, or of a request for or information regarding an appeal, to the email address or secure online portal included in the contract under this subsection must be accepted by the pharmacy benefit manager as a valid submission.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(2) The pharmacy benefit manager must reconsider the reimbursement. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with the opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. Documents or information that may be submitted by a network pharmacy to show that the reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug include, but are not limited to:

(a) An image of information from the network pharmacy's wholesale ordering system;

(b) Other documentation showing the net amount paid by the network pharmacy; or

(c) An attestation by the network pharmacy that:

(i) The reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug; and

(ii) Describes the due diligence the network pharmacy undertook to procure the drug at the most favorable amount for the pharmacy, taking into consideration whether the pharmacy has fewer than 15 retail outlets within the state of Washington under its corporate umbrella and whether the network pharmacy's contract with a wholesaler or secondary supplier restricts disclosure of the amount paid to the wholesaler or secondary supplier for the drug.

The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(3) The pharmacy benefit manager must complete the appeal within ~~((thirty))~~ 30 calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(4) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than ~~((fifteen))~~ 15 retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110(7).

(5) (a) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial ((and)), the national drug code and price of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and the name of at least one wholesaler or supplier from which the drug was available for purchase at that price on the date of the claim or claims that are subject of the appeal. "Multisource generic

drug" (~~is defined in RCW 19.340.100 (1)(c)~~) has the same meaning as the definition of "multisource generic drug" in RCW 48.200.280.

(b) If the pharmacy benefit manager bases its denial on the fact that one or more of the claims that are the subject of the appeal are not subject to RCW 48.200.280 and this chapter, it must provide documentation clearly indicating that the plan to which the claim relates is a self-funded group health plan that has not opted in under RCW 48.200.330, is a medicare plan or is otherwise not subject to RCW 48.200.280 and this chapter.

(6) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. The reasonable adjustment must include, at a minimum, payment of the claim or claims at issue at the net amount paid by the pharmacy to the supplier of the drug. The commissioner will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(7) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(8) A pharmacy benefit manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(9) Health care benefit managers providing pharmacy benefit management services benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(10) This section expires December 31, 2025.

NEW SECTION

**WAC 284-180-507 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services.**

(1)(a) A network pharmacy, or its representative, may appeal the reimbursement amount for a drug to a health care benefit manager providing pharmacy benefit management services (first tier appeal) if the reimbursement amount for the drug is less than the net amount the network pharmacy paid to the supplier of the drug and the claim was adjudicated within the past 90 days.

(b) If a pharmacy is represented by a pharmacy services administrative organization, or other entity, the contract between the pharmacy benefit manager and the pharmacy must allow the pharmacy services administrative organization or other entity to use the appeal process included in the contract between the pharmacy benefit manager and the pharmacy. The pharmacy benefit manager must meet all statutory, regulatory, and contractual requirements when reviewing an appeal submitted by a representative on behalf of a pharmacy.

(c) A pharmacy services administrative organization may submit an appeal to a pharmacy benefit manager on behalf of multiple pharmacies if:

(i) The claims that are the subject of the appeal are for the same prescription drug; and

(ii) The pharmacies on whose behalf the claims are submitted are members of the pharmacy services administrative organization; and

(iii) The pharmacy benefit manager has contracts with the pharmacies on whose behalf the pharmacy services administrative organization is submitting the claims.

(2) Before a pharmacy files an appeal pursuant to this section, upon request by a pharmacy or pharmacist, a pharmacy benefit manager must provide, within four business days of receiving the request, a current and accurate list of bank identification numbers, processor control numbers, and pharmacy group identifiers for health plans and for self-funded group health plans that have elected under RCW 48.200.330 to participate in RCW 48.200.280, 48.200.310, and 48.200.320 with which the pharmacy benefit manager either has a current contract or had a contract that has been terminated within the past 12 months to provide pharmacy benefit management services.

(3) A pharmacy benefit manager must process the network pharmacy's appeal as follows:

A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager between 9 a.m. and 5 p.m. Pacific Time Zone Monday through Friday, except national holidays, and speak with an individual responsible for processing appeals;



(ii) A fax number that a network pharmacy can use to submit information regarding an appeal; and

(iii) An email address or a link to a secure online portal that a network pharmacy can use to submit information regarding an appeal. If the pharmacy benefit manager chooses to use a link to a secure online portal to satisfy the requirement of this subsection, the contract must include explicit and clear instructions as to how a pharmacy can gain access to the portal. Submission by a pharmacy of an appeal that includes the claim adjudication date or dates consistent with subsection (1) of this section and documentation or information described in subsection (4) of this section, or of a request for information regarding an appeal, to the email address or secure online portal included in the contract under this subsection must be accepted by the pharmacy benefit manager as a valid submission.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(4) The pharmacy benefit manager must reconsider the reimbursement amount. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with an opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. Documents or information that may be submitted by a network pharmacy or their representative to show that the reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug include, but are not limited to:

(a) An image of information from the network pharmacy's wholesale ordering system;

(b) Other documentation showing the amount paid by the network pharmacy; or

(c) An attestation by the network pharmacy that:

(i) The reimbursement amount paid by a pharmacy benefit manager is less than the net amount that the network pharmacy paid to the supplier of the drug; and

(ii) Describes the due diligence the network pharmacy undertook to procure the drug at the most favorable amount for the pharmacy, taking into consideration whether the pharmacy has fewer than 15 retail outlets within the state of Washington under its corporate umbrella and whether the network pharmacy's contract with a wholesaler or secondary supplier restricts disclosure of the amount paid to the wholesaler or secondary supplier for the drug.

(5) The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(6) The pharmacy benefit manager must complete the appeal within 30 calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(7) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than 15 retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110.

(8) (a) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial, the national drug code, and price of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the reimbursement cost for the drug and the name of at least one wholesaler or supplier from which the drug was available for purchase at that price on the date of the claim or claims that are subject of the appeal.

(b) If the pharmacy benefit manager bases its denial on the fact that one or more of the claims that are the subject of the appeal is not subject to RCW 48.200.280 and this chapter, it must provide documentation clearly indicating that the plan to which the claim relates is a self-funded group health plan that has not opted in under RCW 48.200.330, is a medicare plan, or is otherwise not subject to RCW 48.200.280 and this chapter.

(9) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. The commissioner will presume that a reasonable adjustment applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of chapter 48.200 RCW under RCW 48.200.290. If a therapeutically equivalent interchangeable product becomes available during the period that a reasonable adjustment is in effect, the adjustment may reflect the cost of that product from the date it becomes available to the end of the prospective reasonable adjustment period. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(10) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(11) A pharmacy benefit manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(12) Health care benefit managers providing pharmacy benefit management services must identify a pharmacy benefit manager employee who

is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(13) This section is effective January 1, 2026.

AMENDATORY SECTION (Amending WSR 22-23-069, filed 11/10/22, effective 12/11/22)

**WAC 284-180-515 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner.** (1) The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

(2) This section expires December 31, 2025.

NEW SECTION

**WAC 284-180-517 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner.** (1) The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

(2) This section is effective January 1, 2026.

AMENDATORY SECTION (Amending WSR 22-23-069, filed 11/10/22, effective 12/11/22)

**WAC 284-180-520 Appeals by network pharmacies to the commissioner.** The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by submitting a petition at [www.insurance.wa.gov](http://www.insurance.wa.gov) according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's business address and mailing address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

(ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(iv) Any additional information that the commissioner may require;

(d) The network pharmacy must file the petition for review with the commissioner within 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the pharmacy benefit manager's deadline for responding to the first tier appeal;

(e) The network pharmacy making the appeal must have less than 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must include a signed attestation that this requirement is satisfied; and

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under subsection (1) of this ((subsection)) section have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dis-

pute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multi-

source generic drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(11) This section expires December 31, 2025.

NEW SECTION

**WAC 284-180-522 Appeals by network pharmacies to the commissioner.** The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal

regarding reimbursement for a drug, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by submitting a petition at <https://www.insurance.wa.gov> according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's business address and mailing address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

(ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the reimbursement cost for the drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(iv) Any additional information that the commissioner may require;

(d) The network pharmacy must file the petition for review with the commissioner within 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the pharmacy benefit manager's deadline for responding to the first tier appeal;

(e) The network pharmacy making the appeal must have less than 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must include a signed attestation that this requirement is satisfied; and

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under subsection (1) of this section have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within

seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement



for a drug, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(11) This section is effective January 1, 2026.

## WSR 24-21-161

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed October 23, 2024, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-163.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National Handbooks, sale of motor fuel, electric vehicle supply equipment, and penalties for violations. As a result of a petition for rule making, the department of agriculture (department) is proposing amending chapter 16-662 WAC to align with the Federal Highway Administration's National Electric Vehicle Infrastructure (NEVI) program's technical requirements for electric vehicle (EV) supply equipment (EVSE) payment methods. The department is also expanding upon these requirements to include additional technologies and be inclusive of evolving technologies

Hearing Location(s): On November 26, 2024, at 10:00 a.m., via Microsoft Teams conference call. Join on your computer, mobile app, or room device [Date of Intended Adoption: December 3, 2024.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_Njc1YmJjNWETnZgwNC00NzVmLWlzMzQtM2YxMGVmMDC10TEz%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522838c55c7-c187-44ae-8de0-2be684ce5d4a%2522%257d&data=05%7C02%7CAClow%40agr.wa.gov%7C769d35f33747416e35ff08dce8a058cb%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638641022583287835%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=fVp3qefs5e3j%2BBm3OgSVoC4oLeTz-NYFDdglcQVpOONA%3D&reserved=0, Meeting ID 293 568 530 736, Passcode MKDZkt; or dial in by phone 1-564-999-2000,,361690620# United States, Olympia, Phone conference ID 361 690 620#.</p>
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Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-2092, by November 26, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Amy Clow, plant protection rules coordinator, phone 360-902-2041, email [aclow@agr.wa.gov](mailto:aclow@agr.wa.gov), by November 19, 2024, by 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2021 legislative session, the Washington state legislature passed 2SSB 5192 related to EVSE. This legislation directed the department to adopt rules regarding methods of payment. On December 16, 2022, the department adopted rules establishing minimum payment requirements for EVSE, which included having a credit card reader device physically located on either the EVSE unit or a kiosk used to service that equipment. That device must be able to accept a Euro MasterCard Visa (EMV) chip. This rule became effective January 1, 2024.

On July 28, 2023, a group of electric vehicle service provider (EVSP) organizations petitioned the department to amend the required minimum payment methods adopted in WAC 16-662-210 to align with NEVI program requirements established in February 2023. These requirements include a contactless payment method that accepts major debit and credit cards. They do not require a physical credit card reader device

to be installed on the EVSE or kiosk. In response to the NEVI technical requirements adoption in July 2023, California aligned their EVSE payment regulations with the technical requirements of NEVI, specifically removing the requirement for an EMV chip reader to be installed on the EVSE. Due to these changes, Washington will be the only state with a state-level regulation requiring EVSE to provide an EMV chip reader.

Reasons Supporting Proposal: Due to the regulations recently adopted by the NEVI program and the state of California, Washington is currently the only state with a state-level regulation requiring EVSE to provide an EMV chip reader to be physically installed on each charging station. The impact of this requirement is significant for EV charging providers and EV drivers. It will require different equipment and operational obligations, resulting in different installation and maintenance costs for EVSE manufacturers and network providers for EVSE in Washington compared to other states. To put it simply, manufacturers will have to design an EV charging product just for operating in Washington. This will add further complexity and costs to multistate EVSE projects, such as those running across California, Oregon, and Washington. For EV drivers in Washington, it will also result in different payment experiences, offerings, reliability, and potentially costs to charge from that of surrounding states.

By amending this rule to align with the NEVI and California requirements, as well as expanding upon those requirements to include additional technologies, the department is ensuring that it continues to meet its statutory mandate to remain consistent with evolving technology, while also seeking to minimize costs and maximizing benefits to the public.

Statutory Authority for Adoption: RCW 19.94.010, 19.94.190, 19.94.565.

Statute Being Implemented: Chapter 19.94 RCW.

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

Name of Proponent: Electric Vehicle Charging Association, Tesla, Rivian, ChargePoint, Blink, ABB E-Mobility, EVgo, FLO, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tahis McQueen, P.O. Box 42560, Olympia, WA 98504-2560, 360-481-7452.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department is not a listed agency under RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Based on the stakeholder outreach conducted by the department, it has been determined that no small businesses are impacted by the proposed rule.

The rule making effectively alleviates the burden on large businesses, such as site hosts, service providers, and utility companies, to no longer require physical EMV chip readers to be installed on newly manufactured EVSE units, thus resulting in projected cost savings. Further, the proposed rule making does not impose any requirements to modify existing operational EVSE units with EMV chip readers, meaning that both EMV chip-related maintenance responsibilities and costs are inherently removed.

Under chapter 19.85 RCW, a small business economic impact state-ment is not required for this rule making as it does not affect small businesses, nor does it impose more-than-minor costs on businesses. RCW 19.85.025(4), 19.85.030 (1) (a).

Scope of exemption for rule proposal:

Is fully exempt.

October 22, 2024  
Greg Haubrich  
Assistant Director

### OTS-5913.3

AMENDATORY SECTION (Amending WSR 23-01-091, filed 12/16/22, effective 1/1/24)

**WAC 16-662-210 Electric vehicle supply equipment payment method and fee disclosure requirements.** (1) All publicly available electric vehicle supply equipment installed in Washington that requires payment shall (~~meet the following requirements:~~

~~(a) Have a credit card reader device physically located on either the electric vehicle supply equipment unit or a kiosk used to service that electric vehicle supply equipment. The credit card reader device shall comply with all of the following requirements:~~

~~(i) The credit card reader device shall accept, at a minimum, the Euro MasterCard Visa (EMV) chip and, at a minimum, one of the following credit card types: Visa, MasterCard, or American Express; and~~

~~(ii) The credit card reader device shall be nonlocking and shall always permit customers to remove their credit card without damage to the card, including during a fault situation or power failure.~~

~~(b) All electric vehicle supply equipment subject to this section shall have a mobile payment device physically located on the electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment; and~~

~~(c) The electric vehicle service provider shall provide and display a toll-free number on each electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment that provides the user with the option to initiate a charging session and submit payment at any time that the electric vehicle supply equipment is operational and publicly available.~~

~~(2-)) provide for secure payment methods, accessible to persons with disabilities, which at a minimum shall include:~~

~~(a) A contactless payment method that accepts major debit and credit cards; and~~

~~(b) An automated toll-free phone number or a short message/messaging system (SMS) that provides the electric vehicle charging customer with the option to initiate a charging session and submit payment.~~

~~(2) "Contactless payment methods" means a secure method for consumers to purchase services using a debit card, credit card, smart-card, mobile applications, or another payment device including, but not limited to, those using radio frequency identification (RFID) technology and near-field communication (NFC).~~

(3) At a minimum, the electric vehicle service provider shall disclose to the user, at the point of sale, the following minimum information, if applicable:

(a) A fee for use of the parking space;

(b) A nonmember plug-in fee from the electric vehicle service provider;

(c) The price to refuel in United States dollars per kilowatt-hour or mega joule;

(d) Any potential changes in the price to refuel, in United States dollars per kilowatt-hour or mega joule, due to variable pricing; and

(e) Any other fees charged for a charging session.

~~((3))~~ (4) If the charging session or portion of a charging session is offered at no cost, it must be disclosed at the location where the charging session is initiated and prior to a user or a vehicle initiating a charging session.

~~((4))~~ (5) The electric vehicle service provider may not require a subscription, membership, or account or a minimum balance on an account in order to initiate a charging session at an electric vehicle supply equipment subject to this section.

~~((5))~~ (6) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

## WSR 24-21-162

## PROPOSED RULES

## BOARD OF TAX APPEALS

[Filed October 23, 2024, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-136 and 24-15-135.

Title of Rule and Other Identifying Information: WAC 456-09-230 Ex parte communication, 456-09-550 Time for filing evidence, briefs, replies, witness lists, stipulations, and documentary evidence, 456-09-555 Motions, 456-09-560 Postponements, continuances, and extensions of time, 456-09-743 Hearing procedure, 456-09-745 Failure to attend and hearing on the record, 456-10-110 Definitions, 456-10-230 Ex parte communication, 456-10-310 Contents of a notice of appeal, 456-10-365 Limits on exhibits and evidence, 456-10-505 Time for filing evidence, briefs, replies, and documentary evidence, 456-10-510 Motions, 456-10-515 Postponements, continuances, and extensions of time, 456-10-540 Hearing procedure, and 456-10-550 Failure to attend and hearings on the record.

Hearing Location(s): On December 2, 2024, at 1:30 p.m., electronic meeting via Teams, information on agency website.

Date of Intended Adoption: December 24, 2024.

Submit Written Comments to: Keri Lamb, P.O. Box 40915, Olympia, WA 98504, email bta@bta.wa.gov, fax 360-586-9020, beginning October 23, 2024, by November 15, 2024.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, email bta@bta.wa.gov, by November 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 456-09-230 clarification regarding contacting administrative staff or the executive director, 456-09-550 remove requirement for prior approval for reply briefs, 456-09-555 remove requirement for proposed order and allow provisions for faster responses to emergency motions, 456-09-560 remove language regarding party's first request for continuance, 456-09-743 add language to clarify procedure when the respondent has the burden of proof, 456-09-745(1) change party to appellant, 456-10-110 add clarification that filings are due by 5:00 p.m. to conform with other established deadlines, 456-10-230 clarification regarding contacting administrative staff or executive director, 456-10-310 add name of representative as required in subsection (1)(b), 456-10-365 remove requirement to specify pages of the board of equalization record, 456-10-505 clarify that the prehearing order controls where issued, 456-10-510 allow provisions for faster response time frame for responses to emergency motions, 456-10-515 remove language regarding a party's first request for continuance, 456-10-540 add language to clarify procedure when the respondent has the burden of proof, and 456-10-550(1) change party to appellant.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.090

Statute Being Implemented: Chapters 35.05 and 82.03 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board it-

self has drafted the proposed changes, and therefore recommends them in full.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Keri Lamb, Board of Tax Appeals, 360-753-5446; Implementation and Enforcement: Board of Tax Appeals, 360-753-5446.

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

A cost-benefit analysis is not required under RCW 34.05.328. These are procedural rules regarding agency hearings.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

October 23, 2024  
Claire Hesselholt  
Chair

## OTS-5932.2

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

**WAC 456-09-230 Ex parte communication.** Neither the board nor any person may make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which is prohibited by the Administrative Procedure Act. Attempts by anyone to make such prohibited ex parte communications will be subject to the sanctions in WAC 456-09-220 and 456-09-750. Communication with the board's administrative staff or executive director are not considered ex parte communication.

AMENDATORY SECTION (Amending WSR 22-23-080, filed 11/14/22, effective 12/15/22)

**WAC 456-09-745 Failure to attend and hearing on the record.** (1) ((When a party has failed)) If an appellant fails to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal brought by any party to the proceedings or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

Within 14 calendar days of service of the default order or dismissal, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated together with proof of service pursuant to WAC 456-09-345. The board may set aside a dismissal or default for good cause.

(2) If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of one or more parties will not be required.

### OTS-5933.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

**WAC 456-09-550 Time for filing evidence, briefs, replies, witness lists, stipulations, and documentary evidence.** (1) In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board by the following deadlines:

(a) A list of fact or expert witnesses who will testify at the hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 100 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(b) Any factual stipulations must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 55 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(c) Documentary evidence to be introduced at a hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Documentary evidence must be introduced at least 38 calendar days before the hearing. Each page of documentary evidence must be numbered and indicate whether it is submitted by the appellant or respondent. A list of the documentary evidence submitted must be filed at the same time.

(d) Pretrial motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Pretrial motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(e) Summary judgment motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Summary judgment motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(f) Trial briefs are required and must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Trial briefs must be submitted at least 31 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(g) Responses or response briefs are not required, but if submitted to the board, the responding party must include proof of service pursuant to WAC 456-09-345. Responses and response briefs must be sub-



mitted according to the timeline outlined in the prehearing order. Three copies are required if the proceeding occurs in front of the entire board.

(h) Replies to any motion or brief are (~~only permitted with written permission. If allowed, replies~~) not required but when filed must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Replies must be submitted at least 17 calendar days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(i) Posthearing briefing and proposed findings of fact and conclusions of law may be required by the board. If so, this document must be submitted together with proof of service pursuant to WAC 456-09-345. Proposed findings of fact and conclusions of law must be received by the board no later than the date specified by the board, or if no date is specified, no later than 21 calendar days after a hearing. Three copies are required if the proceeding occurs in front of the entire board.

(2) Failure to comply with these requirements or the prehearing order may be grounds to exclude evidence, witnesses, replies, responses, or briefs, or to dismiss the appeal in accordance with WAC 456-09-750.

### OTS-5934.3

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

**WAC 456-09-555 Motions.** (1) Any request for an order or ruling or a request for relief is considered a motion. Every motion, unless made during hearing, must be in writing and include:

(a) A statement of the relief sought;

(b) The basis for the relief;

(c) A statement that the moving party made a good faith effort to meet and confer with the other party or parties to resolve the subject of the motion;

(d) A request for oral argument, if any, and if so, how much time the party desires; and

(e) Proof of service pursuant to WAC 456-09-345 (~~and~~

~~(f) A proposed order~~).

(2) All motions must be properly captioned and signed by the party, their attorney, or their representative.

(3) At the discretion of the board, a hearing on a motion may be held in person, by phone, by video, or by other electronic means.

(4) A response to a motion must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-09-345.

(5) (~~Replies are not permitted absent prior permission of the board. The board will consider a request to file a reply within 24 hours of a response being filed. If granted, the~~) Any reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

(6) In cases where good cause is shown for a motion to be filed less than 14 days before a hearing or significant submission date, the board may alter the response deadline. The board will notify the parties of changes to response deadlines within one business day of the motion filing.

### OTS-5935.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

**WAC 456-09-560 Postponement, continuance, and extensions of time.** (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference must be made in writing and comply with WAC 456-09-555 and 456-09-345. (~~The board will freely grant a party's first request. For second and subsequent requests,~~) The moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-09-555 and 456-09-345, and be filed 30 calendar days before the scheduled hearing. (~~The board will freely grant a party's first request. For second and subsequent requests,~~) The moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

(4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and 456-09-345. The presiding officer will decide whether to hear argument and will rule on the request.

(5) This section does not extend any deadline to file an initial appeal.

### OTS-5936.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

**WAC 456-09-743 Hearing procedure.** (1) Unless otherwise ordered, hearings will be conducted in the following format:

- (a) Administration of an oath to all persons testifying;
- (b) The appellant's opening statement;
- (c) The respondent's opening statement;
- (d) The appellant's case in chief:
  - (i) Direct examination of witness;
  - (ii) Cross-examination by the respondent;
  - (iii) Redirect examination by the appellant;
  - (iv) Recross examination;

- (v) The above procedure is followed for each witness.
- (e) The respondent's case in chief:
  - (i) Direct examination of witness;
  - (ii) Cross-examination by the appellant;
  - (iii) Redirect examination by the respondent;
  - (iv) Recross examination;
  - (v) The above procedure is followed for each witness.
- (f) The appellant's rebuttal, following the procedure in subsection (d) for each witness;
- (g) The appellant's closing argument;
- (h) The respondent's closing argument;
- (i) The appellant's closing rebuttal.
- (2) The board may pose questions to the parties, their representatives, and any witnesses at any time during the hearing.
- (3) In appeals where the respondent in the party with the burden of proof, the board may permit the respondent to present their evidence and arguments first.

### OTS-5937.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-110 Definitions.** (1) In this chapter, the subsequent terms have the following meanings:

- (a) "Appellant" means a person or entity who appeals any order or decision.
- (b) "Board" means the board of tax appeals described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers, tax referees, or agents of the board.
- (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees or agents of the board.
- (d) "File" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably. Documents filed with the board are considered timely if received by 5:00 p.m. Pacific time on the due date.
- (e) "Motion" means a written or oral request for the board to take action.
- (f) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.
- (g) "Party" means any person or entity who is an appellant, respondent, or intervenor.
- (h) "Presiding officer" or "hearing officer" means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer has the authority outlined in WAC 10-08-200 and chapter 34.05 RCW.
- (i) "Respondent" means a person or entity who is listed as a responding party in any appeal.

(j) "Submit" means to present or deliver to the board. Submissions may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "submit" and "file" are used interchangeably.

(k) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

## OTS-5938.2

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-230 Ex parte communication.** Neither the board nor any person will make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which are prohibited by the Administrative Procedure Act in RCW 34.05.455. Attempts to make such communications will be subject to the sanctions in WAC 456-10-220 and 456-10-555. Communication with the board's administrative staff or executive director are not considered ex parte communication.

## OTS-5939.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-310 Contents of a notice of appeal.** (1) An appellant must submit a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) Name of the respondent together with respondent's mailing address, email address, and ~~((phone))~~ telephone number ((if known)), and that of a representative, if any.

The board may add additional respondents to ensure that all necessary entities are a party to the appeal.

(c) A copy of the order, decision, or determination appealed from.

(d) The type of tax.

(i) In excise tax cases, the amount of the tax that should be reduced or refunded and the reasons for it, as well as the tax period of time at issue;

(ii) In property tax cases, the parcel number of the property, the assessment year(s) at issue, the value determined by the local board of equalization, and the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property, and the year(s) for which the exemption is at issue.

(e) The relief sought.

(f) A signature or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

(2) The board may, upon motion of a party or upon its own motion, require additional information or explanation of any matter stated in a notice of appeal.

## OTS-5940.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-365 Limits on exhibits and evidence.** (1) Each party (~~must~~) is encouraged to indicate the specific pages of evidence it intends to rely on, if any, from the body from which the party appeals. For property tax appeals this includes the record at the county board. For excise tax appeals, this includes audit papers, refund reviews, and exemption applications. For other appeals, this includes documents submitted by both parties to the decision maker below. The actual decision appealed from (the county board ruling, department determination, or the equivalent) is not counted within the evidence limits. (~~Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.~~)

(2) For property tax appeals, each party is strongly encouraged to submit the following exhibits or evidence in the following instances:

(a) If the party intends to rely on comparable sales, a table of comparable sales. The table should list the sales in order of most similar to least similar to the subject property, and include each sale's age, size, sales price, date of sale, and location relative to the subject property. A suggested format is available on the board's website or by contacting the board's staff.

(b) If the party intends to rely on an income approach, an outline. The outline should at least include the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, income, and capitalization rate.

(c) If the party intends to rely on a cost approach, a cost breakdown that includes the cost elements used and how the costs were determined.

(3) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. Excluded from these limits are the actual decisions appealed from (the county board ruling, department determination, or the equivalent) and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 75 pages per assessment-year appealed, including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 125 pages per assessment-year appealed, exclud-

ing the subject's rent roll and income statements, but including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(c) For excise tax appeals, each party is limited to submitting a total of 250 pages, including the record of the department of revenue not excluded as outlined above that the party intends to rely on;

(d) For all other appeals, each party is limited to submitting a total of 75 pages, including the record of the body from which a decision is appealed, and which the party intends to rely on.

(4) For property tax appeals, each party should submit no more than five comparable sales. If both unimproved and improved sales are necessary, no more than five of each type should be submitted.

(5) A party may file a motion with the board to submit evidence and/or exhibits beyond the page limits up to 500 pages, which the board will grant for good cause. Exceeding the page limits without the board's permission may result in the hearing being continued, or the exclusion of evidence beyond the limits.

(6) The board will not review the record of a county board of equalization or any other tribunal that is unduly large, disorganized, or not numbered.

#### OTS-5941.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-505 Time for filing evidence, briefs, replies, and documentary evidence.** The prehearing order controls the course of action in cases where one is issued. If the board does not issue a prehearing order, evidence, briefs, and other documents must be submitted to the board by the following due dates:

(1) Documentary evidence must be submitted at least 38 calendar days prior to hearing, together with proof of service according to WAC 456-10-410. Failure to comply may be grounds for exclusion of such evidence or dismissal of the appeal as outlined in WAC 456-10-555.

(2) Briefs or other supporting statements, if any, must be submitted at least 31 calendar days prior to the hearing, together with proof of service according to WAC 456-10-410.

(3) Reply briefs or other supporting statements, if any, must be submitted at least 17 calendar days prior to the hearing, together with proof of service according to WAC 456-10-410.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is exempted from these requirements.

#### OTS-5942.2

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-510 Motions.** (1) Any request for an order, ruling, or a request for relief is considered a motion. Every motion, unless made during a hearing, must be in writing and include the following:

- (a) A statement of the relief or order sought;
- (b) The basis for the relief or order;
- (c) A statement that the moving party has made a good faith effort to meet and confer with the other party or parties to resolve the subject matter of the motion;
- (d) A statement whether oral argument is requested, and if so, how much time is sought. Motions for summary judgment and motions to dismiss will receive approximately 10 minutes per side; and
- (e) Proof of service according to WAC 456-10-410.

(2) All motions must be properly captioned, contain the docket number assigned by the board, and be signed by the party, their attorney or their representative.

(3) At the discretion of the board, the hearing on a motion may be held in person, by phone, video, or by other electronic means.

(4) Any response to the motion must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-10-410. Responses are strongly encouraged, but not required.

(5) ~~((Replies are not permitted, absent prior permission of the board. If permitted, the))~~ Any reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

(6) In cases where good cause is shown for a motion to be filed less than 14 days before a hearing or significant submission date, the board may alter the response deadline. The board will notify the parties of changes to response deadlines within one business day of the motion filing.

### OTS-5943.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-515 Postponements, continuances, and extensions of time.** (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, must be made in writing and comply with WAC 456-10-510 and 456-10-410. ~~The ((board will freely grant a party's first request. For second and subsequent requests, the))~~ moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-10-510 and 456-10-410, and be filed 14 calendar days before the scheduled hearing. ~~The ((board will freely grant a party's first re-~~

~~quest. For second and subsequent requests, the~~) moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

(4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-10-510 and 456-10-410. The presiding officer will decide whether to hear argument on the request.

(5) This section does not extend any deadline to file an initial appeal.

#### OTS-5944.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

**WAC 456-10-540 Hearing procedure.** Informal hearings are structured similarly to formal hearings, although more relaxed. As such, informal hearings will generally be organized as follows:

(1) All parties and witnesses will be sworn in by a hearing officer to tell the truth;

(2) Each party may then provide a short explanation of what the testimony of their witnesses and evidence will show;

(3) Next, each party may call witnesses to testify, beginning with the party that is appealing. The opposing party will have an opportunity to ask each witness questions, and the party calling the witness an opportunity to ask the witness questions to clarify the testimony; and

(4) ~~((Lastly,))~~ Each party may summarize the testimony and evidence that supports their case, beginning with the ~~((party that appealed))~~ appellant.

(5) In appeals where the respondent is the party with the burden of proof, the board may permit the respondent to present their evidence and arguments first.

The board or hearing officer may ask a party, a representative, or a witness a question at any time during the hearing.

#### OTS-5945.1

AMENDATORY SECTION (Amending WSR 22-23-079, filed 11/14/22, effective 12/15/22)

**WAC 456-10-550 Failure to attend and hearings on the record.**

(1) ~~((When a party has failed))~~ If an appellant fails to attend a hearing after receiving timely notice, the board ~~((will))~~ may consider a motion for default or dismissal brought by any party to the proceedings, or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.



(2) Within 14 calendar days of service of the order, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated, together with proof of service pursuant to WAC 456-10-410. The board may set aside a dismissal, default, or final order for good cause.

(3) If the parties agree in writing and the presiding officer approves, an appeal may be submitted to the board on the record and the attendance of one or more parties at the hearing will not be required.

**WSR 24-21-168**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed October 23, 2024, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-049.

Title of Rule and Other Identifying Information: Rule making to implement HB 2204 (chapter 91, Laws of 2024), codified at RCW 66.20.010(19), which creates an emergency liquor permit allowing liquor manufacturing licensees to temporarily operate in a retail capacity on the premises of another liquor licensee with retail privileges while the manufacturer's premises are inaccessible and unable to operate due to an emergency or road closure. This rule making anticipates the creation of new WAC 314-38-120 Emergency liquor permits.

Hearing Location(s): On December 4, 2024, at 10:00 a.m. All public liquor and cannabis board (LCB) activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The board room at the headquarters building in Olympia, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance. The public may also login using a computer or device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the board room will be staffed during a meeting, board members and LCB participants may continue to appear virtually. For more information about LCB meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than December 18, 2024.

Submit Written Comments to: Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 48030, Olympia, WA 98504-3080, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, beginning October 23, 2024, 12:00 p.m., by December 4, 2024, 12:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by November 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to implement HB 2204, chapter 91, Laws of 2024, codified at RCW 66.20.010(19):

Section 1: This language mostly repeats RCW 66.20.010(19), except for expressly stating that the permit is to allow manufacturing licensees to sell alcohol "of their own production." This is within the meaning of the permit and original legislation because it clarifies that this permit is intended to allow manufacturers, who otherwise may sell liquor of their own production on their own premises in a retail capacity, to continue these retail activities while being temporarily displaced, to sell their own liquor on the retail premises of another licensee.

Section 2: This language states that LCB will not charge money for the issuance of this permit. There is no statutory requirement for LCB to charge a fee, nor a specific fee identified in statute, and LCB has decided not to charge a fee to manufacturing licensees during a period that they are experiencing financial hardship.

Section 3: This language states that distilleries, craft distilleries, fruit and wine distilleries, domestic breweries, microbreweries, and domestic wineries are allowed to obtain the emergency liquor permit.

Section 4: This language identifies all liquor licensees as eligible to host emergency liquor permit holders with a few exceptions: Caterers, which do not have their own premises to host; private clubs, which are not open to the public per RCW 66.24.450 and 66.24.452; and sports entertainment facilities, which are a unique type of liquor licensee that would be impracticable to host an emergency permit holder, as it would be more hassle than it would be worth to have a large football stadium host a winery on a temporary basis. All of these are prohibited from hosting emergency liquor permit holders.

Section 5: This language clarifies that a host must have the same ability to sell alcohol as the permit holder. For example, a beer/wine restaurant not authorized to serve spirits may not host a distillery, as that would result in spirits being served on premises that would not be permitted to serve spirits without an emergency liquor permit holder temporarily operating there. This is a theme continued throughout the proposed rules; an emergency liquor permit shall not be used to allow licensees to operate in ways they are not otherwise permitted to operate.

This is also reflected in subsection (5)(b), which states that distilleries must continue to satisfy the food offering requirements identified in WAC 314-28-067 and RCW 66.24.1471, and the host must also satisfy those food offerings requirements to be eligible to host a distillery.

Section 6: This states that a permit holder shall identify the host when applying for an emergency liquor permit. This is consistent with existing practice and means that a licensee interested in applying for a permit should identify a tentative host who agrees prior to applying for a permit.

Section 7: Per RCW 66.20.010(19), the permit shall be for 30 days, and can be extended for another 30 days so long as the emergency continues.

Section 8: The first two requirements in subsections (8) and (8)(a) are dictated by statute in RCW 66.20.010(19). The MAST reciprocity requirements in subsections (8)(b) and (c) continue with the theme of ensuring that these permits are not used to engage in otherwise impermissible activity. The MAST permits required for a host's employees must be sufficient to allow them to serve the permit holder's liquor, as allowed by statute, and vice versa. This is not supposed to be used as an opportunity to allow service of liquor by individuals not permitted to provide such service.

Section 9: Continuing with the theme of not allowing this to become an opportunity for an end-run around other alcohol laws and regulations, this section specifically identifies agreements involving impermissible direct or indirect interests, more commonly known as "undue influence," as remaining prohibited despite the existence of an emergency liquor permit.

Section 10: Subsection (10)(a) is dictated by statute at RCW 66.20.010(19). Subsection (10)(b) continues with the theme repeatedly identified above and provides that an emergency liquor permit holder can only have one permit at a time, so a manufacturer with one established premises cannot use this as an opportunity to temporarily operate out of three different hosts. Subsection (10)(c) borrows language from WAC 314-11-060(3) where liquor licenses are required to be con-

spicuously posted for public inspection and viewing by liquor enforcement officers. The same logic applies here in allowing public viewing and inspection of emergency liquor permits.

Section 11: This section operates generally on the theme of keeping everything separated between hosts and permit holders. The licensees remain distinct legal entities while operating on the same premises. As such, they need to maintain separate financial records, subsection (11)(a); they need to continue to pay taxes and make payments as separate entities, subsection (11)(b); and they need to use distinctively marked glassware to serve liquor, subsection (11)(c). The language of subsection (11)(c) is borrowed from WAC 314-03-200(4), which identifies how licensees can share outdoor spaces.

Section 12: Continuing to borrow from WAC 314-03-200(4) on shared outdoor spaces, this language on joint liability explains that if a violation occurs, the default presumption will be that the host and permit holder share responsibility for the violation, and the responsibility of attributing fault or liability will be on the licensees themselves, not on LCB.

Section 13: The definitions provided are identified in more detail in the table below. The time frame of 48 hours was used because a licensee that is closed for less than that may not find it worthwhile to make all the arrangements and apply for a permit, move all the liquor and supplies etc., if the closure is only temporary. This also ensures that routine freeway closures or other periodic disruptions of the like do not rise to the level where an emergency liquor permit is warranted or necessary.

Reasons Supporting Proposal: The reasons supporting these proposed rules, in addition to that described above, are identified in the tables herein:

WAC 314-38-120 Emergency liquor permits		
Section	Proposed Rule	Reason
(1)	Per RCW 66.20.010, there is an emergency liquor permit for eligible licensees to authorize the sale, service, and consumption of liquor of their own production on the premises of another liquor licensee with retail sales privileges when an emergency has made the permit holder's premises inaccessible and unable to operate due to an emergency or road closure.	The language mimics that found in RCW 66.20.010(19), with one exception: the use of the wording "of their own production[.]" which is added to ensure that the purpose of the statute is maintained in rule, allowing manufacturers to continue the retail activities allowed by their license during an emergency closure.
(2)	There is no fee for the emergency liquor permit.	LCB has made the decision within its authority not to charge fees to licensees experiencing this hardship.
(3)	The following licensees are eligible to obtain an emergency liquor permit:	These are the liquor licensees with manufacturing privileges, per the following: (a) RCW 66.24.140, 66.24.145 (b) RCW 66.24.244, 66.24.240 (c) RCW 66.24.170
(3)(a)	Distilleries, craft distilleries, and fruit and wine distilleries;	
(3)(b)	Domestic breweries and microbreweries; and	
(3)(c)	Domestic wineries.	

WAC 314-38-120 Emergency liquor permits		
Section	Proposed Rule	Reason
(4)	The following licensees are eligible to operate as a host of a permit holder:	These are the liquor licensees eligible to host a permit holder: (1) All of the manufacturing licensees, and (2) all liquor licensees with retail privileges except for caterers, which do not have a dedicated premises, private clubs, which are not intended to be open to the public, and sports entertainment facilities, which operate in such a way that allowing them to host a permit holder would be infeasible.
(4)(a)	All the licensees identified in subsection (3) of this section;	
(4)(b)	All liquor licensees with retail sales privileges, except for the following:	
(4)(b)(i)	Caterers, licensed under RCW 66.24.690;	
(4)(b)(ii)	Private clubs licensed under RCW 66.24.450 or 66.24.452; and	
(4)(b)(iii)	Sports entertainment facilities licensed under RCW 66.24.570.	
(5)(a)	To be eligible to host a permit holder, the host must have the authority to sell the type of products manufactured by the permit holder.	The goal is to prevent a host from selling liquor it is not ordinarily permitted to sell on its premises, such as a beer/wine restaurant hosting a distillery and thus having spirits served on premises.
(5)(b)	If the permit holder is a distillery, craft distillery, or fruit and wine distillery, the host must comply with the food offerings requirements in WAC 314-28-067.	Per RCW 66.24.1471 and WAC 314-28-067, distilleries, craft distilleries and fruit and wine distilleries must satisfy certain food offering requirements. This ensures liquor licensees required to meet food offerings requirements cannot avoid these requirements through use of the emergency liquor permit.
(6)	The permit holder shall identify the host when applying to the board's licensing division for an emergency liquor permit.	This is consistent with existing practice when applying for an emergency liquor permit. Additionally, this ensures that a host is identified prior to a permit holder requesting a permit, and thus presumably informed that they are expected to host a permit holder.
(7)(a)	The permit shall last for 30 days.	This language is from RCW 66.20.010(19).
(7)(b)	If the emergency continues, the permit may be renewed for an additional 30 days.	
(8)	The permit holder may store no more than a 30-day supply of liquor at the host premises.	This language is from RCW 66.20.010(19).
(8)(a)	The permit holder's liquor must be kept separate from the host liquor.	
(8)(b)	Host employees and agents are permitted to serve liquor provided by the permit holder if they have the MAST permits required by RCW 66.20.310 and chapter 314-17 WAC.	This wording is meant to ensure that employees and agents of hosts and permit holders have the same level of MAST permit privileges to serve liquor, and as stated above in subsection (5)(a), the host has authority to sell liquor manufactured by the permit holder.
(8)(c)	The permit holder's employees and agents must meet the same MAST permit requirements as the host's employees and agents.	
(9)	A host and permit holder may not enter into any type of agreement that would involve impermissible direct or indirect interests as provided in chapter 66.28 RCW.	Reiterating that hosts and permit holders cannot use the emergency liquor permit to enter business agreements that are otherwise prohibited by law or rule.
(10)(a)	A host may have no more than three permit holders operating on its premises at a time.	This language is from RCW 66.20.010(19).
(10)(b)	A permit holder may only have one permit at a time.	This is to prevent a permit holder with one location from using the emergency liquor permit as an opportunity to operate at multiple locations.
(10)(c)	The permit holder must conspicuously post the emergency liquor permit at the host premises at all times the permit is in use and be available for inspection by liquor enforcement officers.	This language is from WAC 314-11-060(3) about required public display of liquor licenses, and the reasoning is similar: To allow patrons and liquor enforcement officers to know that permit holders are legally operating on the premises.

WAC 314-38-120 Emergency liquor permits		
Section	Proposed Rule	Reason
(11)(a)	Hosts and permit holders must maintain separate records consistent with Titles 66 RCW and 314 WAC as it applies to the host and permit holder.	This is consistent with WAC 314-03-200(4) on licensees sharing outdoor spaces and the need to maintain separate records.
(11)(b)	Hosts and permit holders must comply with all tax payment and reporting requirements in Titles 66 RCW and 314 WAC.	This is to ensure that licensees continue to comply with all tax payment requirements as if they were operating from the original premises.
(11)(c)	Hosts and permit holders must use distinctively marked glassware or serving containers to identify the source of any alcohol product being consumed on the host premises. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer.	Language from WAC 314-03-200 regarding outdoor service areas and licensees sharing space.
(12)	Hosts and all permit holders on the hosts' premises are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.	Language from WAC 314-03-200 regarding outdoor service areas and licensees sharing space.
(13)	<b>Definitions:</b> For purposes of this section, the following definitions apply:	
(13)(a)	"Emergency" means an emergency or disaster as defined in RCW 38.52.010.	This language is from RCW 66.20.010(19).
(13)(b)	"Host" means a liquor licensee with the same retail sales privileges that allows a permit holder to operate on their premises pursuant to the terms of the emergency liquor permit.	Definition needed to identify the licensee who is allowing the emergency permit liquor holder to temporarily operate on their premises.
(13)(c)	"Inaccessible" means unable to be safely entered, reached, or used for on-premises business purposes for more than 48 hours.	Term needs to be defined because it is used in RCW 66.20.010(19) and no definition is provided.
(13)(d)	"Permit holder" means a licensed manufacturer that has experienced an emergency that has made its premises inaccessible and unable to operate due to an emergency or road closure.	Definition needed to identify the licensee who is eligible to obtain the emergency liquor permit.
(13)(e)	"Road closure" means whenever the condition of any state highway, county road, city street, or right-of-way is such that its use by vehicles will be dangerous to traffic, or it is being constructed, altered, or repaired in such a manner as to require their use to be closed or restricted to all vehicles for more than 48 hours.	Language used is from RCW 47.48.010 regarding Washington state department of transportation's authority to close roads.
(13)(f)	"Unable to operate" means unable to perform the on-premises activities which the liquor license authorizes in Titles 66 RCW and 314 WAC.	Term needs to be defined because it is used in RCW 66.20.010(19) and no definition is provided.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.010, 66.98.070.

Statute Being Implemented: RCW 66.20.010(19); HB 2204, chapter 91, Laws of 2024.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chan-

dra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5)(a)(ii).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: HB 2204, codified at RCW 66.20.010(19), creates a new emergency liquor permit for manufacturing licensees who can apply for this permit under certain statutory conditions identified in the statute. The proposed rule consists of a single new rule that identifies which licensees can apply for the permit, and the other conditions that they must satisfy while maintaining the permit to be consistent with other provisions of Titles 66 RCW and 314 WAC. No other sections of Title 314 WAC are proposed to be amended. The permit conditions are dictated by statute, and the rule language relates to process requirements for applying to an agency for the emergency liquor permit in that it identifies the conditions that must be met to apply for the permit and what conditions must be met while using the permit, satisfying both RCW 34.05.310 (4)(e) and (g).

Scope of exemption for rule proposal:

Is fully exempt.

October 23, 2024  
David Postman  
Chair

#### OTS-5783.4

#### NEW SECTION

**WAC 314-38-120 Emergency liquor permits.** (1) Per RCW 66.20.010, there is an emergency liquor permit for eligible licensees to authorize the sale, service, and consumption of liquor of their own production on the premises of another liquor licensee with retail sales privileges when an emergency has made the permit holder's premises inaccessible and unable to operate due to an emergency or road closure.

(2) There is no fee for the emergency liquor permit.

(3) The following licensees are eligible to obtain an emergency liquor permit:

- (a) Distilleries, craft distilleries, and fruit and wine distilleries;
- (b) Domestic breweries and microbreweries; and
- (c) Domestic wineries.
- (4) The following licensees are eligible to operate as a host of a permit holder:
- (a) All the licensees identified in subsection (3) of this section;
- (b) All liquor licensees with retail sales privileges, except for the following:
- (i) Caterers, licensed under RCW 66.24.690;
- (ii) Private clubs licensed under RCW 66.24.450 or 66.24.452; and
- (iii) Sports entertainment facilities licensed under RCW 66.24.570.
- (5) (a) To be eligible to host a permit holder, the host must have the authority to sell the type of products manufactured by the permit holder.
- (b) If the permit holder is a distillery, craft distillery, or fruit and wine distillery, the host must comply with the food offerings requirements in WAC 314-28-067.
- (6) The permit holder shall identify the host when applying to the board's licensing division for an emergency liquor permit.
- (7) (a) The permit shall last for 30 days.
- (b) If the emergency continues, the permit may be renewed for an additional 30 days.
- (8) The permit holder may store no more than a 30-day supply of liquor at the host premises.
- (a) The permit holder's liquor must be kept separate from the host liquor.
- (b) Host employees and agents are permitted to serve liquor provided by the permit holder if they have the MAST permits required by RCW 66.20.310 and chapter 314-17 WAC.
- (c) The permit holder's employees and agents must meet the same MAST permit requirements as the host's employees and agents.
- (9) A host and permit holder may not enter into any type of agreement that would involve impermissible direct or indirect interests as provided in chapter 66.28 RCW.
- (10) (a) A host may have no more than three permit holders operating on its premises at a time.
- (b) A permit holder may only have one permit at a time.
- (c) The permit holder must conspicuously post the emergency liquor permit at the host premises at all times the permit is in use and be available for inspection by liquor enforcement officers.
- (11) (a) Hosts and permit holders must maintain separate records consistent with Titles 66 RCW and 314 WAC as it applies to the host and permit holder.
- (b) Hosts and permit holders must comply with all tax payment and reporting requirements in Titles 66 RCW and 314 WAC.
- (c) Hosts and permit holders must use distinctively marked glassware or serving containers to identify the source of any alcohol product being consumed on the host premises. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer.
- (12) Hosts and all permit holders on the hosts' premises are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to



one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

(13) **Definitions:** For purposes of this section, the following definitions apply:

(a) "Emergency" means an emergency or disaster as defined in RCW 38.52.010.

(b) "Host" means a liquor licensee with the same retail sales privileges that allows a permit holder to operate on their premises pursuant to the terms of the emergency liquor permit.

(c) "Inaccessible" means unable to be safely entered, reached, or used for on-premises business purposes for more than 48 hours.

(d) "Permit holder" means a licensed manufacturer that has experienced an emergency that has made its premises inaccessible and unable to operate due to an emergency or road closure.

(e) "Road closure" means whenever the condition of any state highway, county road, city street, or right-of-way is such that its use by vehicles will be dangerous to traffic, or it is being constructed, altered, or repaired in such a manner as to require their use to be closed or restricted to all vehicles for more than 48 hours.

(f) "Unable to operate" means unable to perform the on-premises activities which the liquor license authorizes in Titles 66 RCW and 314 WAC.

**WSR 24-21-169**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed October 23, 2024, 10:42 a.m.]

Supplemental Notice to WSR 24-16-130.

Preproposal statement of inquiry was filed as WSR 23-23-062.

Title of Rule and Other Identifying Information: Title 314-55 WAC; rule language is being proposed to WAC 314-55-570 to implement E2SSB 5080 (chapter 220, Laws of 2023), to expand and improve the social equity in cannabis program, including revisions to the scoring and application process, county licensing thresholds, and local jurisdiction objections.

Hearing Location(s): On December 4, 2024, at 10 a.m. All public liquor and cannabis board (LCB) activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The board room at the headquarters building in Olympia, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance and the public may also login using a computer or a device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the board room will be staffed during a meeting, LCB members and participants may continue to appear virtually. For more information about LCB meetings, please visit <https://lcb.wa.gov/Boardmeetings/> Board meetings.

Date of Intended Adoption: December 18, 2024.

Submit Written Comments to: Cassidy West, Policy and Rules Manager, P.O. Box 48030, Olympia, WA 98504-3080, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, beginning October 23, 2024, 12:00 p.m., by December 18, 2024, 12:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-878-4235, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are intended to expand and improve the social equity in cannabis program as directed by E2SSB 5080, chapter 220, Laws of 2023. This includes revising definitions, adjusting eligibility criteria, refining the application and scoring processes to ensure a more equitable distribution of cannabis licenses to individuals from disadvantaged communities most adversely impacted by the war on drugs.

**1. Definitions:** Definitions are amended to enhance clarity, inclusivity, and conform with statute; "disproportionately impacted area," "social equity plan," "family member," "median household income," "preliminary letter of approval," "social equity contractor," and "social equity program applicant."

**2. Social Equity Registrant:** A new definition for social equity registrant was created and the definition for social equity applicant modified to distinguish two phases of the application process. A social equity registrant is an individual who has registered to be evaluated for qualification under the social equity criteria. A social equity applicant is an individual who submits application materials to the social equity contractor to be reviewed and scored based on the

scoring rubric and has received a preliminary letter of approval by LCB.

**3. Registration Process:** The initial application process has been amended to provide for registration through an online portal to reduce barriers to entry associated with the eligibility screening for the social equity program, such as financial costs and compliance burden associated with applying for a business license through other state agencies before the social equity contractor scoring evaluation. The registration windows are open for 30 calendar days and there are separate registration windows for retail licenses and nonretail licenses.

Additionally, the existing rules state LCB has sole discretion to reopen the registration window; whereas, the proposed rules detail the factors LCB will consider when deciding whether to reopen the registration window. These factors are relevant to the policy change related to license allocation based on county thresholds.

**4. Scoring Rubric:** The scoring rubric is adjusted to focus on the four areas of qualification for the social equity program identified in E2SSB 5080. The scoring rubric criteria are modified to more equitably consider the obstacles encountered by candidates from marginalized communities, in response to feedback from the community advocating for a nuanced evaluation of qualifications and circumstances.

**5. Affidavits:** The rule outlines the circumstances under which affidavits may be used to demonstrate a qualification.

**6. Social Equity Contractor Review:** The rule change simplifies and clarifies the process for the review of application materials submitted by the registrant to make an eligibility determination for the social equity in cannabis program.

**7. Initial and Final Score:** The rules provide registrants with a remedy period after the initial scoring process. This means once the social equity contractor issues an initial score with an explanation of the score, registrants have an opportunity to submit supplemental documentation for consideration to potentially improve their final score. This change provides additional transparency in the scoring process and increases accessibility.

**8. Board Notification:** This section is amended to provide transparency as to the different notifications an applicant receives related to moving forward in the application process or not.

**9. No Time Restrictions:** These rules provide more flexibility for social equity applicants to secure a location and financing, reducing barriers to entry.

**10. 2870 License Mobility:** The proposal offers broader location opportunities to locate the initial retail license statewide, under specific conditions, for social equity applicants unable to secure a location in the original city, town, or county where the applicant applied for their social equity license. Effective January 1, 2026, a social equity applicant licensed under the qualification of HB 2870, will be able to locate the initial unopened business to a different county, if the licensee's original score from their HB 2870 application exceeds the lowest awarded score for licenses issued in the desired county. This approach promotes statewide mobility for all applicants, fostering fairness without creating disparities between those who qualified under HB 2870 and those who qualify under E2SSB 5080.

Removing geographical constraints that have impeded the establishment of social equity cannabis businesses advances the program's objectives of increasing diversity in cannabis business ownership and allowing for greater representation of historically marginalized communities.

**11. Right to Appeal:** Appeal rights are clearly established for applicants withdrawn or denied a license.

**12. Title Certificate Holders (TCH):** The rule allows title certificate holders to reinstate their licenses under the social equity program with an eligibility determination versus a qualifying application score. This provides relocation options for title certificate holders to reenter the market while providing considerations reflecting public feedback on inclusivity and equitable access to licensing opportunities. The rules provide the TCH must meet the requirements of a social equity applicant, including the 51 percent ownership requirements to reinstate their license. It also provides that TCHs qualifying for the program may reinstate the TCH privilege for an initial license anywhere in the county where it was originally issued, consistent with existing regulations.

**13. Local Authority Objections:** Local authorities can object to the location of proposed cannabis retail licenses based on preexisting ordinances limiting retail outlet density. LCB will give substantial weight to these objections.

**14. County Thresholds:** E2SSB 5080 required the LCB to identify thresholds for the number of producer, processor, and retailer licenses in each county. The rule establishing the county thresholds will be evaluated every three years beginning in 2029 and will be published on LCB's website. Established thresholds indicate the number of potentially viable licenses by county based on an analysis of market conditions and other relevant factors conducted by a third-party economist. These thresholds are not caps, but intended to be an economic evaluation to inform applicants about research information current market conditions and future projections of the number of licenses sustainable based on consumer demand.

**15. Conflict of Interest:** Conflict of interest safeguards were added to reduce risk of any preferential treatment between the third-party vendor and [no further information supplied by agency].

**16. Social Equity Plan Reimbursement:** Adopting section 2 of E2SSB 5080 to clarify reimbursement for licensing fees.

Reasons Supporting Proposal: The amendments seek to address historical disparities within the cannabis industry by providing greater opportunities for those impacted by the enforcement of cannabis prohibition. The rules aim to foster economic inclusivity and social restoration.

Statutory Authority for Adoption: RCW 69.50.331, 69.50.335, 69.50.345.

Statute Being Implemented: RCW 69.50.335, as amended by E2SSB 5080 (chapter 220, Laws of 2023).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: LCB recommends that these rules be implemented as proposed to fulfill the legislative intent of E2SSB 5080, ensuring a robust and equitable social equity in cannabis program.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Cassidy West, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98504, 360-878-4235; Implementation: Rebecca Smith, Director of Licensing and Regulation, 1025 Union Avenue, Olympia, WA 9850[4], 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 9850[4], 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328 (5) (c).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4) (e).

Explanation of exemptions: This rule proposal is exempt because it involves LCB actions that are mandated by statute, implementing E2SSB 5080, chapter 220, Laws of 2023, to expand and improve the social equity in cannabis program, as described in RCW 69.50.331 and 69.50.335.

Scope of exemption for rule proposal:

Is fully exempt.

October 23, 2024

David Postman

Chair

#### OTS-5703.4

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

#### **WAC 314-55-570 Social equity in cannabis program. (1) Definitions.**

(a) **"Disproportionately impacted area (DIA)"** means a census tract within Washington state where community members were more likely to be impacted by the war on drugs. ~~((These areas are determined using a standardized statistical equation to identify areas of high unemployment, low income, and demographic indicators consistent with populations most impacted by the war on drugs, including areas with higher rates of arrest for drug charges.))~~ The board will provide maps to identify disproportionately impacted areas. The maps will reflect census tracts from different time periods to account for gentrification. These areas are determined using a standardized statistical equation to identify areas in the top 15th percentile in at least two of the following demographic indicators of populations most impacted by the war on drugs:

(i) The area has a high rate of people living under the federal poverty level;

(ii) The area has a high rate of people who did not graduate from high school;

(iii) The area has a high rate of unemployment; or

(iv) The area has a high rate of people receiving public assistance.

(b) **"Family member"** means:

(i) A biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the ~~((applicant))~~ social equity registrant, as defined in this subsection below, stands in loco parentis (in place of the parent), is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(ii) Grandchild, grandparent, parent, or sibling of a child as defined in (b)(i) of this subsection;

(iii) Spouse or domestic partner;

(iv) Any individual who regularly resides in the ~~((applicant's))~~ registrant's home or where the relationship creates an expectation that the ~~((applicant))~~ registrant care for the ~~((person))~~ individual and that individual depends on the applicant for care, or that the individual care for the ~~((applicant))~~ registrant and that the ~~((applicant))~~ registrant depends on the individual for care.

(c) "~~((Median))~~ **Household income**" means the ~~((most recent median household))~~ gross income ~~((within))~~ for the previous calendar year and includes the ~~((state))~~ sum of ~~((Washington as calculated))~~ the income received in the previous calendar year by ~~((the United States Census Bureau))~~ all household members aged 15 years and older before taxes and deductions.

(d) "~~((Person))~~ **Individual**" means a real human being, distinguished from a corporation, company, or other business entity.

(e) "**Median household income**" means the median income for households in Washington for the previous calendar year, as determined by the United States Census Bureau.

(f) "**Preliminary letter of approval**" means an approval letter issued to a social equity program applicant. The letter may be used for the purposes of ~~((securing a grant from the department of commerce))~~ applying for funding and/or securing a location, and ~~((other necessities to complete))~~ additional steps that may be necessary for continuing with the licensing application process.

~~((f))~~ (g) "**Social equity program applicant**" means ~~((a person(s) who meets the requirements of))~~ an individual or entity that receives a preliminary letter of approval to apply for the social equity li-  
censing program.

~~((g))~~ (h) "**Social equity contractor**" means a third party responsible ~~((to review))~~ for reviewing and ~~((score))~~ scoring social equity program applications to identify which applicants qualify to apply for a social equity license.

~~((h))~~ (i) "**Social equity licensee**" means ~~((a person))~~ an indi-  
vidual or entity that holds a social equity cannabis license or any ~~((person))~~ individual or entity who is a true party of interest in a social equity in cannabis license as described in WAC 314-55-035.

~~((i))~~ "**Social equity plan**" means a plan that addresses the following elements including, but not limited to:

(i) A description of how issuing a cannabis retail license to the social equity applicant will meet social equity goals as described in statute;

(ii) The social equity applicant's personal or family history with the criminal justice system, including any offenses involving cannabis; and

(iii) Business plans involving partnerships or assistance to organizations or residents with connections or contributions to populations with a history of high rates of enforcement of cannabis prohibition.

(j) "**Social equity title certificate holder**" means a cannabis retail license title certificate holder that meets the requirements of a

social equity program applicant as determined by the social equity contractor, and is unable to open for business in the city or county where the cannabis retail license is located)) (j) **"Social equity registrant"** means any individual or entity that registers to be evaluated and scored for the social equity program. Qualification is evaluated based on the registrant's application materials submitted to the social equity contractor. If a registrant is deemed qualified for the social equity program and selected to move forward, the registrant becomes a social equity applicant, as defined in this subsection.

(2) ~~((**Social equity applicant requirements.**~~

~~(a-)) **Registering for the social equity program.** Registration through a designated portal is required prior to submitting application materials to the social equity contractor. If two or more individuals are registering as a single applicant, only one individual may fill out the registration form on behalf of the other individuals who are applying. Each individual is limited to one registration, within a designated license application window. Individuals registering and submitting application materials who are contributing to the required 51 percent ownership may not be removed or added after registering.~~

~~(a) **Registration window.** The registration window(s) will be open for 30 calendar days. The board will open separate registration windows for retail applications and for producer and processor applications. The board may reopen a designated registration window after conducting an evaluation that considers market demand, impacts related to license density, and availability of licenses.~~

~~(3) **Social equity application process.** After a designated registration window closes, the social equity contractor will provide the registrant with directions for submitting social equity program application materials and verification documents.~~

~~(a) **Submission requirements.** Social equity program application materials must be submitted directly to the social equity contractor in the form and manner required by the social equity contractor, within 21 calendar days after notification from the social equity contractor. Application materials submitted after the specified time frame will not be reviewed or scored. Registrants are responsible for ensuring the application is complete, accurate, and successfully submitted.~~

~~(4) **Qualifying for the social equity program.** To ~~((be considered))~~ qualify for the social equity program under this chapter and RCW 69.50.335, the ~~((following requirements))~~ criteria provided in this subsection must be met ~~((by each applicant:~~~~

~~(b) ~~At least a)~~. Social equity applicants with the highest scores will be prioritized by the social equity contractor to proceed with the social equity license application process. The social equity contractor will provide the board with a list of the selected registrants that may move forward in the application process as an applicant.~~

~~(a) **51 percent ownership.** An applicant must have 51 percent ownership and control by one or more individuals qualifying as a social equity applicant. All individuals that are a part of the license registration must be held by a person, or persons, who has lawfully resided in Washington state for six months prior to the registration date, consistent with RCW 69.50.331. Each individual comprising the 51 percent majority ~~((, or controlling interest, in the applicant, must be held by a person, or persons, who has or have resided in Washington state for six months prior to the application date, consistent with RCW 69.50.331, and meets at least two of the following qualifica-~~~~

tions)) ownership must meet at least two of the four qualifications below:

(i) **Qualification 1:** (~~((The social equity applicant or applicants have lived in a disproportionately impacted area))~~) Resided in a disproportionately impacted area (DIA) in Washington state for a minimum of five years any time between 1980 and 2010(~~(; or)~~). Time spent living in a DIA does not need to be consecutive.

(A) Proof of address documentation that may demonstrate currently living or having lived in a DIA include, but are not limited to, documents such as: Bank statements, lease agreements, home insurance or car policy, federal or state tax returns that show the address for each year, utility bills, employment records, school records, voter registration. Any combination of documents may be utilized to demonstrate the qualification.

(B) Affidavits may be used as a supplemental document to demonstrate the registrant meets the qualifications under (4)(a)(i) of this subsection, provided that the affidavit is accompanied by other documents. The social equity contractor reserves the right to verify the authenticity and accuracy of the submitted affidavit and supporting documentation. Additional documentation or evidence may be requested to support the claims made in the affidavit. Failure to provide truthful information or to comply with the verification request may be considered a misrepresentation of fact, under WAC 314-55-050, 314-55-073, or 314-55-505.

(ii) **Qualification 2:** (~~((The social equity applicant or a family member of the applicant has))~~) Been arrested or convicted (~~(of)~~) for a cannabis offense(~~(; or)~~).

(A) To demonstrate this, documents that contain details such as the date of the arrest or conviction, the charges, and the law enforcement agency involved, such as: Arrest records from the agency that made the arrest, booking reports, bail papers, police reports or police logs, court documents (e.g., arrest warrants, charging documents, or minutes from the arraignment), criminal history records, news reports to establish the event, online inmate locator services for the family member, legal representation who can provide details about the arrest or conviction, court mandated community service paperwork, court mandated paperwork, or background checks. Any combination of documents may be utilized to demonstrate the qualification.

(B) Affidavits may be used as a supplemental document to demonstrate an arrest or conviction was a cannabis offense provided that the affidavit is accompanied by court records that provide evidence of an arrest or conviction for a schedule 1 drug offense. Court records include, but are not limited to, arrest records, charging documents, plea agreements, court orders, or sentencing documents. The social equity contractor reserves the right to verify the authenticity and accuracy of the submitted affidavit and supporting documentation. Additional documentation or evidence may be requested to support the claims made in the affidavit. Failure to provide truthful information or to comply with the verification request may be considered a misrepresentation of fact, under WAC 314-55-050, 314-55-073, or 314-55-505.

(iii) **Qualification 3:** (~~((The social equity applicant's))~~) Had a household income (~~(in the year prior to submitting the application was)~~) less than the median household income within the state of Washington as (~~(calculated)~~) determined by the United States Census Bureau for the calendar year preceding the date of application.

(A) Proof of household income includes, but is not limited to, documents such as: Federal tax return, W-2 forms issued by an employer



that shows annual wages and taxes withheld, 1099-NEC forms, bank statements showing consistent deposits, employer income verification letter stating your salary and terms of employment, unemployment benefits statements, court ordered agreements, annuity statements from an insurance company showing regular annuity payments, workers' compensation letter from an employer or insurance company detailing workers' compensation payments, profit or loss statements for self-employed individuals, a statement showing business income and expenses. Any combination of documents may be utilized to demonstrate the qualification.

(iv) **Qualification 4:** Is both socially and economically disadvantaged as defined by the office of minority and women's business enterprises.

(A) Examples of documentation to demonstrate the qualification may include, but are not limited to, those identified by the office of minority and women's business enterprises for Washington state certification. Any combination of documents may be utilized to demonstrate the qualification.

~~((3) **Social equity application process.**~~

~~(a) **Application window.**~~

~~(i) The board will open the application window for an initial period of 30 calendar days.~~

~~(ii) At its sole discretion, the board may reopen the application window:~~

~~(A) After initial evaluation of applications is received and locations are still available; or~~

~~(B) If additional allotments become available after the initial application window has closed pursuant to RCW 69.50.335.~~

~~(b) **Initial application requirements.**~~

~~(i) The social equity application must be submitted electronically through the department of revenue's business licensing online application system.~~

~~(ii) The social equity applicant must apply to the department of revenue's business licensing service within the 30-day application window. All required information must be completed on the application and payment must be submitted within the 30-day application window for the application to be accepted.~~

~~(iii) The social equity applicant, whether applying as a person, persons, or entity, may apply for a cannabis license only once during each application window described in subsection (4)(c) of this section.~~

~~(iv) An application to reinstate the license of a social equity title certificate holder will not be considered a new social equity license application. The social equity title certificate holder may submit an application for a social equity license and an application to reinstate their existing license through the social equity program.~~

~~(v) A location address is not required at the time of application.~~

~~(e-)) (5) **Identifying registrants eligible to apply for a license.** After the social equity contractor has evaluated all registrations from a designated registration window, the social equity contractor will provide the board with a prioritized list of:~~

~~(a) The top 52 scoring registrants eligible to apply for a retail license.~~

~~(b) The top 10 scoring registrants for a cannabis producer license, which must be issued in conjunction with a cannabis processor license.~~

(c) The top 100 scoring registrants for a cannabis processor only license.

(6) Social equity contractor review. ((Once)) After the ((application)) registration window is closed, the social equity contractor will ((evaluate and prioritize all applications received within the 30-day application window)) provide the registrant, or title certificate holder, with directions for submitting social equity program application materials and verification documents.

~~((i) The social equity applicant must select one county where they wish to operate their business and notify the social equity contractor of their selection in the form and manner required by the social equity contractor.~~

~~((ii) The social equity applicant must submit documentation verifying the eligibility requirements described in (c) (D) (viii) of this subsection to the social equity contractor in the form and manner required by the social equity contractor.~~

~~((iii) Examples of documentation that may verify eligibility requirements include, but are not limited to:~~

~~(A) School records, rental agreements, utility bills, mortgage statements, loan documents, bank records, or tax returns that show the applicant's address(es), or a signed declaration that includes the applicant's address(es) indicating that the applicant resided in a DIA; or~~

~~(B) The applicant's arrest or conviction records, or family member's arrest or conviction records and an affirmation of the familial relationship signed by the applicant and the family member; or~~

~~(C) The applicant's tax returns demonstrating their income for the prior year; or~~

~~(D) Any other documentation that verifies the eligibility requirements described in (c) (D) (viii) of this subsection.~~

~~((iv) If additional materials are needed, the social equity applicant will receive a letter electronically from the social equity contractor directing the applicant to submit additional application materials directly to the social equity contractor.~~

~~((v) The social equity applicant must submit complete and accurate additional application materials directly to the social equity contractor within 15 business days of the date of the letter. It is the responsibility of the social equity applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the social equity contractor.~~

~~((vi) If the application is determined to be incomplete by the social equity contractor, the social equity applicant will be provided with 14 days to submit a complete application. The social equity contractor will score the application based on the materials submitted within the time frame.~~

~~((vii) The social equity contractor will review the application materials, including the social equity plan provided by the social equity applicant to determine if the applicant meets the requirements of a social equity applicant.~~

~~((viii) After the social equity contractor determines that the requirements have been met, the social equity contractor will score social equity applications using the following scoring rubric to prioritize social equity applicants:)) (a) Who is eligible to be scored: Scoring by the social equity contractor will be limited to each registrant who meets two out of the four required social equity program qualifications, and each registrant may only be scored once. Only the~~

first registration received will be scored for qualifications. Title certificate holders applying for license reinstatement and registering for an eligibility determination shall not be considered a duplicate registration for other new social equity license application under this section.

(b) **Scoring rubric.** The social equity contractor will prioritize social equity program registrants based on the below scoring rubric criteria. The total score will be based on a cumulative total, adding together the highest achieved score for each of the 7 categories:

<b>Social Equity Application Scoring Rubric</b>		
<b>Category</b>	<b>Eligibility Requirements</b>	<b>Point Scale</b>
	1. Lived in a disproportionately impacted area (DIA) 1-5 years = 15 points 6-10 years = 45 points 11+ years = 60 points	((40)) 60
	((1a. How long have you lived in a DIA? 5y-10y = 20 points 10+ years = 40 points	40))
	2. Convicted of a drug offense? (Self) = 15 points Convicted of a cannabis offense? (Self) = 60 points	((40)) 60
	((2a. Convicted of a cannabis offense? (Self)	40))
	3. Convicted of a drug offense? (Family) = 15 points Convicted of a cannabis offense? (Family) = 30 points	((5)) 30
	((3a. Convicted of a cannabis offense? (Family)	5))
	4. If you were convicted of a cannabis offense, what type of sentence did you receive: Fine = ((40)) 15 points Served probation or Confined to home = ((20)) 30 points ((Confined to home = 40 points)) Served time in jail or prison = ((80)) 60 points	((80)) 60
	((5. Did you or your family member's incarceration keep you from getting employment?	5
	6. Did you lose your home or ability to purchase a home or rent a home as a result of your convictions or arrests?	5))
	((7.) 5. Is your household income less than the median household income within the state of Washington as calculated by the United States Census Bureau?	((40)) 45
	((8. Did you own or operate) 6. Owned a medical cannabis dispensary or collective garden, licensed as a business, prior to July 1, 2016 ((10 points?)) = 15 points  ((or Did you own and operate)) Owned a medical cannabis dispensary or collective garden licensed as a business in a DIA ((30 points?)) = 30 points	((40))  ((30 in a DIA)) 30
	((9. Have you held or do you currently hold 51 percent majority/controlling interest of a state cannabis (marijuana) retailer license? No = 10 points Yes = 0 points)) 7. Applied during the HB 2870 social equity application window, qualified as a social equity applicant, but were not eligible to be issued a license	((40)) 15
	<b>Total Maximum Points</b>	<b>((310)) 300 points</b>

~~((ix) The social equity contractor will provide the board with a list of eligible and scored social equity applicants.~~

~~(x) Neither the social equity contractor nor its employees shall benefit from any license or licenses granted as a result of their review.~~

~~(d)(i) **Board review.** Social equity applicants that are scored highest by the social equity contractor within the county selected by the social equity applicant will be processed by the board.~~

~~(ii) In the event of a tie, the board will use a double blind lottery conducted by an independent third party to identify the application(s) that will be processed.) (c) **Preliminary score.** Upon initial assessment of the social equity program application materials, the social equity contractor will provide the registrant with a preliminary score, along with a comprehensive explanation of the score detailing the points allocated for each criterion.~~

~~(i) The registrant may submit additional documentation to potentially improve the final score. Documentation must be submitted in the form and manner specified by the social equity contractor no later than 21 calendar days after being provided the preliminary score.~~

~~(d) **Final score.** Prior to issuing the final score, the social equity contractor may adjust the registrant's preliminary score based on a review of any additional documentation provided. The social equity contractor will notify registrants and qualified social equity applicants of the final score and include a detailed explanation of the scoring decision.~~

~~(e) **Prioritization.** Qualified registrants with highest final scores will be prioritized by the social equity contractor to be included on the list of social equity applicants who are selected to apply for a social equity license.~~

~~(f) **Double-blind lottery.** If a tie should occur among qualified registrants with identical scores, a double-blind lottery will be used to prioritize the social equity applicants who may proceed with applying for a social equity license. The double-blind lottery will be conducted by a third-party contractor who is separate from the social equity contractor reviewing and scoring the application.~~

~~(g) **Conflict of interest.** It is a conflict of interest and violation of this chapter if the social equity contractor, the third-party contractor conducting the double-blind lottery, or employees of any contractor benefit from any social equity license granted under this section. Any conflicts of interest between a contractor and applicant or cannabis licensee may result in the denial of an application or a revocation of the cannabis license.~~

~~(7) **Board notification.**~~

~~((e)) (a) **Preliminary letter of approval.** Once the social equity applications that will be processed are identified as described in this section, eligible social equity applicants will be issued a preliminary letter of approval.~~

~~((4) **Additional provisions.**~~

~~(a) **Time restrictions.** There are no time restrictions for a social equity applicant to select and secure a location.~~

~~(b) **Ownership changes.** Social equity applicants may not make ownership changes to an application after the application has been reviewed, scored, and prioritized by the social equity contractor.) (b) **Withdrawal letter.** The board will issue a withdrawal letter notifying registrants that are not eligible to apply for a social equity license if:~~

~~(i) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;~~

~~(ii) The social equity program application materials are not received by the social equity contractor in a timely manner;~~

(iii) The social equity registrant is not qualified for the social equity program based on the determination made by the social equity contractor;

(iv) The social equity registrant is deemed qualified for the social equity program but did not score high enough to be prioritized, based on the score provided by the social equity contractor or the social equity registrant was not selected in a lottery to determine which registrants could move forward.

(v) The social equity registrant makes a voluntary request to the board, in writing, to voluntarily withdraw the social equity program application being reviewed and scored by the social equity contractor. The voluntary withdrawal of a social equity program application does not result in a hearing right.

~~((e)) (8) Social equity ((applicants may apply for a social equity)) license ((once per)) application ((window)). ((If a social equity applicant applies more than once, the board will accept only the first application.~~

~~(d) **License mobility.** Social equity licenses that are currently designated to specific cities may be located anywhere within the county in which the city is located. However, the license may not be transferred outside of that county.~~

~~(e) **Qualifying for the social equity program will not result in or guarantee cannabis business license approval.** Social equity applicants must meet all license qualifications in WAC 314-55-077 and this chapter to receive a license.) Once the board issues the preliminary letter of approval, selected applicants may submit social equity license application materials to the board. Qualifying as a social equity applicant does not guarantee the issuance of a social equity license.~~

(a) **Licensing requirements.** To qualify for a social equity license, applicants must meet the licensing requirements provided in this chapter, RCW 69.50.331, and RCW 69.50.335.

(b) **Location and financing.** There are no time restrictions for when a social equity applicant must select and secure a location and/or financing. Social equity registrants who applied under chapter 220, Laws of 2023, have been scored and prioritized pursuant to this section by the social equity contractor and have been selected to apply for a new social equity license may locate the initial licensed business to any city, town, or county in the state of Washington, one time only. Once the initial licensed location is established it may not be moved from the selected city, town, or county.

(c) **County threshold.** The board will establish license thresholds for each county to ensure there is an adequate amount of access to licensed sources of cannabis, cannabis concentrates, usable cannabis, and cannabis-infused products to discourage purchases from the illegal market. The board shall conduct a license threshold determination every three years, beginning July 1, 2029. In making its determination, the board shall consider market conditions, economic trends, demographics, and other relevant factors. County thresholds will be publicly posted and updated every three years and will be accessible to all stakeholders and the general public via the internet.

(d) **Retailer license mobility.** Effective January 1, 2026, social equity applicants, who applied under chapter 236, Laws of 2020, may change the initial business location from their currently allocated local jurisdiction under the following conditions:

(i) The qualifying licensee has not secured a location in the initial county where their license is allocated; and

(ii) Any relocation into a different county requires the qualifying social equity licensee to have received an application score which exceeds the lowest score awarded for successful applicants in the desired county.

(iii) The lowest scores awarded for successful applicants under chapter 236, Laws of 2020, by county will be posted online.

(e) **Local ordinance.** The board will substantially consider an objection from an incorporated city or town, or county for a proposed location of a social equity retail license if an ordinance limiting retail outlet density is in effect in the area prior to the board receiving the license application.

(f) **License transfer and assumption.** Licenses awarded under this section may not be transferred or assumed within the first year of the license being issued. After the first year and up to the fifth year from the date of the initial license approval, licenses awarded under this section may only be transferred to or assumed by individuals or groups of individuals who meet the ((definition)) qualifications of a social equity program applicant ((for a period of five years from the date of the initial license was approved)).

(g) **Appeals.** An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the board no later than 20 days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee.

~~((5) **Social equity title certificate holders.**)~~ (9) **Title certificate holders.** A title certificate holder ((that meets the requirements of a social equity program applicant as determined by the social equity contractor may reinstate their retail cannabis license anywhere within the county that they hold their title certificate.

~~(6) **Application withdrawal.** The board will withdraw a social equity application if:~~

~~(a) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;~~

~~(b) The social equity program application materials are not timely received by the social equity contractor;~~

~~(c) The social equity applicant is not selected to continue with the licensing application process; or~~

~~(d) The social equity applicant(s) requests withdrawal of the social equity program application at any time in the application process. The social equity applicant(s) must request withdrawal in writing. The voluntary withdrawal of a social equity program application does not result in a hearing right.)~~ means a licensee who is unable to open for business in the city or county where the cannabis retail license was originally located due to a ban or moratorium.

(a) Title certificate holders that meet the requirements of a social equity applicant under chapter 220, Laws of 2023, may reinstate their existing license under the social equity program, and locate anywhere in the county where the cannabis retail license was originally located. To reinstate a license under the social equity program, title certificate holders must first register through the board to then submit application materials to the social equity contractor for an eligibility determination, as defined in this chapter and RCW 69.50.335. Scoring by the social equity contractor is not required as part of eligibility determination.

(i) Prior to submitting application materials to the board to reinstate the license under the social equity program, the title certificate holders must have an established business entity structure that has been approved by the board.

(ii) Individuals registering and submitting application materials for an eligibility determination, who are contributing to the required 51 percent ownership, may not be removed after the title certificate holder registers and submits application materials to the social equity contractor during the 30-day registration window.

(iii) An application to reinstate a license and application for a social equity license must be submitted to the board.

(iv) Neither a new location for the retail license in the county or financing are required at the time of the application to reinstate an existing cannabis license.

(v) Nothing shall prevent a title certificate holder from applying for a social equity license under chapter 220, Laws of 2023, in addition to reinstating a license under the social equity in cannabis program. Only social equity registrants receiving a score by the social equity contractor are eligible to be prioritized for a new license under this section.

(10) **Social equity plan reimbursement.** All cannabis licensees with an active license may submit a social equity plan, as defined in RCW 69.50.101, to the board for a one-time reimbursement that equals the cost of the licensee's annual cannabis license renewal fee, one per entity. The board will reimburse the licensee no later than 30 calendar days after the social equity plan has been received and verified.

(a) Reimbursements may only be provided to licenses that are currently operational, and not in the process of assumption, acquisition, or discontinuation of business activities.

(b) Social equity applicants or those who hold a social equity license are not required to pay a license renewal fee.