

**WSR 24-24-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed December 2, 2024, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-116.

Title of Rule and Other Identifying Information: The department of social and health services (department) is proposing to amend WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through 388-71-05640, 388-106-0010 What definitions apply to this chapter?, 388-106-0060 Who must perform the assessment?, and 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client?

WAC 388-106-0010 was filed as a part of a CR-101 on June 17, 2024, with WSR 24-13-075. That rule making will be placed on hold for this rule making to proceed. The department may amend other related rules as required. The department is allowed to contract with a federally recognized Indian tribe to determine eligibility including assessments and reassessments, authorize and reauthorize services, and perform case management functions for medicaid long-term services and supports clients within the tribe's authority.

Hearing Location(s): On January 22, 2025, at 10:00 a.m., virtually via Teams or call in. See the department 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 January 23, 2025.

Submit Written Comments to: 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 December 4, 2024, by 5:00 p.m. on January 22, 2025.

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 January 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC to implement SB 5866, an act relating to medicaid long-term services and supports eligibility determinations being completed by federally recognized Indian tribes. SB 5866 amended RCW 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

Reasons Supporting Proposal: The passage of SB 5866, (chapter 255, Laws of 2022).

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

Statute Being Implemented: RCW 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

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

Name of Proponent: Tribal governments and department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dru Aubert, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2524.

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 are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact department customers and federally recognized Indian tribes.

Scope of exemption for rule proposal:

Is fully exempt.

November 26, 2024  
Katherine I. Vasquez  
Rules Coordinator

### SHS-5055.3

AMENDATORY SECTION (Amending WSR 22-19-048, filed 9/15/22, effective 10/16/22)

**WAC 388-71-0503 What definitions apply to ((~~WAC 388-71-0500 through WAC 388-71-05640~~)) this chapter?** "Agency provider" means a long-term care worker who works for a home care agency.

"Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs, and to provide case management services and supports to individuals 18 and older who receive medicaid-funded ((LTC)) long-term care (LTC) in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Background check" means a name and date of birth check, or a fingerprint-based background check, or both.

"Background check result" is defined in WAC 388-113-0010.

"Background check central unit (BCCU)" means the DSHS entity responsible for conducting background checks for the department.

**"Character, competence, and suitability determination (CC&S)"** is defined in WAC 388-113-0050.

**"Client"** means an individual receiving medicaid-funded in-home long-term services from the department.

**"Conflict of interest"** means under 42 CFR 431 (c) (1) (vi), case management must be separate from service delivery functions. A contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs, and to provide case management services and supports to individuals 18 and older who receive medicaid-funded LTC in their own homes must comply with conflict-free case management.

**"Department"** means the department of social and health services or its designees.

**"Family member"** includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

**"Federally recognized Indian tribe"** means self-governing American Indian/Alaskan Native (AI/AN) governments recognized under applicable federal and common law. Because of their sovereignty, federally recognized tribes have the inherent power to make and enforce laws on their lands, and to create governmental entities. A federally recognized tribe is an AI/AN tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs. In addition, for the purpose of this rule, federally recognized Indian tribes are contracted entities that the aging and long-term support administration (AL TSA) may grant funds to carry out functions and to provide case management services and supports to individuals 18 and older who receive medicaid-funded long-term care in their own homes and general fund state programs.

**"Fingerprint-based background check"** means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

**"Home care agency (HCA)"** means an entity that is licensed by the department of health to provide home care services through a contract arrangement with the department to clients in places of permanent or temporary residence.

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

**"Long-term care worker"** means a direct care ((workers)) worker employed by a home care ((agencies)) agency.

**"Name and date of birth check"** is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

**"Negative actions"** are listed in WAC 388-113-0030.

AMENDATORY SECTION (Amending WSR 23-16-085, filed 7/28/23, effective 8/28/23)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you made yourself understood to

those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

- (1) Understood: You expressed ideas clearly;
- (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;
- (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (such as food, drink, sleep, toilet);
- (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (such as indicated presence of pain or need to toilet);
- (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

(~~{**"Active range of motion"** means}~~) **"Active range of motion"** means exercises performed by the client to maintain their joint function to the joint's optimal range. Exercises may be performed with the assistance of cueing or reminders by caregivers. A formal, active range of motion program needs to be first established by a qualified registered nurse or therapist. Range of motion may be self-directed based upon an occupational or physical therapist assessment and continued without occupational or physical therapist supervision.

**"Activities of daily living (ADL)"** means the following:

- (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.
- (2) Bed mobility: How you moved to and from a lying position, turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.
- (3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.
- (4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, such as, by mouth, tube, or through a vein. Eating does not include any set up help you received, such as bringing food to you or cutting it up in smaller pieces.
- (5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.
- (6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility, or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

(7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

(8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

(9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy, or catheter bag. This type of set up assistance is considered under the definition of support provided.

(10) Transfer: How you moved between surfaces, such as, to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in/out of a vehicle.

(11) Personal hygiene: How you maintained personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene tasks completed in baths and showers.

**"Age appropriate"** proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

**"Aged person"** means a person 65 years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Alternative benefit plan"** means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

**"Assessment or reassessment"** means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

**"Assistance available"** means the amount of assistance that will be available for a task if status is coded:

Partially met due to availability of other informal support. The department determines the amount of the assistance available using one of four categories:

- (1) Less than one-fourth of the time;
- (2) One-fourth to one-half of the time;
- (3) Over one-half of the time to three-fourths of the time; or
- (4) Over three-fourths but not all of the time.

**"Assistance with body care"** means you received or need assistance with:

- (1) Application of ointment or lotions;
- (2) Trimming of toenails;
- (3) Dry bandage changes; or
- (4) Passive range of motion treatment.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the health care authority.

**"Body care"** means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- (1) Foot care if you are diabetic or have poor circulation; or
- (2) Changing bandages or dressings when sterile procedures are required.

**"Bowel program"** means a regular, ongoing program, other than oral medications, that must include interventions such as rectal stimulation using the finger, over the counter suppositories, or enemas to facilitate evacuation of your bowels. Regimens only promoting bowel regularity, including oral medications or supplements, nutrition, hydration, or positioning are not considered in this definition.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

**"Child"** means an individual less than 18 years of age.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current behavior"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (1) Whether the behavior is easily altered or not easily altered; and
- (2) The frequency of the behavior.

**"Decisions"** means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks of daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

- (1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values;
- (2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations;
- (3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues, and supervision in planning,

organizing, and correcting daily routines. You attempted to make decisions, although poorly;

(4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions;

(5) Child under 12: Proficiency in decision making is not expected of a child under 12 and a child under 12 would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Department"** means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

**"Designee"** means area agency on aging or federally recognized Indian tribe.

**"Developmental milestones table"** is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

**"Disability"** is described under WAC 182-500-0025.

**"Disabling condition"** means you have a medical condition which prevents you from self-performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

**"Health action plan"** means an individual plan, which identifies health-related problems, interventions, and goals.

**"Home health agency"** means a licensed:

(1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(a) Private duty nursing; or

(b) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC 182-509-0001.

**"Individual provider"** under RCW 74.39A.240 means a person, including a personal aide, who, under an individual provider contract with the department, or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the medicaid state plan, medicaid waiver programs, or similar state-funded in-home care programs.

**"Informal support"** means:

(1) Assistance that will be provided with the client's agreement as expressed in the assessment process without home and community-based services funding, except as allowed in subsection (3) of this definition. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: Family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs.

(2) The department will not consider an individual provider to be a source of informal support unless:

(a) The individual provider is also a family member or a household member who had a relationship with the client that existed before

the individual provider entered into a contract with the department;  
and

(b) The individual provider signs a written agreement that states:

(i) The individual provider understands that the provision of unpaid informal support is voluntary;

(ii) The individual provider understands that if they decline to provide unpaid informal support that the client's benefit could increase and that the client could choose to assign those increased hours to the individual provider;

(iii) If there is a collective bargaining representative that represents the individual provider for the purposes of collective bargaining, the individual provider is informed as to the collective bargaining representative's opinion, if any, about whether the individual provider should agree to provide unpaid informal supports;

(iv) The individual provider understands that the individual provider may stop providing unpaid informal support at any time by informing the case manager that the individual provider wishes to stop providing unpaid informal support; and

(v) The individual provider understands that if the individual provider is a family member or had a household relationship with the client prior to becoming the client's individual provider that they may provide unpaid care to a client above and beyond the individual provider authorization regardless of whether they are providing informal support.

(3) Adult day health and adult day care is coded in the assessment as a source of informal support, regardless of funding source;

(4) Informal support does not include age appropriate functioning.

**"Institution"** means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community in 30 days prior to the assessment and includes the following:

(1) Meal preparation: How meals were prepared (such as, planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). **NOTE:** The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

(2) Ordinary housework: How ordinary work around the house was performed (such as, doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

(3) Essential shopping: How shopping was completed to meet your health and nutritional needs (such as, selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities, and household items required specifically for your health, maintenance, or well-being. This includes shopping with or for you.

(4) Wood supply: How wood or pellets were supplied (such as, splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating or cooking.

(5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving a vehicle yourself or traveling as a passenger in a car, bus, or taxi.



**"Long-term care services"** means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

**"MAGI"** means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

**"Medicaid"** is defined under WAC 182-500-0070.

**"Medically necessary"** is defined under WAC 182-500-0070.

**"Medically needy (MN)"** or **"medically needy program (MNP)"** means the state and federally funded health care program available to specific groups of people who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income or resources above the CN standard may also qualify for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

- (1) The design, delivery, and evaluation of services and supports;
- (2) Exercising control of decisions and resources, and making their own decisions about health and well-being;
- (3) Determining how to meet their own needs;
- (4) Determining how and by whom these needs should be met; and
- (5) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

- (1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;
- (2) In a building that you own;
- (3) In a relative's established residence; or
- (4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Passive range of motion"** means a maintenance movement exercise of each joint only to the extent the joint can move. Passive range of motion is performed by a caregiver because the client is unable to move the joint without assistance. A formal passive range of motion program needs to be first established by a qualified registered nurse or therapist. Passive range of motion may be self-directed based upon an occupational or physical therapist assessment and continue without occupational or physical therapist supervision.

**"Past behavior"** means the behavior did not occur in the last seven days, but did occur more than seven days from the assessment date. For behaviors indicated as past behaviors, the department documents the month and year the behavior last occurred and whether the behavior is addressed with current interventions or whether no interventions are in place.

"**Personal aide**" is defined in RCW 74.39.007.

"**Personal care services**" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"**Physician**" is defined under WAC 182-500-0085.

"**Plan of care**" means assessment details and service summary generated by CARE.

"**Provider or provider of service**" means an institution, agency, or person:

(1) Having a signed department contract to provide long-term care client services; and

(2) Qualified and eligible to receive department payment.

"**Reasonable cost**" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"**Representative**" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"**Residential facility**" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care, or enhanced adult residential care.

"**Self-performance for ADLs**" means a code based on what you actually did for yourself and how much help you received with ADLs, with the exception of bathing, in the last seven days before your assessment, not what you might be capable of doing. For codes of supervision, limited assistance, and extensive assistance, self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADL codes of supervision, limited assistance, and extensive assistance, does not include physical assistance that occurred less than three times in the seven-day look back period, or set-up help for any self-performance ADL code.

(1) Based on information provided during your assessment, the CARE tool assigns a self-performance code to each ADL. When you received the same type of help (such as oversight, nonweight bearing, or weight bearing help) with an ADL at least three times, CARE assigns the self-performance code associated with the most dependent type of help you received at least three times. Your self-performance level code is:

(a) Independent, if you received:

(i) ((~~no~~)) No help, including oversight, encouragement, or cueing, or;

(ii) ((~~help~~)) Help including oversight, encouragement, or cueing only once or twice in the seven-day period;

(b) Supervision, if you received oversight (monitoring or stand-by), encouragement, or cueing three or more times;

(c) Limited assistance, if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs three or more times;

(d) Extensive assistance, if you performed part of the ADL, but on three or more occasions, you needed weight bearing help or you did not participate in a subtask of the ADL, but did participate in other subtasks of the ADL;

(e) Total dependence, if you did not participate at all in the completion of the ADL. Every time the ADL was completed during the entire seven-day period, you received complete assistance of all sub-tasks completed during the entire seven-day period by others; or

(f) Did not occur, if you or others did not perform the ADL over the last seven days before your assessment. This means the activity did not happen. For example, for "walk in room" to have a code of "did not occur" it means in the last seven days before your assessment, you did not walk even one time. The ADL may not have occurred because:

(i) You were not able (such as, you were not able to walk because you are paralyzed);

(ii) No provider was available to assist; or

(iii) You declined help with the task.

(2) When your self-performance code is not independent, extensive assistance, total dependence, or did not occur, and you received help with the ADL at least three times, but not three times of the same type of help, the CARE tool determines a self-performance code by:

(a) Selecting the three times where you received the most help; and

(b) Assigning a self-performance code based on the least dependent type of help of those three times.

(3) CARE assigns a self-performance code of:

(a) Supervision, if oversight, encouragement, or cueing was the least dependent type of help you received of the three times; or

(b) Limited assistance, if nonweight bearing help or guided maneuvering of your limbs was the least dependent type of help you received out of the three times.

(c) For example, if you received oversight help twice, nonweight bearing help twice, and weight bearing help twice, CARE:

(i) Selects two times of weight bearing help and one time of non-weight bearing help because these were the three times where you received the most help; and

(ii) Assigns a self-performance code of limited assistance because nonweight bearing help was the least dependent type of help you received out of the three times where you received the most help.

**"Self-administration of medication"** means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

(1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

(2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter ((246-888)) 246-980 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

(4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be per-

formed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

**"Self-performance for bathing"** means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven-day look back period, or set-up help. Your self-performance level is scored as:

(1) Independent, if you received no help or oversight to complete the ADL of bathing.

(2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

(3) Physical help transfer only, if in order to bathe you had help to transfer only.

(4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

(5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

(6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

(a) You were not able (for example, you may be paralyzed);

(b) No provider was available to assist; or

(c) You declined because you chose not to perform the ADL.

**"Self-performance for IADLs"** means what you actually did in the last 30 days before the assessment, not what you might be capable of doing or how well you performed the IADL. Scoring is based on the level of performance that occurred at least one time in the 30-day period. Your self-performance is scored as:

(1) Independent, if you received no help, set-up help, or supervision;

(2) Assistance, if you received any type of help with the activity, including setup, cueing, or monitoring, or the activity was fully performed by others in the last 30 days;

(3) Total assistance, if you are a child and needed the IADL fully performed by others and you are functioning outside of typical developmental milestones; or

(4) IADL did not occur, if you or others did not perform the IADL in the last 30 days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (such as, emergency contacts), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a preferred schedule if identified by the client, identified referrals, and dates and agreement to the outlined services.

**"SSI-related"** is defined under WAC 182-512-0050.

**"Status"** means the level of assistance:

(1) That will be provided by informal supports; or

(2) That will be provided to a child primarily due to his or her age.

(3) The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(e) Client declines, which means you will not want assistance with the task.

**"Supplemental security income (SSI)"** means the federal program as described under WAC 182-500-0100.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

(1) No set-up or physical help provided by others;

(2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

(3) One-person physical assist provided;

(4) Two- or more person physical assist provided; or

(5) ADL did not occur during entire seven-day period.

**"Task"** means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

**"Turning and repositioning program"** is a consistent and organized method in which your caregiver must position and realign your body to prevent or treat skin breakdown. This program is needed because you are physically unable to reposition yourself while sitting or lying down.

**"You/your"** means the client.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

**WAC 388-106-0060 Who must perform the assessment?** The assessment must be performed by the department, an area agency on aging, or a federally recognized Indian tribe contracted with the department, as described in chapters 388-106 and 388-828 WAC. ((Beginning January 1, 2008, individuals requesting personal care services will be assessed as described in the following chart:))

((Age of person requesting an assessment for personal care services	Has the person been determined to meet DDD eligibility requirements?	Who will perform the assessment for personal care services?	What assessment will be used?
Under eighteen years of age	Yes	DDD	CARE/DDD Assessment per chapter 388-828 WAC
Under eighteen years of age	No	DDD	CARE/LTC Assessment per chapter 388-106 WAC
Eighteen years of age and older	Yes	DDD	CARE/DDD Assessment per chapter 388-828 WAC
Eighteen years of age and older	No	HCS	CARE/LTC Assessment per chapter 388-106 WAC))

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

**WAC 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client?** In providing care to a client, the consumer directed employer must:

- (1) Be responsible that the client assigned individual provider(s) understands the approved plan of care;
- (2) Assign client approved tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;
- (4) Contact the client, client's representative, and case manager when there are changes observed by the individual provider that affect the personal care and other tasks listed on the plan of care;
- (5) Be responsible that the individual provider(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital or moves to another setting;
- (7) Notify the case manager immediately in the event of the client's death;
- (8) Notify the department (~~(or AAA)~~), area agency on aging, or federally recognized Indian tribe responsible for the client's case management, immediately when unable to staff/serve the client;
- (9) Comply with time keeping requirements, and keep accurate records of time of authorized/paid hours that are accessible to the appropriate department or designee staff; and
- (10) Comply with all applicable laws and regulations.

**WSR 25-01-020**  
**PROPOSED RULES**  
**CENTRALIA COLLEGE**

[Filed December 6, 2024, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [24-21-040].

Hearing Location(s): On January 22, 2025, at 4:00 - 5:00 p.m., in the Hanson Board Room, Centralia College (college).

Date of Intended Adoption: January 27, 2025.

Submit Written Comments to: Robert Cox, 600 Centralia College Boulevard, email robert.cox@centralia.edu, beginning December 6, 2024, by January 20, 2025.

Assistance for Persons with Disabilities: Mike Hoel, phone 360-623-8437, email michael.hoel@centralia.edu, by January 20, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes will bring the college in compliance with federal law.

Reasons Supporting Proposal: The Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment. The emergency WAC is currently in effect. This will permanently update the college's student conduct code to be compliant with federal regulations.

Statutory Authority for Adoption: 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.

Statute Being Implemented: New chapter 132L-352 WAC; repeal chapter 132L-351 WAC.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Cox, TAC, Centralia College, 360-623-8385.

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: [No further information supplied by agency].

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

December 6, 2024

Robert Cox

Vice President of Student Services

**OTS-5641.2**

**Chapter 132L-352 WAC**  
**CENTRALIA COLLEGE—STUDENT RIGHTS AND RESPONSIBILITIES CODE**

NEW SECTION

**WAC 132L-352-005 Authority.** The Centralia 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 services or their 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. This code will govern all issues that happen after August 1, 2024. Chapter 132L-351 WAC will govern all issues that happen prior to August 1, 2024.

NEW SECTION

**WAC 132L-352-010 Statement of jurisdiction.** (1) The student conduct code shall apply to conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college programs or activities; or
- (c) 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 locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the 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 the time they gain admission to the college through the 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 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 students 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.

#### NEW SECTION

**WAC 132L-352-015 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.

(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 student affairs, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation 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 that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(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.

#### NEW SECTION

**WAC 132L-352-020 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

(1) "**Business day**" means a weekday, excluding weekends and college holidays.

(2) "**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.

(3) "**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.

(4) "**Conduct review officer**" is a college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(5) "**Disciplinary action**" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(6) "**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 a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(7) "**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.

(8) "**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.

(9) "**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.

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

(11) "**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.

(12) "**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.

(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 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 that the document is emailed and deposited in the mail, whichever is first.

(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 a "student" for purposes of this chapter.

(16) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(17) **"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.

(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 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.

(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.

NEW SECTION

**WAC 132L-352-030 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 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.

(b) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, 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.

(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, 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 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 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, 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.

(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 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.

(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) **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.

(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.** Carrying, exhibiting, displaying, or drawing any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrant alarm for the safety of other persons.

#### NEW SECTION

**WAC 132L-352-035 Corrective action, disciplinary sanctions, terms and conditions.** (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student 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 this code of conduct 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. 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.

(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 suspension is imposed.

(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) 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 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 deemed "not in good standing" with the college 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) **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 the professional within the scope of practice and with the professional credentials as defined by the college and the evaluation is at the student's expense. 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 for reasonable costs incurred by the college in pursuing an investigation or disciplinary pro-

ceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(h) **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.

(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 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.

#### NEW SECTION

**WAC 132L-352-040 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 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.

#### NEW SECTION

**WAC 132L-352-045 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 discrimina-

tion, 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 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.

(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 132L-352-035; 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, 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.

#### NEW SECTION

**WAC 132L-352-050 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132L-352-045(12) (Initiation of Disciplinary Action), 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;

(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.

NEW SECTION

**WAC 132L-352-055 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. 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 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 21 calendar 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 in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

**WAC 132L-352-060 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 21 calendar days of service of the initial decision.

(2) The president 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 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 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 does not make a disposition of the matter within 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 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

**WAC 132L-352-065 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.

(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 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.

NEW SECTION

**WAC 132L-352-070 Student conduct committee—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 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 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) 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) 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) 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;

(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.

#### NEW SECTION

**WAC 132L-352-075 Student conduct committee—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 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 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.

(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.

#### NEW SECTION

##### **WAC 132L-352-080 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the committee chair shall permit

the parties to make closing arguments in whatever form, 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 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The 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 decision shall also include a determination of appropriate sanctions, 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(s) 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 its decision to be served on the parties and their attorney, if any. The notice will inform all 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 sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

#### NEW SECTION

**WAC 132L-352-085 Student conduct committee—Review of initial decision.** (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.

#### NEW SECTION

**WAC 132L-352-090 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 calendar 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(s) 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 respondent that 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 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) 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 sex discrimination, 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.

**WSR 25-01-028**

**WITHDRAWAL OF PROPOSED RULES**

**BUILDING CODE COUNCIL**

(By the Code Reviser's Office)

[Filed December 9, 2024, 8:15 a.m.]

WAC 51-54A-0308, proposed by the building code council in WSR 24-07-097, appearing in issue 24-07 of the Washington State Register, which was distributed on April 3, 2024, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register



**WSR 25-01-029**

**WITHDRAWAL OF PROPOSED RULES**

**BUILDING CODE COUNCIL**

(By the Code Reviser's Office)

[Filed December 9, 2024, 8:15 a.m.]

WAC 51-55-001, 51-55-002, 51-55-003, 51-55-008, 51-55-0100, 51-55-0200, 51-55-0300, 51-55-0400, 51-55-0500, 51-55-0600, 51-55-0700, 51-55-0800, 51-55-0900, and 51-55-1000, proposed by the building code council in WSR 24-07-098, appearing in issue 24-07 of the Washington State Register, which was distributed on April 3, 2024, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

## WSR 25-01-039

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed December 10, 2024, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-036.

Title of Rule and Other Identifying Information: Chapter 132H-106 WAC, Bylaws and standing orders of community college district VIII.

Hearing Location(s): On January 24, 2025, at 11:00 a.m. - 12:00 p.m., via Zoom. Join Zoom meeting <https://bellevuecollege.zoom.us/j/85884188947>, Meeting ID 858 8418 8947.

Date of Intended Adoption: March 19, 2025.

Submit Written Comments to: Loreen McRea Keller, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email [loreen.keller@bellevuecollege.edu](mailto:loreen.keller@bellevuecollege.edu).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Alignment with Bellevue College board of trustees policy manual and planned adoption of WAC as policy 1000.

Reasons Supporting Proposal: Update sections, move several sections from WAC, align with Bellevue College board policy.

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

Statute Being Implemented: RCW 28B.50.140(13).

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: Lori McRea Keller, 3000 Landerholm Circle S.E., Bellevue, 20007 [98007], 425-564-6155.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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.

December 10, 2024

Loreen M. Keller

Associate Director

Policy and Government Relations

OTS-6026.1

AMENDATORY SECTION (Amending WSR 09-07-048, filed 3/11/09, effective 4/11/09)

**WAC 132H-106-010 Board of trustees.** The board of trustees is an agency of the state and derives its authority as described in RCW 28B.50.100 and 28B.50.140. It shall be the responsibility of the board of trustees to establish policy and to evaluate the total college program. The board of trustees shall appoint a college president to administer the college and shall delegate to ~~((him/her))~~ them the authority and responsibility for implementation of board policy.

AMENDATORY SECTION (Amending WSR 02-10-067, filed 4/26/02, effective 5/27/02)

**WAC 132H-106-030 Meetings of the board of trustees.** Meetings may be held upon request by the chair or by a majority of the members of the board.

The board of trustees customarily holds a regular meeting at such time and place as it may designate ~~((approximately))~~ every four to six weeks from January through June and from ~~((September))~~ October through December. Exact board meeting dates may be found in the Washington State Register or ~~((by contacting the president's office at (425) 564-2302))~~ on the board of trustees website.

(1) All regular and special meetings of the board of trustees shall be announced and held in accordance with chapter 42.30 RCW (the Open Public Meetings Act).

(2) No official business shall be conducted by the board of trustees except during a regular or special meeting.

(3) The board of trustees may convene in executive session whenever it is deemed necessary pursuant to RCW 42.30.110.

AMENDATORY SECTION (Amending WSR 09-07-048, filed 3/11/09, effective 4/11/09)

**WAC 132H-106-040 Officers of the board.** The board ~~((annual-ly))~~ elects from its membership a chair and vice chair to serve for the ensuing year. The president of Bellevue College or the president's designee serves as secretary to the board of trustees as specified by ~~((state law))~~ RCW 28B.50.100.

NEW SECTION

**WAC 132H-106-055 Organization/operation of the college.** (1) Organization: Bellevue College, Community College District VIII is established in Title 28B RCW as a public institution of higher education. The institution is governed by a six-member board of trustees, appointed by the governor. The board employs a president, who acts as the senior executive officer of the institution. The president establishes the structure of the administration.

(2) Operation: The administrative office is located at the following address: 3000 Landerholm Circle S.E., Bellevue, Washington

98007-6484. Educational operations may be located at other sites throughout the district. The office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. During the summer months the college operates on an alternate schedule, and throughout the year, some evening services are provided. Specific information is available through the college public information office and at the college website.

(3) Additional and detailed information concerning the educational offerings may be obtained at the college website [bellevuecollege.edu](http://bellevuecollege.edu).

WSR 25-01-040

PROPOSED RULES

BELLEVUE COLLEGE

[Filed December 10, 2024, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-037.

Title of Rule and Other Identifying Information: Organization and general operating policies of community college district VIII.

Hearing Location(s): On January 24, 2025, at 9:45 - 10:45 a.m., via Zoom. Join Zoom meeting <https://bellevuecollege.zoom.us/j/84729592165>, Meeting ID 847 2959 2165.

Date of Intended Adoption: March 19, 2025.

Submit Written Comments to: Loreen McRea Keller, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email [loreen.keller@bellevuecollege.edu](mailto:loreen.keller@bellevuecollege.edu).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Alignment with Bellevue College board of trustees policy manual and planned adoption of WAC as policy 1050.

Reasons Supporting Proposal: Update sections, move several sections from WAC, and align with Bellevue College board policy.

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

Statute Being Implemented: RCW 28B.50.140(13).

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: Lori McRea Keller, 3000 Landerholm Circle S.E., Bellevue, 20007 [98007], 425-564-6155.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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.

December 10, 2024

Loreen M. Keller

Associate Director

Policy and Government Relations

OTS-6027.1

Chapter 132H-133 WAC

~~(( ORGANIZATION AND GENERAL OPERATING POLICIES ))~~ COMMERCIAL ACTIVITY OF COMMUNITY COLLEGE OF DISTRICT VIII

AMENDATORY SECTION (Amending WSR 92-19-049, filed 9/10/92, effective 10/11/92)

**WAC 132H-133-010 Title.** WAC 132H-133-010 (~~through 132H-133-150~~) and 132H-133-050 shall be known as the (~~organization and general operating policies~~) commercial policy of Community College District VIII.

AMENDATORY SECTION (Amending WSR 03-01-009, filed 12/5/02, effective 1/5/03)

**WAC 132H-133-050 Commercial activity policy.** (~~The mission of Community College District VIII, Bellevue Community College, is to provide comprehensive educational programs of the highest quality as provided for in the Community College Act of 1967. These programs will be responsive to the changing needs of the communities and the students served by our district and will be accessible to all those seeking to continue their education.~~)

To promote the mission of Bellevue (~~Community~~) College it is often necessary to engage in commercial activities that provide goods and services that meet special needs of students, faculty, staff, and members of the public participating in college activities and events.

Chapter 28B.63 RCW establishes standards for institutions of higher education to follow in conducting commercial activities. (~~The purpose of these laws is to require institutions of higher education to define the legitimate purposes under which commercial activities may be approved by a college or university and to establish mechanisms for review of such activities.~~) The purpose of the policy statement and standards that follow is to (~~assure~~) ensure that Bellevue (~~Community~~) College pursues commercial activities in compliance with chapter 28B.63 RCW and that all commercial activities of the college serve the mission of the college.

(1) **Policy statement.** Bellevue (~~Community~~) College may engage in the providing of goods, services, or facilities for a fee only when such are directly and substantially related to the educational mission of the college. Fees charged for goods, services (~~+~~), and facilities shall reflect their full direct and indirect costs, including overhead. They shall also take into account the price of such items in the private marketplace.

(2) **Approval and review of commercial activities.** The vice president of administrative services or designee shall be responsible for the approval of new commercial activities and the periodic review of existing ones. It shall be the responsibility of this (~~officer to assure~~) office to ensure that each commercial activity meets the criteria established for commercial activities of the college. Proposals for new or altered services shall be approved by the vice president of administrative services or designee prior to implementation.

(3) **Criteria for commercial activities serving members of the campus community.** Each of the following criteria shall be used in assessing the validity of providing goods or services to members of the campus community:

(a) The goods or services are substantially and directly related to the mission of the college.

(b) Provision of the goods, services, or facilities on campus represents a special convenience to the campus community or facilitates extracurricular activities.

(c) Fees charged for the goods, services, or facilities shall take into account the full direct and indirect costs, including overhead. They shall also reflect the costs of such items in the private marketplace.

(d) Procedures adequate to the circumstances shall be observed to ensure that the goods and services are provided only to (~~persons who are~~) students, faculty, staff, or invited guests.

**(4) Criteria for providing commercial activities to the external community.**

(a) The goods, services, or facilities provided relate substantially and directly to the mission of the college and are not commonly available or otherwise easily accessible in the private marketplace and are (~~in~~) in demand from the external community.

(b) Fees charged for the goods, services, or facilities shall take into account the full direct and indirect costs, including overhead. They shall also reflect the price of such items in the private marketplace.

(5) **Definitions and limitations.** "Commercial activity" means an activity which provides a product or service for a fee which could be obtained from a commercial source. This definition shall be used to determine which activities shall be governed by this policy, except that this policy shall not apply to:

(a) The initiation of or changes in academic or vocational programs of instruction in the college's regular, extension, evening, or continuing education programs;

(b) Fees for services provided in the (~~practicum~~) practical aspects of instruction;

(c) Extracurricular programs, including food services, athletic and recreational programs, and performing arts programs.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-133-020 Purpose.

WAC 132H-133-040 Organization/operation information.

## WSR 25-01-053

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed December 11, 2024, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-073.

Title of Rule and Other Identifying Information: WAC 182-526-0010 Definitions, 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing, 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding, and 182-526-0650 Service of petition for judicial review.

Hearing Location(s): On January 22, 2025, 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\\_6bEgewjCTa6c66AYPffGqQ](https://us02web.zoom.us/webinar/register/WN_6bEgewjCTa6c66AYPffGqQ).

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 January 23, 2025.

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 December 12, 2024, at 8:00 a.m., by January 22, 2025, at 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 January 3, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending chapter 182-526 WAC to update its regulations related to the service of a petition for judicial review.

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: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 1-844-728-5212.

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 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.

December 11, 2024

Wendy Barcus



## OTS-5953.2

AMENDATORY SECTION (Amending WSR 21-18-063, filed 8/26/21, effective 9/26/21)

**WAC 182-526-0010 Definitions.** The following definitions and those found in RCW 34.05.010 apply to this chapter:

**"Administrative law judge (ALJ)"** - An impartial decision-maker who is an attorney and presides at an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency, as defined in RCW 34.05.010. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

**"Agency"** - See WAC 182-500-0010.

**"Appellant"** - A person or entity who requests a hearing about an action of HCA or its designee.

**"Applicant"** - Any person who has made a request, or on whose behalf a request has been made, to HCA, or HCA's authorized agent on HCA's behalf, for assistance through a medical service program (~~established under chapter 74.09 RCW~~) administered by HCA.

**"Authorized agent"** - A person or agency, as defined in RCW 34.05.010, acting on HCA's behalf under an agreement authorized by RCW 41.05.021 to act as an HCA hearing representative. An authorized agent may be an employee of the department of social and health services or its contractors but may not be an employee of an HCA-contracted managed care organization.

**"Board of appeals" or "BOA"** - The HCA's board of appeals.

**"Business days"** - All days except Saturdays, Sundays, and designated holidays under WAC 357-31-005.

**"Calendar days"** - All days including Saturdays, Sundays, and designated holidays under WAC 357-31-005.

**"Continuance"** - A change in the date or time of a prehearing conference, hearing, or the deadline for other action.

**"Date of the health care authority (HCA) action"** - The date when the HCA's decision is effective.

**"Deliver"** - Giving a document to a person or entity in person or placing the document into the person or entity's possession as authorized by the rules in this chapter or chapter 34.05 RCW.

**"Department"** - The department of social and health services.

**"Documents"** - Papers, letters, writings, emails, or other printed or written items.

**"Electronic service"** - The service of documents sent or received through electronic communications, cloud services, or other electronic means established by the agency. For the purpose of effectuating service, as defined below, on HCA or OAH (but not BOA), service via OAH's PRISM participant portal is an acceptable method of "electronic service."

**"Filing"** - The act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

**"Final order"** - An order that is the final HCA decision.

**"HCA"** - The health care authority.

**"Health care authority (HCA) hearing representative"** - An employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing. The HCA hearing representative may or may not be an attorney. An employee of an HCA contracted managed care organization is not an HCA hearing representative.

**"Hearing"** - Unless context clearly requires a different meaning, a proceeding before an ALJ, HCA-employed presiding officer, or a review judge that gives a party an opportunity to be heard in disputes about medical services programs (~~established under chapter 74.09 RCW~~) administered by HCA. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Titles 182 and 388 WAC, chapter 10-08 WAC, or other law.

**"Initial order"** - A hearing decision entered (made) by an ALJ that may be reviewed by a review judge at any party's request.

**"Intermediary interpreter"** - An interpreter who:

- (1) Is a certified deaf interpreter (CDI); and
- (2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a person with hearing loss and a qualified interpreter.

**"Judicial review"** - Review of a final order as provided under RCW 34.05.510 through 34.05.598.

**"Limited-English proficient (LEP)"** - Includes limited-English-speaking persons or other persons unable to communicate in spoken English because of hearing loss.

**"Limited-English-speaking (LES) person"** - A person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

**"Mail"** - Placing a document in the United States Postal system, or commercial delivery service, properly addressed and with the proper postage.

**"Managed care organization" or "MCO"** - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid health care services to eligible recipients under HCA's managed care programs.

**"OAH"** - The office of administrative hearings.

**"Order of default"** - An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear in a prehearing conference or a hearing. Once the order of default becomes a final order, it terminates the appellant's request for a hearing and ends the hearing process.

**"Order of dismissal"** - An order from the administrative law judge (ALJ) or review judge ending the hearing process.

**"Party":**

- (1) The health care authority (HCA);
- (2) HCA-contracted managed care organization (MCO) (if applicable); and
- (3) A person or entity:
  - (a) Named in the action;
  - (b) To whom the action is directed; or
  - (c) Is allowed to participate in a hearing to protect an interest as authorized by law or rule.

**"Person with hearing loss"** - A person who, because of a loss of hearing, cannot readily speak, understand, or communicate in spoken language.

**"Prehearing conference"** - A formal proceeding scheduled and conducted by an ALJ or other reviewing officer on the record for the purposes identified in WAC 182-526-0195.

**"Prehearing meeting"** - An informal, voluntary meeting that may be held before any prehearing conference or hearing.

**"Program"** - An organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers and HCA-contracted managed care organizations.

**"Qualified interpreter"** - Includes qualified interpreters for a limited-English-speaking person or a person with hearing loss.

**"Qualified interpreter for a limited-English-speaking person"** - A person who is readily able to interpret or translate spoken and written English communications to and from a limited-English-speaking person effectively, accurately, and impartially. If an interpreter is court certified, the interpreter is considered qualified.

**"Qualified interpreter for a person with hearing loss"** - A visual language interpreter who is certified by the Registry of Interpreters for the Deaf (RID) or National Association of the Deaf (NAD) and is readily able to interpret or translate spoken communications to and from a person with hearing loss effectively, accurately, and impartially.

**"Recipient"** - Any person receiving assistance through a medical service program (~~(established under chapter 74.09 RCW)~~) administered by HCA.

**"Reconsideration"** - Asking a review judge to reconsider a final order entered because the party believes the review judge made a mistake.

**"Record"** - The official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

**"Review"** - A review judge evaluating initial orders entered by an ALJ and making the final HCA decision as provided by RCW 34.05.464, or issuing final orders.

**"Review judge"** - A (~~decision-maker~~) decision maker with expertise in program rules who serves as the reviewing officer under RCW 34.05.464. The review judge reviews initial orders and the hearing record exercising decision-making power as if hearing the case as a presiding officer. In some cases, review judges conduct hearings under RCW 34.05.425 as a presiding officer. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by HCA but may be physically located at the board of appeals (BOA). The review judge must not have been involved in the initial HCA action.

**"Rule"** - A regulation adopted by a state agency. Rules are found in the Washington Administrative Code (WAC).

**"Service"** - The delivery of documents as explained in WAC 182-526-0040.

**"Should"** - That an action is recommended but not required.

**"Stay"** - An order temporarily halting the HCA decision or action.

**"Witness"** - For the purposes of this chapter, means any person who makes statements or gives testimony that becomes evidence in a hearing. One type of witness is an expert witness. An expert witness

is qualified by knowledge, skill, experience, training, and education to give opinions or evidence in a specialized area.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing.** (1) For cases in which the party who requested a hearing is an applicant or recipient of a medical services program (~~(established under chapter 74.09 RCW)~~) administered by the agency, the hearing must be held according to RCW 74.09.741 (5)(c).

(2) An applicant or recipient may agree to have one or more pre-hearing conferences conducted telephonically without waiving the right to have any subsequent prehearing conference or other hearings held in person.

(3) Any party to the hearing has the right to request that:

(a) The hearing be changed from an in-person hearing to a telephonic hearing or from a telephonic hearing to an in-person hearing; or

(b) A witness be allowed to appear telephonically even for an in-person hearing.

(4) A party must show a compelling reason to change the way a witness appears (in person or by telephone). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects its ability to present its case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(5) A compelling reason to change the way a witness appears at a hearing can be overcome by a more compelling reason not to change how a witness appears for a hearing.

(6) If a party wants to change how a hearing is held or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

(7) The ALJ may schedule a prehearing conference to determine if the request should be granted.

(8) If the ALJ grants the request, the ALJ may orally advise the parties of the change in how the witness or party appears.

(9) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding.** (1) The

following requirements apply only to hearings in which an applicant or recipient of medical services programs (~~set forth in chapter 74.09 RCW,~~) administered by the agency seeks review of decisions made by more than one agency, as defined in RCW 34.05.010. For example: A medical services program recipient appeals a termination of medical assistance by the health care authority and in the same request for hearing the recipient appeals a termination of cash assistance issued by the department of social and health services.

(2) When the applicant or recipient of a medical services program files a single request for hearing objecting to decisions made by more than one agency, as defined in RCW 34.05.010, the office of administrative hearings (OAH) schedules one hearing. The administrative law judge (ALJ) may sever the proceeding into multiple hearings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Any party requests severance without another party's consent, and the ALJ finds there is good cause for severing the hearing and that the proposed severance is not likely to prejudice the rights of the applicant or recipient in accordance with RCW 74.09.741(5).

(3) If there are multiple hearings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon the ALJ's motion, the ALJ may consolidate the hearings if the ALJ finds that the consolidation is not likely to prejudice the rights of the applicant or recipient who is a party to any of the consolidated hearings in accordance with RCW 74.09.741(5).

(4) If the ALJ grants the motion to sever the hearing into multiple hearings or consolidate multiple hearings into a single hearing, the ALJ enters an order and OAH sends a new notice of hearing to the appropriate parties in accordance with WAC 182-526-0250, unless service of notice is waived by the parties.

(5) Petitions for judicial review must be served on all agencies involved in the hearing.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0650 Service of petition for judicial review. (1)**

The party requesting judicial review must:

(a) File a petition for judicial review with the court;

(b) File and serve the petition for judicial review of a final order within (~~thirty~~) 30 days after the date it was mailed to the parties; and

(c) Serve copies of the petition on the health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, the petitioning party must deliver a copy of the petition for judicial review to the (~~director of~~) HCA (~~and send a copy to the~~) board of appeals (BOA). The party may hand deliver the petition (~~or~~), send it by mail that gives proof of receipt(~~-~~

~~The physical location of the director is:~~

Director  
Health Care Authority  
626 8th Avenue S.E.  
Olympia, WA 98501

~~The mailing address of the director is:~~

~~Director  
Health Care Authority  
P.O. Box 45502  
Olympia, WA 98504-5502~~

~~The physical and mailing addresses for BOA are in WAC 182-526-0030), or serve it electronically. See WAC 182-526-0030 for the BOA physical, mailing, and electronic service addresses.~~

(3) To serve the office of the attorney general and other parties, the petitioning party may send a copy of the petition for judicial review by regular mail. The party may send a petition to the address for the attorney of record to serve a party. The party may serve the office of the attorney general by hand delivery to:

Office of the Attorney General  
7141 Cleanwater Drive S.W.  
Tumwater, WA 98501

The mailing address of the attorney general is:  
Office of the Attorney General  
P.O. Box 40124  
Olympia, WA 98504-0124

## WSR 25-01-067

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed December 11, 2024, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-061.

Title of Rule and Other Identifying Information: Permanent closure reporting requirements for pharmacies, health care entities, hospital pharmacy associated clinics, wholesalers, and manufacturers. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-480 to require additional reporting requirements provided to customers and the commission in advance of permanent closures. The commission is proposing to add WAC 246-945-231 to consolidate the reporting requirement for pharmaceutical firms to report disciplinary action to the commission and add WAC 246-945-592 to establish reporting requirements for permanently closing manufacturers and wholesalers.

Hearing Location(s): On February 6, 2024 [2025], at 10:30 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual via Zoom. To access the meeting on February 6, 2025, at 9:30 a.m., go to <https://us02web.zoom.us/j/86309299195> or <https://zoom.us/join> and use the Webinar ID 863 0929 9195. The access options include one-tap mobile +12532158782,,86309299195# US (Tacoma), +12532050468,,86309299195# US; or telephone dial (for higher quality, dial a number based on your current location) +1 253-215-8782 US (Tacoma), +1 253-205-0468 US.

Date of Intended Adoption: February 6, 2024 [2025].

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, fax 360-236-2260, <https://fortress.wa.gov/doh/policyreview/>, beginning the date and time of this filing, by January 23, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-236-4946, fax 360-236-2260, TTY 711, email [PharmacyRules@doh.wa.gov](mailto:PharmacyRules@doh.wa.gov), by January 23, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing rule amendments to provide customers earlier and more detailed notification of permanent facility closures. "Facility" includes pharmacies, health care entities, and hospital pharmacy associated clinics. The anticipated effect of the proposal is to provide customers additional time to transfer prescriptions and plan accordingly prior to a facility permanently closing.

The proposed rules also revise reporting requirements for pharmaceutical firms and require additional reporting requirements, within specified time frames, prior to permanent facility, manufacturer, and wholesaler closures.

Reasons Supporting Proposal: This rule making is in response to a rules petition filed by an interested party and approved by the commission during the December 2023 business meeting. The objective of the additional notification and reporting requirements for facilities, manufacturers, and wholesalers prior to permanently closing is to increase communication with the public and commission to benefit continuity of care. Providing timelines for notification of closures will allow customers timely notice to transfer prescriptions. Increased regulation on the accounting for and inventory of legend drugs and

controlled substances helps to ensure accountability and prevent diversion. Enhancing facility, manufacturer, and wholesaler permanent closure requirements will allow the commission better oversight in the event of permanent facility, manufacturer, and wholesaler closures.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.075, and 69.50.301.

Statute Being Implemented: RCW 18.64.005.

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: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4946; Enforcement: Marlee B. 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 Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4946, fax 360-236-2260, TTY 711, email PharmacyRules@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 costs of the proposed rule (\$117 per facility, \$12 per pharmaceutical firm, and \$98 to \$122 per manufacturer or wholesaler) are all less than the minor cost threshold (\$19,161.74 for pharmacies and drug stores and \$10,305.83 for drugs and druggists' sundries merchant wholesalers).

The minor cost analysis demonstrated that the estimated cost to pharmacies, health care entities, and hospital pharmacy associated clinics is \$117 per facility, \$12 per pharmaceutical firm, and \$98 to \$122 per manufacturer and wholesaler. Using the governor's office for regulatory innovation and assistance's minor cost threshold calculator with NAICS Code Titles 446110 Pharmacies and Drug Stores and 424210 Drugs and Druggists' Sundries Merchant Wholesalers, the minor cost threshold is not met per RCW 19.85.020. A full small business economic impact statement (SBEIS) may not be required since the minor cost threshold is not met.

**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 commission is proposing rule amendments to provide customers earlier and more detailed notification of permanent facility closures. "Facility" includes pharmacies, health care entities, and hospital pharmacy associated clinics.

The proposed rules also require additional and revised reporting requirements, within specified time frames prior to permanent facility, manufacturer, and wholesaler closures.

This proposed rule package is in response to a rule petition filed by an interested individual requesting pharmacies provide clear communication and a timeline for prescription transfers to patients



ahead of a facility closure in December 2023. On December 14, 2023, the commission voted to approve the request and consider rule making.

Small facilities, manufacturers, and wholesalers that permanently close must fulfill reporting and notification requirements to the commission and customers. Commission reporting requirements for closing facilities, manufacturers, and wholesalers consist of communicating in writing planned and actualized logistics pertaining to closure plans. Customer notification requirements for closing facilities include informing customers verbally of the closure, informing employees of the rule adoptions, creating a notice to include with dispensed prescriptions, and advertising in a print and digital version of the newspaper, if available. Manufacturers and wholesalers must notify customers in writing of the closure date and the last day to place orders for fulfillment. Compliance with the proposed reporting requirements will involve time of the manager in charge.

**SBEIS Table 1 identifies and summarizes which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS):**

**SBEIS Table 1. Summary of Businesses Required to Comply with the Proposed Rule**

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
446110	Pharmacies and Drug Stores	267	\$19,161.74
424210	Drugs and Druggists' Sundries Merchant Wholesalers	388	\$10,305.83

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 246-945-231(1) Reporting disciplinary action.**

**Description:** Only three license types the commission regulates are currently required by state rule to report to the commission disciplinary action taken by another state, federal, or foreign authority. The commission is proposing to amend the term "facility" to "pharmaceutical firm" in WAC 246-945-480(5) and replace WAC 246-945-480(5) with WAC 246-945-231(1), thereby requiring all 15 licensee types the commission regulates to report disciplinary action taken by authorized entities to the commission. "Facility" includes pharmacies, health care entities, and hospital pharmacy associated clinics per WAC 246-945-405. "Pharmaceutical firm" refers to any business engaged in the dispensing, delivering, distributing, manufacturing, or wholesaling of prescription drugs or devices within or into Washington state per WAC 246-945-001. All pharmaceutical firms are also listed in WAC 246-945-990. This proposed reporting requirement applies to pharmaceutical firms at any time.

**Cost(s):** Pharmaceutical firms will need to report to the commission when a disciplinary action occurs.

The estimated probable total cost is \$12 per incident for a pharmaceutical firm to report to the commission of a disciplinary action by another state, federal, or foreign authority. The department is unable to estimate how many times this will happen per year.

Cost assumptions for estimate:

- Commission reporting cost assumptions:

- o Each pharmaceutical firm is required to designate a responsible person whose responsibilities include accountability for transferred drugs and substances per the FDA Drug Quality and Security Act.<sup>1</sup>
- o For the purpose of this estimate, the commission assumes that the closest probable job title is a general operations manager.
- o Commission staff estimate based on experience that reporting an applicable disciplinary action will require 10 minutes of a general operations manager's time (\$69.43/hour).<sup>2</sup>

Calculations for estimate:

- Calculations for commission reporting costs:
  - o \$11.57 for 10 minutes of the general operations manager's time to report an applicable disciplinary action.

**WAC 246-945-480(1) Facility reporting requirements.**

**Description:** The proposed WAC 246-945-480(1) amendment is to replace the "ten" with "10." Per RCW 34.05.310 (4)(d), this amendment is exempt from analysis as it exclusively corrects a typographical error.

**WAC 246-945-480(2) Facility reporting requirements.**

**Description:** Currently, when a facility (i.e., pharmacy, health care entity, or hospital pharmacy associated clinic) is closing permanently, 30 days prior they must notify the commission of the name and address of the person(s) who will acquire legend drugs from the facility to be closed. The commission is proposing to amend WAC 246-945-480 (2)(a) to require permanently closing facilities to additionally report to the commission during this time frame the credential number of the people who are anticipated to acquire the facility's legend drugs and the name, address, and credential number of the people anticipated to acquire the facility's controlled substances. Pharmacy managers will need to apprise the commission of the credential number of the people who shall acquire the legend drugs and the name, address, and credential number of the people who shall acquire the controlled substances, if known at the time. The information may be included with an existing communication.

Facilities currently should notify customers of imminent permanent closures via direct mail, public notice in a newspaper, and signage in a conspicuous area of the pharmacy without a time parameter. Proposed WAC 246-945-480 (2)(b) amends the patient notification requirements to mandate informing customers of the closure during prescription pick-up or delivery, include a notice with dispensed prescriptions informing them of their right to request a prescription transfer, and public notice in a legal newspaper of general circulation in both print and digital versions, if applicable, in addition to the signage in a conspicuous area of the pharmacy. These notifications must begin no later than 30 calendar days prior to closing. Pharmacy managers will need to apprise pertinent staff of the rule adoption, develop and print notices to be included in dispensed prescriptions to inform customers of their right to request a prescription transfer, and determine if the newspaper in which they are circulating the announcement has a digital version.

After a facility closes, they have 15 days to report several items to the commission, including the name and address of the person(s) to whom the legend drugs and controlled substances were transferred. The proposed WAC 246-945-480 (2)(c) amends the post-closure requirements to require the facility closing to additionally report the credential numbers of the people who acquired both the legend

drugs and controlled substances. The information may be included with an existing communication.

**Cost(s):** The probable costs only impact facilities that permanently close. Permanently closing facilities will need to report to the commission the credential numbers for the people anticipated to acquire the legend drugs, the name, address, and credential number of the people anticipated to acquire the controlled substances, if known at the time, and credential numbers of the people who ultimately acquired legend drugs and controlled substances. To communicate to the public, they will also need to apprise pertinent staff to inform customers upon prescription pick-up or delivery, include notices of prescription transfer rights in dispensed prescriptions, and, if available, publicize a notice of permanent closure in a digital version of the selected newspaper.

The commission assumes that all facilities dispensing prescriptions have a working computer and printer, but should they have to purchase one the cost could be \$300 to \$2,000 for a computer and \$100 to \$300 for a printer.<sup>3,4</sup>

The estimated probable total cost is \$117 per permanently closing facility to communicate additional reporting and notification requirements to the commission and public.

Cost assumptions for estimate:

- Commission reporting cost assumptions:
  - Assumes each facility has one pharmacy manager per WAC 246-945-410(5).<sup>5</sup>
  - Commission staff estimate based on experience that requesting a credential number for the people anticipated to acquire the legend drugs and communicating it in writing will take five minutes of a pharmacy manager's time (\$73.50/hour).<sup>6</sup>
  - Commission staff estimate based on experience that reporting the name, address, and credential number of the people anticipated to acquire the controlled substances will take 10 minutes of a pharmacy manager's time (\$73.50/hour).<sup>7</sup>
  - Communicating the name, address, and credential number of the people who ultimately acquired legend drugs and controlled substances will take 20 minutes of a pharmacy manager's time (\$73.50/hour) according to commission staff's estimate based on pharmacist consultation.<sup>8</sup>
- Customer notification cost assumptions:
  - Assumes each facility has one pharmacy manager per WAC 246-945-410(5).<sup>9</sup>
  - Commission staff estimate based on consultation with a pharmacist that apprising pertinent staff of the rule adoption and the need to inform customers of the permanent closure upon prescription pick-up or delivery will require 30 minutes of the pharmacy manager's time (\$73.50/hour) to prepare and deliver the communication.<sup>10</sup>
  - Commission staff estimate based on consultation with a pharmacist that creating a paper notice to include with dispensed prescriptions that informs the customer of their right to request a prescription transfer will require 30 minutes of the pharmacy manager's time (\$73.50/hour) to prepare and insert the notice.<sup>11</sup>

- o Informing customers of the permanent closure will occur verbally and refer customers to the noticed inserted with the dispensed prescription. The time required to convey the information to the customer will vary greatly, depending on the number of questions received from the customer, but is anticipated to generally be a negligible amount of time.
- o The cost of notices inserted with dispensed prescriptions is minimal, about one to two reams of paper, depending on the facility's dispensing capacity. The commission considers this cost negligible for the purposes of this analysis.
- o The cost of an advertisement in a digital version of a newspaper does not impose an additional cost as print newspaper advertisements include digital publication.<sup>12</sup> Facilities currently have to advertise in a print newspaper when permanently closing.

Calculations for estimate:

- Calculations for commission reporting costs:
  - o \$6.13 For five minutes of a pharmacy manager's time to report a credential number for people anticipated to acquire legend drugs and communicate it in writing to the commission.
  - o \$12.25 For 10 minutes of a pharmacy manager's time to report the name, address, and credential number for people anticipated to acquire controlled substances and communicate them in writing to the commission.
  - o \$24.50 For 20 minutes of a pharmacy manager's time to report the name, address, and credential number for people who ultimately acquired legend drugs and controlled substances.
- Calculations for customer notification costs:
  - o \$36.75 For 30 minutes of a pharmacy manager's time to prepare and deliver a communication apprising pertinent staff of the rule adoption and the need to inform customers of the closure.
  - o \$36.75 For 30 minutes of a pharmacy manager's time to create and include a paper notice with dispensed prescriptions that informs customers of their right to request a prescription transfer.

**WAC 246-945-480(3) Facility reporting requirements.**

**Description:** There are no proposed amendments to WAC 246-945-480(3) making it exempt from analysis.

**WAC 246-945-480(4) Facility reporting requirements.**

**Description:** The proposed WAC 246-945-480(4) amendment is to replace the first "The" with "A." Per RCW 34.05.310 (4)(d), this amendment is exempt from analysis as it exclusively corrects a typographical error.

**WAC 246-945-592(1) Wholesaler and manufacturer reporting requirements.**

**Description:** Manufacturers and wholesalers that are permanently closing are not explicitly required in rule to inform the commission nor their customers. The commission is proposing to add WAC 246-945-592 to require manufacturers and wholesalers to notify the commission and their customers in the event of a permanent closure.

Proposed WAC 246-945-592 (1)(a) includes a customer notification requirement in the form of a written communication which includes the last day the manufacturer or wholesaler will be open and the last day the customer may place an order to be fulfilled.

Reporting requirements to the commission are included in proposed WAC 246-945-592 (1)(b) and (c). At least 30 calendar days prior to permanently closing, a manufacturer or wholesaler shall report to the commission in writing the date of the closure and the names, credential numbers, and addresses of the people who will receive any legend drugs or controlled substances, if known at the time. Within 15 calendar days from the closure date, the manufacturer or wholesaler will return their license, confirm the name, credential number, and address of the people who received any legend drugs and controlled substances, confirm United States Drug Enforcement Agency (DEA) registration and unused DEA 222 forms were returned to the DEA, and confirm all signs and symbols indicating the presence of the wholesaler and manufacturer have been removed, if applicable, to the commission.

**Cost(s):** The probable costs only impact manufacturers and wholesalers that permanently close. Permanently closing manufacturers and wholesalers will need to report to the commission the date of the closure and the names, credential numbers, and addresses of the people anticipated to receive any legend drugs or controlled substances, if known at the time. After the manufacturer or wholesaler location has closed, they will need to report to the commission the return of their license, the name, credential number, and address of the people who received any legend drugs and controlled substances, confirmation of returned United States Food and Drug Administration's (FDA) DEA registration and unused DEA 222 forms, and, if applicable, confirmation of removal of all signs and symbols indicating the presence of the wholesaler and manufacturer.

The estimated probable total cost ranges from \$98 to \$110 per permanently closing manufacturer or wholesaler to fulfill reporting requirements to the commission and notify customers.

Cost assumptions for estimate:

- Commission reporting cost assumptions:
  - Each pharmaceutical wholesaler or manufacturer is required to designate a responsible person whose responsibilities include accountability for transferred drugs and substances per the FDA Drug Quality and Security Act.<sup>13</sup>
  - For the purpose of this estimate, the commission assumes that the closest probable job title is a general operations manager.
  - Commission staff estimate based on experience that reporting the date of the closure will require five minutes of a general operations manager's time (\$69.43/hour).<sup>14</sup>
  - Communicating the name, address, and credential number of people anticipated to acquire the legend drugs and controlled substances will take 20 minutes of a general operations manager's time (\$69.43/hour).<sup>15</sup>
  - Communicating the name, address, and credential number of the people who ultimately acquired legend drugs and controlled substances will take 20 minutes of a general operations manager's time (\$69.43/hour) according to commission staff's estimate based on pharmacist consultation.<sup>16</sup>
  - Commission staff estimate based on consultation with a pharmacist that reporting the return of their license will require five minutes of a general operation manager's time (\$69.43/hour).<sup>17</sup>

- Confirming that DEA registration and unused DEA 222 forms were returned to the DEA is estimated to require five minutes of a general operation manager's time (\$69.43/hour) per commission staff estimate based on consultation with a pharmacist consultant.<sup>18</sup>
- If there are signs and symbols indicating the presence of the manufacturer or wholesaler, commission staff estimate based on consultation with a pharmacist that confirming their removal will require 10 minutes of a general operation manager's time (\$69.43/hour).<sup>19</sup> If the manufacturer or wholesaler does not have signs or symbols, there will be no confirmation and the cost would be \$0.
- Customer notification cost assumptions:
  - Commission staff estimate based on consultation with a pharmacist that notifying customers of the manufacturer or wholesaler's closure in writing and the last day to place an order to be fulfilled will require 30 minutes of the general operation manager's time (\$69.43/hour) to prepare and distribute the written notice.<sup>20</sup>
- Calculations for estimate:
- Calculations for commission reporting costs:
  - \$5.79 For five minutes of the general operations manager's time to report the date of closure.
  - \$23.14 For 20 minutes of the general operations manager's time to communicate the name, address, and credential number of people anticipated to acquire the legend drugs and controlled substances.
  - \$23.14 For 20 minutes of the general operations manager's time to communicate the name, address, and credential number of people who ultimately acquired the legend drugs and controlled substances.
  - \$5.79 For five minutes of the general operations manager's time to report the return of the license.
  - \$5.79 For five minutes of the general operations manager's time to confirm DEA registration and unused DEA 222 forms were returned to the DEA.
  - \$0 To \$11.57 range for zero to 10 minutes of the general operations manager's time to confirm removal of identifying signs and symbols. This cost is only applicable to permanently closing manufacturers and wholesalers with signs and symbols indicating their presence.
- Calculations for customer notification costs:
  - \$34.72 For 30 minutes of the general operations manager's time to inform customers of the manufacturer or wholesaler's closure and the last day to place an order to be fulfilled.

**WAC 246-945-592(2) Wholesaler and manufacturer reporting requirements.**

**Description:** Manufacturers and wholesalers are not currently required by state rule to report to the commission any disasters, accidents, or emergencies. The commission is proposing to require wholesalers and manufacturers to report to the commission any disasters, accidents, or emergencies which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, or disease in new

WAC 246-945-592. This proposed reporting requirement applies to manufacturers and wholesalers at any time.

**Cost(s):** Manufacturers and wholesalers will need to report to the commission when a disaster, accident, or emergency which affects the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, or disease occurs.

The estimated probable total cost is \$12 per incident for a manufacturer or wholesaler to report to the commission of a disaster, accident, or emergency which affects the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, or disease. The department is unable to estimate how many times this will happen per year.

Cost assumptions for estimate:

- Commission reporting cost assumptions:
  - Each pharmaceutical wholesaler or manufacturer is required to designate a responsible person whose responsibilities include accountability for transferred drugs and substances per the FDA Drug Quality and Security Act.<sup>21</sup>
  - For the purpose of this estimate, the commission assumes that the closest probable job title is a general operations manager.
  - Commission staff estimate based on experience that reporting an applicable disaster, accident, or emergency will require 10 minutes of a general operations manager's time (\$69.43/hour).<sup>22</sup>

Calculations for estimate:

- Calculations for commission reporting costs:
  - \$11.57 For 10 minutes of the general operations manager's time to report an applicable disaster, accident, or emergency.

**Summary of all Cost(s):**

**SBEIS Table 2. Summary of Section 3 Probable Cost(s)**

WAC Section and Title	Probable Cost(s)
WAC 246-945-231(1) Reporting Disciplinary Action	\$12 per pharmaceutical firm occurrence
WAC 246-945-480(2) Facility Reporting Requirements	\$117 per facility permanent closure
WAC 246-945-592(1) Wholesaler and Manufacturer Reporting Requirements	\$98 to \$110 per manufacturer or wholesaler permanent closure
WAC 246-945-592(2) Facility Reporting Requirements	\$12 per manufacturer or wholesaler occurrence
<b>TOTAL</b>	<b>\$12 per pharmaceutical firm occurrence \$117 per facility permanent closure \$98 to \$122 per manufacturer or wholesaler permanent closure and occurrence</b>

The following is an analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry and a summary of how the costs were calculated: The costs of the proposed rule (\$12 per pharmaceutical firm, \$117 per facility, and \$98 to \$122 per manufacturer or wholesaler) are **less than** the minor cost threshold (\$19,161.74 for pharmacies and drug stores or \$10,305.83 for drugs and druggists' sundries merchant wholesalers).

The probable costs were calculated for pharmaceutical firms, pertinent facilities, manufacturers, and wholesalers to comply with the proposed rule. Probable costs affiliated with compliance primarily

pertain to staff time. Average staff wages in Washington state were sourced from data produced by the United States Bureau of Labor and Statistics. Commission staff, including staff licensed as pharmacists, estimated time requirements.

- 1 H.R. 3204 – Drug Quality and Security Act, 113th Congress (2013-2014), <https://www.congress.gov/bill/113th-congress/house-bill/3204/text?s=10&r=1&q=%7B%22search%22%3A%22hr3204%22%7D> (visited September 23, 2024).
- 2 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 3 Lenovo, new laptops range from \$300 to \$2,000, [https://www.lenovo.com/us/en/d/deals/business/?orgRef=https%253A%252F%252Fwww.bing.com%252F&sortBy=bestSelling&cid=us%3Asem%7Cse%7Cmsn%7Cnonbrand\\_pc%7C%7Coffice%20laptop%7Cp%7C506005685%7C1268838063590376%7Ckwd-79302875432137%3Aloc-190%7Csearch%7Cnonbrand%7Cconsumer&msclkid=cb523a8cb13f12b648eb5c602cb4e2f7&visibleData=1014%3ALaptops](https://www.lenovo.com/us/en/d/deals/business/?orgRef=https%253A%252F%252Fwww.bing.com%252F&sortBy=bestSelling&cid=us%3Asem%7Cse%7Cmsn%7Cnonbrand_pc%7C%7Coffice%20laptop%7Cp%7C506005685%7C1268838063590376%7Ckwd-79302875432137%3Aloc-190%7Csearch%7Cnonbrand%7Cconsumer&msclkid=cb523a8cb13f12b648eb5c602cb4e2f7&visibleData=1014%3ALaptops) (visited September 19, 2024).
- 4 Lenovo, new printers range from \$100 to \$300, <https://www.lenovo.com/us/en/search?fq=&text=printer&rows=20&sort=relevance> (visited September 19, 2024).
- 5 WAC 246-945-410(5) "The facility shall designate a pharmacy manager," <https://app.leg.wa.gov/WAC/default.aspx?cite=246-945-410> (visited September 19, 2024).
- 6 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Health Service Managers in WA in May 2023, <https://www.bls.gov/oes/current/oes119111.htm> (visited September 20, 2024).
- 7 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Health Service Managers in WA in May 2023, <https://www.bls.gov/oes/current/oes119111.htm> (visited September 20, 2024).
- 8 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Health Service Managers in WA in May 2023, <https://www.bls.gov/oes/current/oes119111.htm> (visited September 20, 2024).
- 9 WAC 246-945-410(5) "The facility shall designate a pharmacy manager," <https://app.leg.wa.gov/WAC/default.aspx?cite=246-945-410> (visited September 19, 2024).
- 10 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Health Service Managers in WA in May 2023, <https://www.bls.gov/oes/current/oes119111.htm> (visited September 20, 2024).
- 11 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Health Service Managers in WA in May 2023, <https://www.bls.gov/oes/current/oes119111.htm> (visited September 20, 2024).
- 12 Phil Kearney, National Marketing Strategist at The Seattle Times, (phone call on September 20, 2024).
- 13 H.R. 3204 – Drug Quality and Security Act, 113th Congress (2013-2014), <https://www.congress.gov/bill/113th-congress/house-bill/3204/text?s=10&r=1&q=%7B%22search%22%3A%22hr3204%22%7D> (visited September 23, 2024).
- 14 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA in May 2023 <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 15 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA in May 2023 <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 16 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA in May 2023 <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 17 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA in May 2023 <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 18 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA in May 2023 <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 19 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 20 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).
- 21 H.R. 3204 – Drug Quality and Security Act, 113th Congress (2013-2014), <https://www.congress.gov/bill/113th-congress/house-bill/3204/text?s=10&r=1&q=%7B%22search%22%3A%22hr3204%22%7D> (visited September 23, 2024).
- 22 Bureau of Labor Statistics, General and Operations Manager, \$69.43 Hourly mean wage in WA <https://www.bls.gov/oes/current/oes119111.htm> (visited September 23, 2024).

A copy of the detailed cost calculations may be obtained by contacting Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4946, fax 360-236-2260, TTY 711, email PharmacyRules@doh.wa.gov.

December 4, 2024  
Hawkins DeFrance, PharmD, Chair  
Pharmacy Quality Assurance Commission

**OTS-5870.4**

NEW SECTION

**WAC 246-945-231 Reporting disciplinary action.** Any pharmaceutical firm credentialed by the commission must report to the commission any disciplinary action, including denial, revocation, suspension, or restriction to practice by another state, federal, or foreign authority.



AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-480 Facility reporting requirements.** (1) The outgoing and incoming responsible pharmacy manager must report in writing to the commission a change in a responsible manager designation within ~~((ten))~~ 10 business days of the change.

(2) Unless otherwise specified, when permanently closing a facility, the facility must:

(a) Report to the commission in writing, no later than ~~((thirty))~~ 30 calendar days prior to closing:

(i) The date the facility will close;

(ii) The names and addresses of the ~~((persons))~~ person(s) who shall have custody of the prescription files, bulk compounding records, repackaging records, invoices and controlled substances inventory records of the ~~((pharmacy))~~ facility to be closed; ~~((and))~~

(iii) The names, credential numbers, and addresses of ~~((any))~~ the person(s) who ~~((will))~~ shall acquire any legend drugs from the facility to be closed, if known at the time the notification is filed; and

(iv) The names, credential numbers, and addresses of persons who shall acquire any controlled substances from the facility to be closed, if known at the time the notification is filed.

(b) Provide notification to customers ~~((noting))~~ beginning no later than 30 calendar days prior to closing which includes the last day the pharmacy will be open ~~((, name and address of the pharmacy to which prescription records will be transferred and instructions on how patients can arrange for transfer of their prescription records to a pharmacy of their choice))~~ and the last day a transfer may be initiated. Notification ~~((should))~~ shall include:

(i) ~~((Distribution by direct mail; or))~~ Posting a closing notice in a conspicuous place in the public area of the pharmacy;

(ii) ~~((Public notice in a newspaper of general circulation in the area served by the pharmacy))~~ Informing patients of the closure during prescription pick-up or delivery including a notice with dispensed prescriptions informing patients of their right to request a prescription transfer, if applicable; and

(iii) ~~((Posting a closing notice sign in a conspicuous place in the public area of the pharmacy.))~~ Public notice in at least one legal newspaper of general circulation in the area served by the pharmacy that meets the qualifications of RCW 65.16.020. The public notice must appear in both the print and digital versions of the legal newspaper, if available.

(c) No later than ~~((fifteen))~~ 15 calendar days after closing:

(i) Return the facility license to the commission;

(ii) Confirm to the commission that all legend drugs were transferred ~~((or destroyed. If the legend drugs were transferred,))~~ appropriately and provide the names, credential numbers, and addresses of the person(s) to whom ~~((they))~~ the legend drugs were transferred;

(iii) Confirm ~~((if))~~ to the commission that all controlled substances were transferred ~~((, including the date of transfer, names, addresses, and a detailed inventory of the drugs))~~ appropriately and provide a detailed inventory of the drugs transferred and the names, credential numbers, and addresses of the person(s) to whom the controlled substances were transferred;

(iv) Confirm ~~((return of))~~ that the DEA registration and all unused DEA 222 forms were returned to the DEA;

(v) Confirm all pharmacy labels and blank prescriptions were destroyed; and

(vi) Confirm all signs and symbols indicating the presence of the pharmacy have been removed.

(3) The commission may conduct an inspection to verify all requirements in subsection (2) of this section have been completed.

(4) ~~((The))~~ A facility shall immediately report to the commission any disasters, accidents and emergencies which may affect the strength, purity, or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness, and disease.

~~((5) Any facility credentialed by the commission must report to the commission any disciplinary action, including denial, revocation, suspension, or restriction to practice by another state, federal, or foreign authority.))~~

#### NEW SECTION

**WAC 246-945-592 Wholesaler and manufacturer reporting requirements.** (1) Unless otherwise specified, when permanently closing a wholesaler or manufacturer, the wholesaler or manufacturer must:

(a) Provide notification to customers in writing, no later than 30 calendar days prior to closing, which includes the last day the wholesaler or manufacturer will be open and the last day the customer may place an order to be fulfilled.

(b) Report to the commission in writing, no later than 30 calendar days prior to closing:

(i) The date the wholesaler or manufacturer will close; and

(ii) The names, credential numbers, and addresses of the person(s) who shall receive any legend drugs or controlled substances from the wholesaler or manufacturer to be closed, if known at the time the notification is filed.

(c) No later than 15 calendar days after closing:

(i) Return the wholesaler or manufacturer license to the commission;

(ii) Confirm to the commission that all legend drugs were transferred appropriately and provide the names, credential numbers, and addresses of the person(s) to whom the legend drugs were transferred;

(iii) Confirm to the commission that all controlled substances were transferred appropriately and provide a detailed inventory of the drugs transferred and the names, credential numbers, and addresses of each person(s) to whom the controlled substances were transferred;

(iv) Confirm that the DEA registration and all unused DEA 222 forms were returned to the DEA; and

(v) Confirm all signs and symbols indicating the presence of the wholesaler or manufacturer have been removed, if applicable.

(2) A wholesaler or manufacturer shall immediately report to the commission any disasters, accidents, and emergencies which may affect the strength, purity, or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness, and disease.

**WSR 25-01-073**  
**PROPOSED RULES**  
**BOARD OF REGISTRATION**  
**FOR PROFESSIONAL ENGINEERS**  
**AND LAND SURVEYORS**

[Filed December 12, 2024, 1:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-018.

Title of Rule and Other Identifying Information: Chapter 196-26A WAC, Registered professional engineers and land surveyor fees; and chapter 196-30 WAC, Fees for on-site wastewater treatment designers and inspectors. Language amendments only. No fee amendments.

Hearing Location(s): On January 29, 2025, at 1:30 p.m., at the Board of Registration for Professional Engineers and Land Surveyors (board) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, or WebEx meeting. The board is holding this hearing in person at the board's offices in Olympia.

The public may also virtually participate in the hearing by accessing the hearing link on the board's rule-making page <https://brpels.wa.gov/current-laws-and-rules/rulemaking-activity>.

Date of Intended Adoption: February 13, 2025.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email [Shanan.Gillespie@brpels.wa.gov](mailto:Shanan.Gillespie@brpels.wa.gov), beginning January 2, 2025, 7:30 a.m., by January 29, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Mackenzie Wherrett, phone 360-664-1568, TTY 711, email [Mackenzie.Wherrett@brpels.wa.gov](mailto:Mackenzie.Wherrett@brpels.wa.gov), by January 22, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are being proposed to correct and clarify language throughout chapter 196-26A WAC. Chapter 196-30 WAC will be repealed due to the large amount of language that is a duplication of language found in chapter 196-26A WAC. Any specific language regarding on-site wastewater treatment system designers will be moved into chapter 196-26A WAC. Language regarding what is required at the time of application and/or renewal is also being clarified.

Reasons Supporting Proposal: Correcting and clarifying current language and repealing duplicative language helps avoid potential conflicts with language that is found in other chapters of WAC 196.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050, and 18.210.060.

Statute Being Implemented: RCW 18.43.050, 18.43.080, 18.210.140, and 18.210.190.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., #201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., #201, Olympia, WA 98501, 360-664-1575.

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 one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

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.

Explanation of exemptions: RCW 34.05.310 (4)(d) and (g) apply because the language regarding renewal and application processes is being clarified and duplicative language is being repealed.

Scope of exemption for rule proposal:

Is fully exempt.

December 12, 2024

Ken Fuller

Director

## OTS-5891.1

AMENDATORY SECTION (Amending WSR 14-03-029, filed 1/8/14, effective 2/8/14)

**WAC 196-26A-010 State fee authority (~~(, applications)~~) and payment procedures.** The board of registration for professional engineers and land surveyors (board) reviews and approves registration applications (~~(for all examinations)~~) under the provisions of chapters 18.43 and 18.210 RCW. The state fees listed in this chapter are adopted by the (~~(director of the department of licensing (department))~~) board in accordance with RCW (~~(43.24.086)~~) 18.43.050, 18.210.050 and 18.210.140.

The required state fees (~~(as listed in WAC 196-26A-025)~~) must accompany all registration applications. If payment is made by check or money order, the payment should be made payable to (~~(the department of licensing. Should an applicant be judged ineligible for examination,)~~) BRPELS. The fee paid to the (~~(department of licensing shall be retained to cover the costs of processing. An applicant who fails an examination may reapply to the board for examination by paying the required fee and providing any information requested. Applicants who fail to appear for their scheduled examination will forfeit their fees. Applicants may withdraw from an examination without forfeiting their fees by submitting a written notice to the board by the date established by the)~~) board is nonrefundable.

AMENDATORY SECTION (Amending WSR 23-06-073, filed 3/1/23, effective 4/1/23)

**WAC 196-26A-040 Renewals (~~(for professional engineer and professional land surveyor licenses)~~).** (1) Licenses for professional engineers (~~(or)~~), professional land surveyors, on-site wastewater treat-

ment system designers, or certificate of competency holders (inspectors) shall be renewed every two years. The date of expiration shall be the licensee's birthday. The initial license issued to an individual shall expire no earlier than one year after the issue date.

(2) To renew your license, complete an application for renewal, pay the required renewal fee, and provide the information requested in the renewal notice and application form. This information may include email address or other contact information ~~((and information regarding prior unprofessional conduct))~~. In addition, you must disclose any criminal conviction or sanction against you including suspension, revocation, or restriction of your license by a licensing authority in any state, federal, or foreign jurisdiction pursuant to RCW 18.235.110 and 18.235.130. ((Information regarding unprofessional conduct will be evaluated by the board to determine whether it is related to the practice of the applicant's profession.))

(3) For a professional land surveyor the renewal application requires completion of professional development requirements and an attestation by the applicant that they have read chapters 58.09 RCW and 332-130 WAC as part of the renewal process.

(4) For a licensed on-site designer, the renewal application requires completion of professional development requirements as part of the renewal process.

(5) If a completed application for renewal has not been received by the board by the date of expiration (postmarked before the date of expiration if mailed or transacted online before the date of expiration), the license is invalid. ~~((Renewals))~~ Licenses that remain expired over 90 days past the date of expiration require payment of a late fee equivalent to the fee for a one-year renewal in addition to the base renewal fee ~~((,))~~ and completing ~~((of))~~ a renewal application.

~~((5))~~ (6) If your professional engineer or professional land surveyor license has been expired for five or more years, you must submit a renewal application and you will be required to take and receive a passing score on the board's law review examination. In the first year of reactivated practice professional land surveyors may be required by the board to collect an additional 15 professional development hours (PDH).

(7) Any on-site designer license that remains expired for more than two years will be canceled. After cancellation, a new application must be made in accordance with chapter 18.210 RCW to obtain another license.

The licensee is responsible for timely renewal whether or not they ~~((received))~~ receive a renewal notice from the department.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 196-26A-030	Applications for comity licensure and temporary permits.
WAC 196-26A-050	Application for certificate of authorization.
WAC 196-26A-055	Renewal of certificate of authorization.

OTS-5892.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-30-030 License renewals.

## WSR 25-01-078

## PROPOSED RULES

## STATE BOARD OF EDUCATION

[Filed December 12, 2024, 4:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-085.

Title of Rule and Other Identifying Information: Private school accreditation.

Hearing Location(s): On January 24, 2025, at 3 p.m., in the Salish Conference Room, 600 Washington Street S.E., Olympia, WA 98501, <https://us02web.zoom.us/j/87160300962>. Check in at front desk is required.

Date of Intended Adoption: June 26, 2025.

Submit Written Comments to: Nicole Mulhausen, 600 Washington Street S.E., Olympia, WA 98501, email [rulescoordinatorsbe@k12.wa.us](mailto:rulescoordinatorsbe@k12.wa.us), fax 360-753-6731, beginning January 2, 2025, 8 a.m., by January 24, 2025, 5 p.m. PST.

Assistance for Persons with Disabilities: Contact Jacki Verd, phone 360-725-6025, fax 360-753-6731, TTY 360-664-3631, email [sbe@k12.wa.us](mailto:sbe@k12.wa.us), by January 24, 2025, 5 p.m. PST.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update criteria for approval of accreditors; update definition of "Residential Private School" to align with current statute; add criteria under which residential private schools would be exempt from Washington state department of children, youth, and families (DCYF) licensing; add criteria to identify accreditors that are able to provide an examination of student living accommodations including examination of comparable criteria to that of DCYF; and establish a process to ensure the school has received such a review to be exempt from licensing. Other changes to ensure coordination with DCYF if issues arise with a school.

Reasons Supporting Proposal: New regulations resulting from ESSB 5515 require updates to private school accreditation standards (chapter 180-55 WAC) to differentiate between accreditors that address residential facilities and those that do not.

Statutory Authority for Adoption: RCW 28A.305.130.

Statute Being Implemented: ESSB 5515 (2023).

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98501, 360-725-6025.

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: RCW 34.05.310.

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: The rules do not impose a new requirement on schools and provide for an exemption from DCYF licensing as required in ESSB 5515.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: [No information supplied by agency].

December 12, 2024  
Randy Spaulding  
Executive Director

## OTS-6002.1

AMENDATORY SECTION (Amending WSR 06-23-012, filed 11/2/06, effective 12/3/06)

**WAC 180-55-005 Purpose and authority.** (1) **Purpose.** The provision of school accreditation procedures for approved private schools by the state board of education is designed to serve the following purposes:

(a) Support the state board's long-term vision of a performance-based education system by aligning school accreditation requirements to continuous improvement of student learning, achievement, and growth;

(b) Promote educational excellence and equity for every student through enhancement of the quality and effectiveness of the school's educational program in safe and supportive learning environments;

(c) Promote staff growth and commitment to the learning of every student;

(d) Build stronger links with families, parents, and the community by reaching consensus about educational expectations through family, parent, and community involvement;

(e) Provide a statement of accountability to the public; ((and))

(f) Validate effective practices and positive impacts on student learning in private schools through an external appraisal process; and

(g) Protect the health, safety, and well-being of children who are served in residential private schools through accreditation or licensing of residential facilities.

(2) **Authority.** The authority for this chapter is RCW 28A.305.130 ((-5)).

AMENDATORY SECTION (Amending WSR 06-23-012, filed 11/2/06, effective 12/3/06)

**WAC 180-55-015 Definitions.** (1) An "accredited school" is a state board of education approved private school that meets statutory requirements and rules established by the state board of education,



and one that has satisfactorily completed the accreditation procedures described by the state board of education pursuant to RCW 28A.305.130(5) and WAC 180-55-005 through 180-55-020.

(2) "Approved private school" shall mean a nonpublic school approved by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and chapter 180-90 WAC.

(3) "Approved residential private school" means a nonpublic school or nonpublic school district approved by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and chapter 180-90 WAC that provides sleeping and living facilities or residential accommodations for enrolled students.

(4) "Accredited" status shall be assigned to state board of education approved private schools that:

(a) Complete and meet fully state board of education requirements for accreditation as described in WAC 180-55-020; or

(b) Participate and qualify in accordance with standards and procedures established by recognized accrediting bodies or recognized accrediting processes (~~recognized by the state board of education~~).

~~((4))~~ (5) "Accredited residential program" is a supplemental accreditation of a residential private school by an accreditor recognized by the state board of education for the purpose of accrediting student living accommodations.

(6) "School improvement plan" shall mean the same as described under WAC 180-16-220 (2)(b) and (d).

~~((5))~~ (7) "Continuous improvement process" shall mean the ongoing process used by a school to monitor, adjust, and update its school improvement plan.

~~((6))~~ (8) "Self-review" shall mean the same as described under WAC 180-16-220 (2)(c).

~~((7))~~ (9) "Appraisal" shall mean an objective, external appraisal of a school's self-review activities and school improvement plan pursuant to WAC 180-55-020(5).

~~((8))~~ (10) "Recognized accrediting body" shall mean an organization recognized by the state board of education and listed on the state board website.

~~((9))~~ (11) "Recognized accrediting process" shall mean the state board of education process managed through the educational service districts for approved private schools.

AMENDATORY SECTION (Amending WSR 06-23-012, filed 11/2/06, effective 12/3/06)

**WAC 180-55-017 Criteria for state board of education recognition of accrediting bodies.** (1)(a) (~~A recognized accrediting body shall meet the definition of such pursuant to WAC 180-55-015(8).~~

~~(b))~~ Accrediting bodies recognized by the state board of education shall verify that standards for approved private schools seeking accreditation through them meet or exceed the school accreditation standards pursuant to WAC 180-16-220.

~~((c) Accrediting bodies recognized by the state board of education for the specific purpose of accrediting state board approved private schools, prior to being considered by the state board for recognition,))~~ (b) Prior to being considered by the state board for recognition for the specific purpose of accrediting state board approved private schools, accrediting bodies shall have their accreditation

standards verified for compliance under ~~((b)-ef)~~ this subsection by a private school advisory committee established by the superintendent of public instruction pursuant to RCW 28A.195.050. If verified, the committee may recommend the accrediting body to the state board for recognition.

~~((d))~~ (c) A list of recognized accrediting bodies will be maintained on the website of the state board of education. The listing shall include an additional designation for accrediting bodies that are recognized for purposes of accreditation of student living accommodations at approved residential private schools.

(d) A recognized accrediting body must notify the board of any substantive changes to their accreditation standards or procedures and provide a copy of any revised standard when they are published.

(2) Private schools must be approved by the state board of education prior to being recommended by a state board of education recognized accrediting body or process for state accreditation consideration.

#### NEW SECTION

**WAC 180-55-160 Criteria for accreditation of a residential private school student living accommodations.** (1) A recognized accrediting body that accredits student living accommodations at approved residential private schools may be recognized for the purpose of accrediting student living accommodations if the state board of education determines that the accrediting body's accreditation standards related to student living accommodations examine criteria comparable to the criteria established in negotiated rules developed by the department of children, youth, and families, to implement RCW 74.15.325. The standards for accreditation must be determined to be comparable and must address the needs of children and youth during noninstructional hours including, but not limited to:

- (a) Space allotted to each child or youth for sleeping;
- (b) Developmentally appropriate privacy requirements;
- (c) Personal storage;
- (d) Nutritional needs;
- (e) Cleanliness and hygiene of living quarters;
- (f) Social-emotional well-being during noninstructional hours;
- (g) Health and wellness accommodations;
- (h) Compliance with the Americans with Disabilities Act; and
- (i) Physical safety.

(2) Accreditation of a residential program is a supplemental accreditation status. An accreditor recognized by the state board of education for the purpose of accrediting student living accommodations must also meet the criteria in WAC 180-55-017. An appropriately recognized accreditor may accredit the residential program only for schools that are fully accredited for their academic program by the same accrediting body.

#### NEW SECTION

**WAC 180-55-170 Process to request recognition by the state board of education.** (1) Entities that wish to be recognized for the purpose

of accrediting approved private schools must contact the state board of education to identify materials necessary for review by the private school advisory committee, established by the superintendent of public instruction pursuant to RCW 28A.195.050 and, if applicable, consultation with the department of children, youth, and families.

(2) The private school advisory committee will review the materials provided and verify that the accrediting body's accreditation standards meet the requirements of this chapter. If verified, the committee may recommend the accrediting body to the state board for recognition. State board of education, in consultation with the department of children, youth, and families when applicable, retains final authority to recognize the accrediting body.

**WSR 25-01-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed December 13, 2024, 12:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-062.

Title of Rule and Other Identifying Information: The licensing division is creating new chapter 110-149 WAC, Licensing requirements for kinship homes; and repealing WAC 110-148-1326 Can I get a license to care for a specific child, and what are the requirements?

The child welfare division is creating new WAC 110-50-0165 Definitions for relatives and suitable persons placements; and amending WAC 110-50-0170 Determining relatives or suitable persons as placements for children and youth in out-of-home care, 110-50-0180 When relatives' and suitable persons' background checks may exclude them as placement options, and 110-50-0190 Financial supports for relatives and suitable person caring for children and youth placed by the department.

Hearing Location(s): On January 22, 2025, telephonic. Comments can be made by calling 360-972-5385 and leaving a voicemail that includes the comment, emailing the rules coordinator, or submitting comments to the online comment application linked below. All comments must be received by the date and time listed below.

Date of Intended Adoption: January 23, 2025.

Submit Written Comments to: Department of children, youth, and families (DCYF) rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, beginning December 17, 2024, at 8:00 a.m., by January 22, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-522-3691, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by January 15, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will provide the licensing standards for kinship caregivers. This rule making also allows DCYF to issue child-specific licenses to kinship caregivers and eliminate the need to use nonsafety exemptions and waivers to license these homes. This will reduce barriers and improve equity for kinship caregivers applying to be licensed. This new chapter and related WAC amendments will also provide greater stability and outcomes for children and youth entering foster care.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Statute Being Implemented: RCW 34.05.220, 43.216.020, and 43.216.065.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Kyler McGee, 4045 Delridge Way S.W., Suite 201, Seattle WA, 98106, 253-290-9317, Implementation and Enforcement: DCYF, statewide.

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. DCYF is not among the agencies listed as required to comply with 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.

December 13, 2024  
Brenda Villarreal  
Rules Coordinator

OTS-6049.1

## RELATIVES AND SUITABLE PERSONS PLACEMENTS

### NEW SECTION

**WAC 110-50-0165 Definitions for relatives and suitable persons placements.** The following definitions apply to relatives and suitable persons placements:

**"Department"** means the Washington state department of children, youth, and families.

**"Relatives"** means the same as defined in RCW 13.36.020(5), described in RCW 74.15.020(2), or caregivers of Indian children or youth who are defined by tribal code or custom as relatives or extended family.

**"Suitable persons"** means nonrelatives with whom the child or youth, or the child's or youth's family, has a preexisting relationship; who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child or youth, and with whom they have been placed pursuant to RCW 13.34.130.

AMENDATORY SECTION (Amending WSR 24-19-056, filed 9/13/24, effective 10/14/24)

**WAC 110-50-0170** (~~Under what circumstances does the department choose a relative as the placement for a child in need of out-of-home care?~~) Determining relatives or suitable persons as placements for children and youth in out-of-home care. (~~(1) When the department determines that a child needs to be placed outside the home, the department must search for appropriate relatives to care for the child be-~~

~~fore considering nonrelative placements. See RCW 74.15.020 for the definition of "relative."~~

~~(2) The department reviews and determines the following when selecting a relative placement:~~

- ~~(a) The child would be comfortable living with the relative;~~
- ~~(b) The relative has a potential relationship with the child;~~
- ~~(c) The relative is capable of caring for the child and is willing to cooperate with the permanency plan for the child;~~
- ~~(d) The relative is able to provide a safe home for the child;~~
- ~~(e) Each child has their own bed or crib if the child remains in the home beyond 30 days.~~

~~(3) The department may consider nonrelated family members as potential resources, if these family members become licensed to provide foster care (see RCW 74.15.030).)~~ (1) The department must search for appropriate relatives or suitable persons for placement, prior to placing children or youth in foster homes when the department determines that they need to be placed in out-of-home care.

(2) The department must assess the following when selecting relatives or suitable persons for placement of children and youth:

- (a) The children or youth would be comfortable living with the relative or suitable person; and
- (b) The relative or suitable person is:
  - (i) Related to or has a preexisting relationship with them;
  - (ii) Capable of caring for them and is willing to cooperate with the child's or youth's permanency plan; and
  - (iii) Able to provide them a safe home, and:
    - (A) Sleeping arrangements that are based on their age, development, and specific needs, unless there is a written plan approved by the caseworker to mitigate safety concerns; and if they remain in their home for more than 30 calendar days, they must verify each child under 12 months old has a safe sleeping space that meets infant safe sleep requirements, such as a:
      - (I) Bassinet;
      - (II) Crib that complies with chapter 70.111 RCW and 16 C.F.R. 1219.1220;
      - (III) Portable crib; or
      - (IV) Native American:
        - Moss boards; or
        - Cradle boards; and
    - (B) Confirm that the children or youth older than 12 months have their own individual safe sleeping space with bedding, unless other arrangements have been approved by the children's or youth's caseworkers.

(3) The department may consider foster care as a potential placement resource, when there are no approved relatives or suitable persons available to provide placement, per chapter 13.34 RCW.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0180** ~~((Under what circumstances may a relative not be considered as a placement option for a child?))~~ **When relative's and suitable person's background checks may excluded them as placement options.** ~~((The department may exclude relatives who have criminal his-~~

tories as included in the Adoption and Safe Families Act (ASFA) regulations.

~~(1) If the department finds that, based on a criminal records check, a court of competent jurisdiction has determined that the relative or a member of the household has been convicted of a felony involving:~~

~~(a) Child abuse or neglect;~~

~~(b) Spousal abuse;~~

~~(c) A crime against a child or children (including child pornography); or~~

~~(d) Crimes involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.~~

~~(2) The department may not approve a relative placement if the department finds the relative, or a member of the household, has, within the last five years, been convicted of a felony involving:~~

~~(a) Physical assault;~~

~~(b) Battery; or~~

~~(c) A drug related offense.))~~ The department must follow WAC 110-04-0120 when assessing background checks for relatives and suitable persons requesting to be a placement option for children and youth.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0190** (~~What sources of financial support are available to a relative caring for a child that the department has placed in the relative's home?~~) **Financial supports for relatives and suitable persons caring for children and youth placed by the department.** (1)

~~((For relatives needing financial support to care for the child, the social worker))~~ Caseworkers may assist ((the family)) unlicensed relatives and suitable persons that need financial support to care for children or youth to apply for temporary assistance for needy families (TANF) through the ((department's)) department of social and health services (DSHS) local community services office (CSO).

(2) Relatives and suitable persons who are licensed ((as)) kinship caregivers or foster parents ((may choose to)):

(a) Will receive foster care maintenance payments ((. The relative)); and

(b) Must not receive TANF benefits ((in)) on behalf of the child or youth in care ((while)) at the same time they are receiving foster care payments ((-see RCW 74.15.030)).

(3) A relative or suitable person who is not a licensed kinship caregiver or foster parent at the time of placement may apply to become either:

(a) A licensed kinship caregiver as described in chapter 110-149 WAC; or

(b) A foster parent as described in chapter ((388-148)) 110-148 WAC.

(4) The relative or suitable person caring for the ((child)) children or youth in out-of-home ((placement)) care may apply to be ((the)) their representative payee for supplemental security income (SSI) or Social Security Administration benefits for the ((related)) child or youth living with ((the relative)) them. However, if the child or youth is a dependent of ((the state of)) Washington state

with custody assigned to the department by the court, the department will usually remain the payee (~~in~~) on their behalf (~~of the child~~) until the dependency is dismissed.

OTS-5992.3

**Chapter 110-149 WAC  
LICENSING REQUIREMENTS FOR KINSHIP HOMES**

**PURPOSE, DEFINITIONS, AND NONDISCRIMINATION**

NEW SECTION

**WAC 110-149-0010 Purpose.** (1) This chapter contains licensing requirements for kinship homes licensed directly by the department or certified through a child placing agency (CPA). Unless noted otherwise, these requirements apply to caregivers licensed to provide kinship care.

(2) These licensing requirements are designed to verify children and youth who are in licensed kinship care are safe, healthy, and protected from all forms of child abuse and neglect as outlined in:

- (a) RCW 26.44.020; and
- (b) Chapter 110-30 WAC.

NEW SECTION

**WAC 110-149-0020 Definitions.** The following definitions are for the purpose of this chapter and important to understanding these requirements:

**"Abuse or neglect"** means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child or youth as defined in RCW 26.44.020.

**"Agency"** means the same as defined in RCW 74.15.020.

**"Applicant"** means individuals applying to receive a kinship license.

**"Asexual"** means the lack of a sexual attraction or desire for other individuals.

**"Bisexual"** means individuals who have an emotional or physical attraction to individuals of the same and different genders.

**"Caregivers"** means applicants for kinship licenses or licensed kinship caregivers.



**"Case plans"** means a written document followed by the child's or youth's parents, kinship caregivers, foster parents, and all other caregivers.

**"Caseworkers"** means primary agency workers assigned to children or youth through the department or another government agency including tribal governments.

**"Certification"** means:

(a) Kinship or foster homes supervised by a CPA that meets the licensing requirements; or

(b) Individuals approved by the department as certified respite providers.

**"Chapter"** means chapter 110-149 WAC.

**"Child placing agency (CPA)"** means agencies or tribes licensed to place children or youth for foster care or adoption and may be contracted by the department to provide professional therapeutic foster care (PTFC) services.

**"Children"** or **"youth"** means individuals who are one of the following:

(a) Under 18 years of age;

(b) Kindergarten to 18 years of age residing in a residential private school;

(c) Up to 21 years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their 18th birthday and pursuing either a:

(i) High school or equivalency course of study; or

(ii) Vocational program;

(d) Up to 21 years of age and participating in the extended foster care (EFC) program;

(e) Up to 21 years of age with intellectual and developmental disabilities; or

(f) Up to 25 years of age and in the custody of the juvenile rehabilitation division.

**"Child-specific license"** means the same as defined in RCW 74.15.125.

**"Cisgender"** means an individual whose gender identity aligns with those typically associated with the sex assigned to them at birth.

**"Department"** means the Washington state department of children, youth, and families.

**"Firearms"** means any device designed to cause bodily harm or physical damage from which projectiles are launched. These include, but are not limited to, BB guns, pellet guns, air rifles, stun guns, handguns, rifles, shotguns, and archery equipment.

**"Foster homes"** or **"foster parents"** means individuals licensed through chapter 110-148 WAC to regularly provide 24-hour care in their home to children or youth.

**"Gay"** means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

**"Gender expression"** means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

**"Gender fluid"** means individuals whose gender identities are flexible, not permanent.

**"Gender"** or **"gender identity"** means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

**"Guardians"** means the same as defined in RCW 13.34.030.

**"Hearings"** means the same as defined in WAC 110-03-0020.

**"Heterosexual"** means an individual who is exclusively attracted to individuals of the opposite sex or gender.

**"Household members"** means anyone living in the licensed home or living on the licensed property that has unsupervised access with children or youth.

**"Indian children"** means the same as defined in WAC 110-110-0010.

**"Infants"** means children from birth through 11 months of age.

**"Initial licenses"** means the same as defined in RCW 74.15.120.

**"Intersex"** means an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

**"Interstate Compact on the Placement of Children (ICPC)"** means the agreement enacted into law in all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes processes and requirements to:

(a) Provide protection and services to children and youth placed across state lines; and

(b) Verify interstate placements remain safe, suitable, and in the children's or youth's best interest.

**"Kinship licenses"** means child-specific licenses as defined in RCW 74.15.125.

**"Lesbians"** means females or women who have an emotional or physical attraction for other females or women.

**"LGBTQIA+"** means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and two-spirit.

**"License"** means a permit issued by the department when a kinship caregiver and their home meet the licensing requirements established in this chapter.

**"Licensed health care providers"** means medical doctors, doctors of osteopathy, doctors of naturopathy, physician assistants, or advanced registered nurse practitioners.

**"Licensed kinship care"** or **"licensed kinship caregivers"** means the full-time care of children or youth by licensed relatives, suitable persons, or relatives defined by tribal code or custom.

**"Licensing division (LD)"** means the division within the department that licenses and monitors foster homes, licensed kinship homes, residential private schools, CPAs, and licensed group care facilities.

**"Licensors"** means either:

(a) LD employees who recommend approvals for or monitor licenses or certifications for foster homes, licensed kinship homes, residential private schools, facilities, and agencies established under this chapter; or

(b) CPA employees who certify or monitor foster homes supervised by the CPA.

**"Medically fragile"** means the condition of a child or youth who requires the availability of 24-hour skilled care from a health care professional or specially trained family or foster family member. If the technology, support, and services being received by the medically

fragile children or youth are interrupted or denied, they may, without immediate health care intervention, experience death. These conditions may be present all the time or frequently occurring.

**"Missing children"** means any child or youth under the placement, care, and authority of DCYF whose whereabouts are unknown or who have left care without the permission of their caregiver or the department. This does not include children or youth in dependency guardianships.

**"Nonbinary"** is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

**"Other weapons"** means instruments other than firearms intentionally designed to cause bodily harm or physical damage.

**"Out-of-home care"** means the same as defined in RCW 13.34.030.

**"Over-the-counter medication"** means a drug that can be obtained without a prescription and is not restricted to use by a licensed health care provider, e.g., herbal supplements, vitamins, eye drops, ointments, and pain relievers.

**"Parents"** means the same as defined in RCW 26.26A.010.

**"Permanency plan"** means the decision regarding the placement of children or youth resulting from a permanency hearing as defined in RCW 13.34.136.

**"Property"** or **"premises"** means homes, buildings, and grounds, including those adjacent to the residential property that are owned, rented, or managed by the applicant or licensee.

**"Provisional expedited kinship license"** means a license issued to kinship caregivers who meet the requirements outlined in RCW 74.15.127 and WAC 110-149-0390.

**"Prudent parent"** means the same as defined in RCW 74.13.710, or as defined by the tribe.

**"Psychotropic medications"** means a type of medicine prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

**"Queer"** means LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

**"Questioning"** means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

**"Relatives"** means the same as defined in RCW 13.36.020(5), described in RCW 74.15.020(2) and 11.130.010(32), or caregivers of Indian children or youth who are defined by their tribal code or custom as relatives or extended family.

**"Respite"** means the same as defined in RCW 74.13.270 including, but not limited to, appropriate, temporary, short-term care provided by an in-home or out-of-home provider paid by the department.

**"Sexual orientation"** means an individual's emotional or physical attraction to other individuals.

**"Sexual orientation, gender identity, and expression (SOGIE)"** means distinct identifiers everyone has. LGBTQIA+ is a sub-distinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

**"Suitable persons"** means nonrelatives with whom the child or youth, or the child's or youth's family, has a preexisting relationship; who have completed all required criminal history background checks and otherwise appear to be suitable and competent to provide care for the child or youth, and with whom they have been placed, per RCW 13.34.130.

**"Transgender"** means an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

**"Two-spirit"** means a modern umbrella term used by some Native Americans to describe Native American individuals in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being two-spirit does not imply any specific sexual orientation.

#### NEW SECTION

**WAC 110-149-0030 Nondiscrimination.** Caregivers must meet non-discrimination requirements by:

- (1) Following all state and federal laws regarding nondiscrimination while providing services to children and youth in care; and
- (2) Supporting and engaging children and youth in care with dignity and respect regardless of actual or perceived race, ethnicity, religion, culture, or SOGIE.

### CAREGIVER RIGHTS

#### NEW SECTION

**WAC 110-149-0040 Licensing options.** Caregivers may apply to:

- (1) Receive a kinship or foster license through the department, CPA, or tribal CPA. If caregivers:
  - (a) Apply through a CPA or tribal CPA, CPA's have the discretion to:
    - (i) Determine whether to certify a caregiver; and
    - (ii) Have additional requirements for caregivers to become and remain a licensed kinship caregiver. Additional requirements must be related directly to the children's or youth's needs or case plans; and
  - (b) Disagree with a CPA's decision on whether to certify them, they must follow the CPA's appeals process to challenge the decision; and
- (2) The state or a different CPA than they are currently applying to or are licensed with at any time.

#### NEW SECTION

**WAC 110-149-0050 Accepting placements of additional children or youth.** Caregivers must:

(1) Only accept placements of kinship children or youth in out-of-home care, unless they are licensed foster parents under chapter 110-148 WAC, which allows them to accept nonkin placements; and

(2) Have an updated assessment to include any additional kinship children or youth who were not identified on their current license within 90 days of the placement occurring.

#### NEW SECTION

**WAC 110-149-0060 Foster care maintenance payments.** Caregivers must be licensed to receive monthly foster care maintenance payments while caring for kinship children or youth, per WAC 110-50-0470.

#### NEW SECTION

**WAC 110-149-0070 Training, services, and financial support.** Caregivers may request the following from the department to assist in meeting the needs of kinship children or youth:

- (1) Training;
- (2) In or out-of-home services; or
- (3) Financial support including, but not limited to:
  - (a) Transportation or mileage reimbursement;
  - (b) Property damage reimbursement; and
  - (c) Clothing vouchers when kinship children or youth have an exceptional clothing need.

#### NEW SECTION

**WAC 110-149-0080 Respite or babysitting for children and youth.** Caregivers:

- (1) Have the right to receive breaks from caregiving, including respite;
- (2) Must obtain their caseworker's approval if babysitting will be provided regularly or more than 72 hours; and
- (3) May:
  - (a) Make their own arrangements for babysitting using the prudent parenting guidelines, if it will be provided occasionally and is less than 72 hours, per RCW 74.13.710;
  - (b) Have respite provided inside or outside of their home;
  - (c) Identify individuals to become certified kinship respite providers who will be paid by the department;
  - (d) Request the department or their CPA to help locate licensed foster homes to provide respite care; and
  - (e) Contact the children's or youth's caseworker to locate tribal certified respite homes.

NEW SECTION

**WAC 110-149-0090 Paid certified kinship respite provider requirements.** Certified kinship respite providers must be approved by the department to receive payment prior to providing respite care by completing the following when providing respite care in:

- (1) The licensed kinship caregiver's home:
  - (a) Application;
  - (b) A federal bureau of investigation fingerprint-based background check;
  - (c) At least one interview; and
  - (d) Infant safety agreement; or
- (2) The certified kinship respite provider's home. In addition to the requirements in subsection (1) of this section, they must also complete:
  - (a) A walkthrough of their home with a licensor; and
  - (b) Background checks for household members, as outlined in chapter 110-04 WAC.

NEW SECTION

**WAC 110-149-0100 Providing kinship respite care in licensed kinship homes.** Licensed kinship caregivers:

- (1) Must:
  - (a) Only provide respite care to other kinship children or youth; and
  - (b) Be licensed for kinship children or youth to receive respite payments; and
- (2) May request a home study update to their current license to add kinship children or youth they plan to provide respite for to be eligible to receive payment for any respite provided.

NEW SECTION

**WAC 110-149-0110 Applicants or licensed kinship caregivers' right to an administrative hearing.** Caregivers:

- (1) Have a right to an administrative hearing per chapter 110-03 WAC;
- (2) May request an administrative hearing if they contest the department's decision to deny, suspend, or revoke their license; and
- (3) Must submit a written request for an administrative hearing to the office of administrative hearings within 28 calendar days of receiving a certified letter with the department's decision.

**CAREGIVER REQUIREMENTS**NEW SECTION

**WAC 110-149-0120 Meeting the basic and specific needs of children and youth.** Caregivers must meet or request assistance from the children's or youth's caseworkers to develop a plan that meets the child's or youth's basic and specific needs. This includes, but is not limited to, providing:

- (1) Food, including options for:
  - (a) Allergies;
  - (b) Specific diets; and
  - (c) Cultures;
- (2) Seasonally appropriate clothes;
- (3) Medications;
- (4) Medical, vision, and dental care and equipment including, but not limited to:
  - (a) Incontinence items;
  - (b) Glasses; and
  - (c) Dental retainers; and
  - (5) Diapers and wipes.

NEW SECTION

**WAC 110-149-0130 Meeting the safety and well-being needs of children and youth.** Caregivers:

- (1) Must follow these requirements when caring for children and youth:
  - (a) Make reasonable efforts to protect children and youth from abuse or neglect;
  - (b) Follow the children's or youth's case plans, including making them available for family time and visits with siblings;
  - (c) Provide access to meet with children or youth in care at any time, including at their home and property, to support their safety and well-being. Access must be given to the following, as applicable:
    - (i) The department;
    - (ii) CPA representatives; and
    - (iii) Tribes;
  - (d) Provide and arrange for care that is appropriate for children or youth;
  - (e) Provide children or youth with a safe, nurturing, respectful, and supportive environment;
  - (f) Obtain approval from the children's or youth's caseworker prior to making any significant changes to their appearance including, but not limited to:
    - (i) Hair dying or haircuts;
    - (ii) Piercings; and
    - (iii) Tattoos;
  - (g) Provide:

- (i) Ongoing and appropriate haircare that is specific to the needs of the children or youth; and
- (ii) Emotionally and developmentally appropriate care regarding their race, religion, culture, and SOGIE in their home and community including, but not limited to:
  - (A) Providing children and youth:
    - (I) A supportive and affirming environment;
    - (II) Opportunities for spiritual or religious participation or nonparticipation; and
    - (III) Tribal activities within their tribal community or extended family;
  - (B) Using their pronouns and chosen name;
  - (C) Not sharing their SOGIE without their permission; and
  - (D) Connecting them to appropriate resources; and
- (h) Not use drugs or alcohol, whether legal or illegal, in a manner that affects their ability to provide safe care to children or youth; and
- (2) May be required to complete trainings or participate in in-home services to address the needs of children or youth placed in their home.

NEW SECTION

**WAC 110-149-0140 Additional requirements for Indian children.**

Caregivers must follow these additional requirements when caring for Indian children and youth in their care:

- (1) Provide opportunities and support by connecting them with their tribal families and communities including, but not limited to, attending cultural and spiritual events, activities, and ceremonies, or learning tribal stories and songs;
- (2) Collaborate with their caseworker:
  - (a) To support their connections to their tribal families and communities, as needed;
  - (b) When repairing, replacing, or providing culturally significant items; and
  - (c) To develop a case plan that includes, but is not limited to:
    - (i) Following the local Indian child welfare advisory committee recommendations, if applicable;
    - (ii) Managing tribally funded payments, e.g., per capita, general welfare, settlement funds, if applicable;
    - (iii) Possessing and using Native American traditional medicines including, but not limited to:
      - (A) Sage;
      - (B) Cedar; and
      - (C) Sweet grass; and
    - (iv) Using baby boards and moss bags;
    - (v) Providing plant-based or lactose free alternatives to cow's milk, if applicable;
    - (vi) Allowing Indian children or youth to attend cultural events and activities;
    - (vii) Not using discipline methods that interfere with the child's or youth's cultural needs, including cutting their hair, or taking away any religiously or culturally significant items or events; and



(viii) Consulting with tribes prior to any out-of-state or out-of-country travel when caring for children or youth in the care and custody of a tribal court; and

(3) Obtain approval from their caseworkers prior to making any changes to the child's or youth's appearance including, but not limited to:

- (a) Hair dying or haircuts;
- (b) Piercings; and
- (c) Tattoos.

#### NEW SECTION

**WAC 110-149-0150 Conditions of the home.** (1) Caregivers must make reasonable efforts for their home to meet the following conditions and the developmental needs of the children and youth placed in their care including, but not limited to:

- (a) Having:
  - (i) A method for heating and cooling;
  - (ii) Access to electricity and lighting, safe drinking water, and toilet and bathing facilities; and
  - (iii) Safe and sanitary pets when they are around children and youth, if applicable; and
- (b) Verifying outdoor spaces that are accessible to children or youth are safe. This includes, but is not limited to, providing adequate supervision for the following:
  - (i) Trampolines;
  - (ii) Bodies of water;
  - (iii) Pools;
  - (iv) Hot tubs; and
  - (v) Fire pits; and
- (c) Being free from:
  - (A) Insect and rodent infestation;
  - (B) Fire hazards, including exposed wires or flammable materials within three feet of a fire source; and
  - (C) Other safety hazards that may be accessible to children or youth, including:
    - (I) Overflowing garbage;
    - (II) Uncontained pet waste;
    - (III) Fleas;
    - (IV) Toxic mold;
    - (V) Peeling lead paint; or
    - (VI) Excessive debris.

(2) The department will make reasonable efforts to assist caregivers in acquiring necessary items to verify and maintain safe and sanitary conditions of the home and property, if these conditions are not met.

#### NEW SECTION

**WAC 110-149-0160 Sleeping arrangements.** Caregivers must meet the following sleeping arrangement conditions based on children's or youth's ages, development, and specific needs:

(1) Children under 12 months old must have a safe sleeping space that meets the infant safe sleep requirements, which includes bassinets, Native American cradle boards and moss bags, portable cribs, or cribs. Cribs must comply with:

- (a) Chapter 70.111 RCW; and
- (b) 16 C.F.R. 1219 or 1220; and

(2) Children and youth older than 12 months must have their own safe sleeping space with bedding, unless other arrangements have been approved by their caseworker.

#### NEW SECTION

##### **WAC 110-149-0170 Medical consent.** Caregivers:

(1) Have the authority to consent to routine medical, dental, and vision care on behalf of children or youth in the placement care and authority of the department or tribe who are younger than 18 years of age who are placed in their care;

(2) Must:

(a) Discuss children's and youth's routine care needs with the caseworkers who will incorporate the care needs into their case plans;

(b) Obtain direction from the tribes for permission to consent for medical care for children or youth in the custody of tribal court;

(c) Contact the children's or youth's caseworkers prior to scheduling nonroutine and nonemergent medical services. These services include, but are not limited to:

(i) Any procedures requiring anesthesia, e.g., tonsillectomy, tympanostomy, or wisdom teeth extraction;

(ii) Psychotropic medications for any children younger than 13 years of age or who are not able to give their own consent;

(iii) Surgery; and

(iv) Medical procedures; and

(d) Follow state laws regarding children's or youth's ability to access and consent to medical care including, but not limited to:

(i) Mental health care;

(ii) Protected health care;

(iii) Reproductive health care;

(iv) Sexually transmitted diseases; and

(v) Substance use treatment; and

(e) Not consent to medical care on behalf of an individual 18 years or older, unless they have legal authority to do so.

#### NEW SECTION

##### **WAC 110-149-0180 Medication administration and accessibility.**

Caregivers must:

(1) Complete the following when children or youth are taking:

(a) Prescription medications:

(i) Notify their caseworker of the prescribed medications and any changes to medications, e.g., types or doses;

(ii) Give the medications in the amount and frequency prescribed by the licensed health care provider; and

(iii) Only:

- (A) Start or stop giving the medications with approval from their licensed health care provider; and
- (B) Use the medications for behavior control, including for sleep, when prescribed for that purpose; and
- (b) Over-the-counter medications. Give over-the-counter medications to children or youth only as specified on the label; and
- (2) Provide accessibility to medications for children or youth to:
  - (a) Others who are approved to provide medications; and
  - (b) Youth who are approved to take their own medicine; and
  - (3) Allow the following individuals to take their own medication:
    - (a) Youth participating in the extended foster care program; and
    - (b) Children or youth, if written approval is received by their:
      - (i) Licensed health care providers; and
      - (ii) Caseworkers.

NEW SECTION

- WAC 110-149-0190 Storing medications, substances, toxic products, firearms, and other weapons.** (1) Caregivers must keep children and youth safe by:
- (a) Verifying lifesaving medications are accessible to them including, but not limited to:
    - (i) Inhalers;
    - (ii) Epi-Pens; and
    - (iii) Naloxone;
  - (b) Making the following items inaccessible to them when there is a concern about unsafe access based on their age, development, and specific needs:
    - (i) Prescription medications;
    - (ii) Over-the-counter medications including, but not limited to:
      - (A) Vitamins;
      - (B) Herbal remedies; and
      - (C) Pet medications;
    - (iii) Substances including, but not limited to:
      - (A) Alcohol;
      - (B) Marijuana;
      - (C) Nicotine; and
      - (D) Other drug paraphernalia; and
    - (iv) Toxic materials including, but not limited to:
      - (A) Cleaning products; and
      - (B) Mechanical fluids, including motor oil or antifreeze; and
      - (c) Locking firearms, ammunition, and other weapons in a manner that is inaccessible to children.
  - (2) The department will provide locking mechanisms if needed.

NEW SECTION

- WAC 110-149-0200 Supervising children and youth.** Caregivers must supervise children or youth by:
- (1) Providing and arranging for supervision that is appropriate for the children's or youth's age and development; and
  - (2) Following a written supervision plan if provided by the:

- (a) Caseworker; or
- (b) CPA.

NEW SECTION

**WAC 110-149-0210 Participating in activities.** Caregivers must follow prudent parenting standards requirements in RCW 74.13.710 when allowing children or youth to participate in normal childhood activities.

NEW SECTION

**WAC 110-149-0220 Education requirements.** Caregivers must:

- (1) Follow the educational plan approved by the children's or youth's caseworkers; and
- (2) Enroll school-aged children or youth in public or tribal schools unless there is a court order allowing:
  - (a) Home schooling;
  - (b) Private schooling; or
  - (c) Alternative learning experiences.

NEW SECTION

**WAC 110-149-0230 Children's and youth's personal belongings.** When handling and storing children's and youth's personal belongings, caregivers must:

- (1) Treat belongings with care and respect at all times;
- (2) Verify children or youth who leave their home and take their personal belongings with them. This includes belongings they brought with them and those acquired while in care, e.g., clothing, mementos, bicycles, gifts, and money;
- (3) Secure the children's or youth's belongings for at least 30 calendar days; and
- (4) Coordinate with their caseworker to transfer their belongings to them as soon as possible if they are not able to take them when they leave.

NEW SECTION

**WAC 110-149-0240 Privacy for children and youth.** (1) Caregivers must provide children and youth the right to privacy including, but not limited to, personal mail, electronic mail, and phone calls unless the:

- (a) Children's or youth's caseworkers ask caregivers to provide monitoring; or
- (b) Court approves monitoring as part of the child's or youth's case plan.

(2) Caregivers:

(a) Are prohibited from using video and audio to monitor children or youth in care inside licensed kinship caregiver's homes, unless the criteria in (b) of this subsection or the following conditions are met:

(i) The LD senior administrator approves the use of electronic monitoring devices; or

(ii) The court approves the implementation of video or audio monitoring as part of the children's or youth's case plan;

(b) May use:

(i) Audio or visual monitoring of children or youth in care inside the licensed kinship caregiver's home for the following:

(A) Children, birth through four years of age;

(B) Medically fragile or sick children or youth;

(C) To document actions of children or youth directed in writing by their licensed health care provider using video recording equipment; and

(D) Door or window alarms or motion detectors; and

(ii) Recording for children's or youth's normal childhood events inside or outside of the licensed kinship caregiver's home including, but not limited to:

(A) Birthdays;

(B) Vacations;

(C) Extracurricular activities; and

(D) First day of school.

#### NEW SECTION

**WAC 110-149-0250 Transportation.** (1) Caregivers must have a plan to transport children or youth to appointments and activities based on children's or youth's age, development, and specific needs.

(2) If caregivers transport children or youth in a private vehicle, they must:

(a) Follow all state laws; and

(b) Have proper safety equipment to provide safe transportation, including car seats or booster seats, based on each child's or youth's age, development, and specific needs.

#### NEW SECTION

**WAC 110-149-0260 Emergency preparedness.** Caregivers must work with their licensor to prepare the home for emergencies to include:

(1) Having:

(a) A reliable way to contact emergency services when children or youth are present in the home;

(b) Smoke detectors inside and outside of all sleeping areas, on each story, in all play areas, and in the basement of the home;

(c) A working carbon monoxide detector on each level of the home;

(d) Access to a working fire extinguisher, recommended 2A10BC-rated five pound or larger in size; and

(e) An unblocked exit to the outside from each child's or youth's sleeping space that is large enough for emergency personnel wearing rescue gear to access;

(2) Verifying children or youth can escape from every floor in the home; and

(3) Creating and reviewing an evacuation plan with the children and youth in case of:

- (a) Fires;
- (b) Natural disasters; or
- (c) Other emergencies.

## MANAGING BEHAVIORS

### NEW SECTION

**WAC 110-149-0270 Discipline.** When disciplining children or youth, caregivers:

(1) Must:

(a) Use discipline that is appropriate to the children's or youth's age and level of development; and

(b) Not use physical or verbally abusive, neglectful, humiliating, degrading, or frightening punishment including, but not limited to:

- (i) Hitting;
- (ii) Spanking;
- (iii) Restricting breathing;
- (iv) Name calling;
- (v) Threats or intimidation;
- (vi) Trapping or locking in a space;
- (vii) Forced physical exertion or exercise; and
- (viii) Other methods that interfere with the children's or youth's:

(A) Basic needs, including withholding food and water;

(B) Cultural needs, including cutting an Indian child's or youth's hair or taking away a religiously or culturally significant item or event; and

(C) Familial connections, including removal of sentimental items or gifts from their parents or family time; and

(2) May request training on how to use positive methods of guidance for children and youth that promote self-control, self-responsibility, self-direction, self-esteem, and cooperation including, but not limited to:

(a) Directing them to another activity;

(b) Giving them choices when appropriate;

(c) Using time-in as a method of guidance, allowing them time to change their behavior;

(d) Planning to prevent problems; and

(e) Using positive reinforcement and encouraging them to express their feelings and ideas.

NEW SECTION

**WAC 110-149-0280 Physical restraint.** When considering or using physical restraint on children and youth, caregivers:

(1) Must:

(a) Not use physical restraint to redirect or deescalate the situation, unless the children's or youth's behaviors pose an immediate risk to the physical safety of themselves, another individual, or animals, or to prevent serious property damage. If restraint is necessary, it must be reasonable;

(b) Notify the children's or youth's caseworkers of any behavior that results in physical restraint as soon as possible, but within 24 hours of the restraint; and

(c) Develop a plan with the children's or youth's caseworkers if the use of physical restraint becomes ongoing; and

(2) May be required to complete training on how and when to use physical restraint that is based on the specific needs of the child or youth.

**REPORTING REQUIREMENTS**NEW SECTION

**WAC 110-149-0290 Reporting incidents.** Caregivers must report the following incidents involving children and youth in their care within these required time frames:

(1) Immediately to the department intake when the incident is a:

(a) Death or near death; or

(b) Suspected or disclosed physical or sexual abuse, neglect, or exploitation of a child or youth, per chapter 26.44 RCW; and

(2) As soon as possible, but within:

(a) Twenty-four hours, to the children's or youth's caseworkers, any behavior that resulted in a physical restraint; and

(b) Forty-eight hours, to the child's or youth's caseworker or department intake if the child's or youth's caseworker is not available, or it is after normal business hours, for any of the following incidents:

(i) Serious illness or injury, or need for psychiatric care;

(ii) Sexual contact between two or more children or youth that is not:

(A) Consensual; or

(B) Not developmentally appropriate according to the American Academy of Pediatrics, e.g., not between preschool or teenage peers;

(iii) Disclosed suicidal or homicidal thoughts, gestures, or attempts;

(iv) Any medication given or consumed incorrectly; or

(v) Any treatment by a medical professional for emergency medical or emergency psychiatric care.

NEW SECTION**WAC 110-149-0300 Reporting children and youth missing from care.**

Caregivers must complete the following when children or youth are missing from their care:

- (1) Notify the following immediately, but not more than 24 hours, when children or youth run away while in their care:
  - (a) Law enforcement;
  - (b) Tribal law enforcement for Indian children or youth;
  - (c) National center for missing and exploited children at 1-800-843-5678; and
  - (d) Child's or youth's caseworker; or
  - (e) Intake, if the child's or youth's caseworker cannot be contacted directly or it is after normal business hours;
- (2) Provide the national center for missing and exploited children and law enforcement the following, when reasonably possible, no later than 24 hours of notification that the child or youth is missing from care:
  - (a) A recent photo of the child or youth;
  - (b) A description of the child's or youth's physical features, including:
    - (i) Height;
    - (ii) Weight;
    - (iii) Gender;
    - (iv) Ethnicity;
    - (v) Race;
    - (vi) Hair color; and
    - (vii) Eye color; and
  - (c) Endangerment information, if applicable, including the child's or youth's:
    - (i) Pregnancy status;
    - (ii) Prescription medications;
    - (iii) Suicidal tendencies;
    - (iv) Vulnerability to being sex trafficked; and
    - (v) Other health or risk factors;
- (3) Not provide the national center for missing and exploited children consent to release children and youth information under subsection (2)(c) of this section; and
- (4) At any time after making an initial report the caregiver learns of a missing child's or youth's whereabouts or they return home, caregivers must report this to the:
  - (a) Caseworker; or
  - (b) Intake.

NEW SECTION**WAC 110-149-0310 Reporting changes in the home.** (1) Caregivers

must:

- (a) Notify their licensor before moving to a new location and request a continuation of their current license, per RCW 74.15.100; and
- (b) Report the following to their licensor immediately if there is:
  - (i) A change in their address or telephone number;
  - (ii) Structure damage to their home;
  - (iii) A plan to make changes to their home structure; or



- (iv) A plan to relocate their home; and
- (v) Any of the following changes to individuals in the home including:
  - (A) A change in the caregiver's spouse or partner;
  - (B) A separation from the caregiver's spouse or partner;
  - (C) An arrest of an individual who has access to children or youth;
  - (D) The death of a caregiver;
  - (E) An individual moving in or out of the home or property;
  - (F) Any serious physical or mental incapacity that may interfere with the care of children or youth; or
  - (G) Any changes in a medical condition, including changes in prescription drugs that impact their ability to care for children or youth.
- (2) The department or CPA may require the licensed kinship caregivers to complete a new or updated assessment of the home based on the situations in subsection (1)(b) of this section. This assessment may or may not result in the issuance of a new license.

## LICENSING PROCESS

### NEW SECTION

- WAC 110-149-0320 Issuing initial licenses.** (1) The department may:
- (a) Issue initial licenses:
    - (i) To caregivers prior to their completed home study to receive foster care maintenance payments to assist in the care of specific children or youth; and
    - (ii) For a maximum of 90 calendar days. If the kinship license is not approved by the 90th day, the caregiver's foster care maintenance payments will be discontinued and resume when the three-year kinship license is approved;
  - (b) Provide financial support to caregivers while they complete their home study; and
  - (c) Reissue initial licenses to include any additional kinship children or youth placed in the home after an initial license is issued.
- (2) The department must inform caregivers they may receive an initial license to care for specific children or youth in the department's placement care and authority or when requested by a tribe or tribal CPA for children or youth in their jurisdiction when the following conditions are met:
- (a) Children or youth are currently placed in a kinship caregiver's home;
  - (b) The caregiver agrees to receive an initial license; and
  - (c) All household members 16 and older have a conditionally approved background check, except for:

- (i) Parents or guardians who are approved to reside in the home;
- or
- (ii) A household member who cannot pass a conditional approval when there is a:
  - (A) Court order allowing them to remain in the home with the child or youth; and
  - (B) Supervision plan is in place.

NEW SECTION

- WAC 110-149-0330 Kinship licensing process.** (1) Caregivers applying to become licensed kinship caregivers must:
- (a) Collaborate with their licensor to complete the licensing process, which includes, but is not limited to:
    - (i) Providing:
      - (A) The required licensing documents as outlined in the licensing provider portal; and
      - (B) Verification that the caregivers are at least 18 years old;
    - (ii) Completing the background checks requirements for all household members, per chapter 110-04 WAC; and
    - (iii) Participating in:
      - (A) A home study;
      - (B) An inspection of their home; and
      - (C) Additional assessments, in rare circumstances when related to the safety and specific needs of the children or youth in care including, but not limited to:
        - (I) Mental health;
        - (II) Substance abuse; or
        - (III) Collaterals; and
    - (b) Complete the kinship licensing process prior to the 90th day of the initial license being issued to avoid a break in foster care reimbursement payment.
  - (2) Caregivers have the right to access caregiver support if they feel their licensing needs are not met.
  - (3) The department or CPA may withdraw a caregiver's application if they are not engaging in the licensing process.

NEW SECTION

- WAC 110-149-0340 Background check requirements.** (1) Caregivers, caregivers' household members, and individuals on the property having unsupervised access to children or youth must:
- (a) Meet the requirements outlined in chapter 110-04 WAC; and
  - (b) Pass a background check.
  - (2) The department:
    - (a) Must:
      - (i) Disqualify caregivers or those living in a caregiver's home if they:
        - (A) Do not meet the requirements outlined in this chapter; or
        - (B) Cannot have unsupervised access to children or youth because they did not pass their background check; and
      - (ii) Notify caregivers if an individual in their home is:
        - (A) Disqualified from having unsupervised access to children; and

- (B) Cannot remain living in their home; and
- (b) May allow a child's or youth's parents or guardians who have been approved to reside in the home to support the children's or youth's case plan.
- (3) Kinship children or youth placed in the licensed kinship caregiver's home do not need to complete background checks.

NEW SECTION

**WAC 110-149-0350 Issuing or reassessing kinship licenses.** (1)

The licensors or CPA workers must complete a home inspection when they receive notification of licensed kinship caregivers moving within 30 calendar days of the:

- (a) Licensed kinship caregiver's first night in their new home when children or youth are placed; or
- (b) Notification of the move when no children or youth are placed.
- (2) The department must:
  - (a) Make reasonable efforts to assist caregivers in acquiring the necessary items and support to meet the licensing requirements; and
  - (b) Reassess when caregivers request to:
    - (i) Add a kinship child or youth to their kinship license and that child or youth was not identified prior to licensure;
    - (ii) Add or remove caregivers from their license; and
    - (iii) Apply for a foster home license as outlined in chapter 110-148 WAC;
  - (c) Not transfer the license to another individual; and
  - (d) Make the final decision to license caregivers when they are certified by a CPA.
- (3) The department may:
  - (a) Issue kinship licenses:
    - (i) To relatives or suitable persons:
      - (A) As defined:
        - (I) In RCW 74.15.125 for child-specific licenses;
        - (II) By tribes; or
        - (III) By agencies requesting ICPCs; and
      - (B) Providing care to kinship children or youth in the placement care and authority of the department, tribe, or other jurisdiction; and
    - (ii) For a three-year period; and
  - (b) Renew kinship licenses:
    - (i) When caregivers and their household members meet background check requirements in chapter 110-04 WAC; and
    - (ii) For the name and address shown on the application when the licensing requirements contained in this chapter are met.
- (4) Caregivers with a kinship license:
  - (a) Must:
    - (i) Meet and maintain the licensing requirements in:
      - (A) RCW 74.15.030; and
      - (B) This chapter; and
    - (ii) Provide verification to the department that they are meeting the licensing requirements, if requested; and
  - (b) Do not have the right to:
    - (i) Have specific children or youth placed in their care; or

(ii) Be a party in any department court proceedings under chapter 13.34 RCW.

NEW SECTION

**WAC 110-149-0360 Department and CPA employees applying for kinship licenses.** (1) Employees or their relatives applying for kinship licenses who:

- (a) Work for:
  - (i) The department must follow department policy regarding licensure; and
  - (ii) A CPA, in the roles of administration, supervision, foster or kinship home certification, placement, payment authorization, or case management may not be certified by that CPA as a foster or kinship home; or
- (b) Have financial interests in a CPA may not be licensed or certified by that CPA.

(2) If caregivers obtain employment from the CPA that has already certified their home, and they serve in any role listed in subsection (1)(a)(ii) of this section, they must be recertified through another CPA or become licensed directly by the department within six months of employment.

NEW SECTION

**WAC 110-149-0370 Kinship caregivers having multiple licenses, certifications, or authorizations.** (1) Applicants must submit a complete licensing application for each license they are requesting.

(2) The department:

- (a) Must:
  - (i) Conduct an individualized assessment of each complete license application when applicants apply for more than one license, prior to approving or denying an application for any license, certification, or authorization requested by the applicant; and
  - (ii) Determine the capacity limits for each license based on the requirements in the chapter within Title 110 WAC that authorizes the license; and
- (b) May approve:
  - (i) Licensed kinship caregiver's requests to have more than one department license, certification, or authorization, including child care and kinship licenses; and
  - (ii) Multiple licenses for the same home or address when:
    - (A) There are multiple licensed kinship caregivers living in the same home or address; and
    - (B) Each licensed kinship caregiver is licensed to care for different children or youth.

(3) Providers who hold both a child care and a kinship license must:

- (a) Comply with WAC 110-300-0300; and
- (b) Develop and follow a written individual care plan for every child or youth in their care with developmental, health, or behavioral needs.

(4) Providers who:

- (a) Hold a child care early learning program license;
  - (b) Offer overnight child care authorized under chapter 110-300 WAC; and
  - (c) Hold a kinship license authorized under this chapter, must comply with:
    - (i) WAC 110-300-0270; and
    - (ii) All other applicable rules under this chapter and chapter 110-300 WAC.
- (5) If the department determines that licensed kinship caregivers are not in compliance with all applicable requirements and regulations for any license, certification, or authorization:
- (a) The department and licensed kinship caregivers may mutually agree to amend one or more of the licenses, certifications, or authorizations;
  - (b) The licensed kinship caregivers may voluntarily agree to surrender or relinquish one or more of the licenses, certifications, or authorizations to the department; or
  - (c) The department may issue fines or suspend, deny, modify, or revoke one or more of the licenses, per RCW 43.216.325 and 74.15.130.

NEW SECTION

- WAC 110-149-0380 Renewing kinship licenses.** (1) Caregivers must:
- (a) Submit applications for kinship license renewals prior to the expiration date on the current license; and
  - (b) Collaborate with their licenser to complete the license renewal process which includes, but is not limited to:
    - (i) Providing the required renewal documents;
    - (ii) Completing background checks for all household members, per chapter 110-04 WAC; and
    - (iii) Participating in:
      - (A) A reassessment; and
      - (B) An inspection of their home; and
      - (C) Additional assessments, in rare circumstances when related to the safety and specific needs of the children or youth in care, including, but not limited to:
        - (I) Mental health;
        - (II) Substance abuse;
        - (III) Collaterals; and
  - (2) The department may:
    - (a) Send a renewal notice to licensed kinship caregivers 90 calendar days prior to the license expiration date; and
    - (b) Close a kinship license if an application is not received by the expiration date.

NEW SECTION

- WAC 110-149-0390 Provisional expedited kinship licenses.** (1) Caregivers requesting a provisional expedited kinship license:
- (a) Must submit a completed provisional expedited license application to the department or a CPA to initiate this type of license;

(b) May request a provisional expedited kinship license if they meet the following requirements:

(i) They have been licensed to provide foster care or licensed kinship care within the previous five years;

(ii) The license was not closed due to a denial, revocation, or an agreement to relinquish;

(iii) They reside in the same home in which they previously held a foster care or kinship license;

(iv) There are no additional household members;

(v) The expedited kinship license will be supervised by the same CPA under whom they were previously licensed or certified if the CPA agrees to supervise the home; and

(vi) The caregiver and all household members have passed the required background checks, per chapter 110-04 WAC; and

(c) Do not have the right to appeal a decision by the department if they do not meet the criteria for a provisional expedited kinship license.

(2) The department may:

(a) Issue provisional expedited kinship licenses when kinship caregivers meet the specific qualifications of this section outlined in RCW 74.15.127 while they work towards a kinship license; and

(b) Continue to work with the caregivers to become fully licensed under this chapter if they do not meet the criteria for approval of a provisional expedited kinship license.

#### NEW SECTION

**WAC 110-149-0400 Licensing requirement exemptions.** When caregivers do not meet the licensing requirements:

(1) The department may approve an exemption to license and continue to license a caregiver if the department finds that they can provide for the safety, health, and well-being of children or youth in their care; and

(2) Caregivers do not have appeal rights if the department denies their request for an exemption to the licensing requirements.

#### NEW SECTION

**WAC 110-149-0410 Denying, suspending, or revoking a license.** The department:

(1) Will work or attempt to work with caregivers before moving to deny, suspend, or revoke kinship licenses;

(2) May deny, suspend, or revoke kinship licenses when:

(a) The department has determined that caregivers have abused, neglected, or abandoned a child or youth; or

(b) Caregivers:

(i) Do not meet the licensing requirements in this chapter;

(ii) Have others in the home that have not passed a background check; and

(iii) Commit, permit, or assist in an illegal act on the property of a home or facility providing care to children or youth;

(iv) Knowingly provide false information to the department that impacts the safety and well-being of children or youth in care;

(v) Cannot provide for the safety, health, and well-being of the children in their care; or

(vi) Cannot or will not support a child's or youth's cultural needs including needs based on their race, ethnicity, religion, or SO-GIE;

(3) Will send caregivers a certified letter notifying them the department has decided to deny, suspend, or revoke their license. The letter will also inform them what they need to do if they disagree with the department's decision;

(4) Has jurisdiction over all:

(a) Applicants for licenses;

(b) Licenses issued by the department; and

(c) Licensed kinship caregivers as outlined in RCW 74.15.030; and

(5) Retains jurisdiction over licensing applications and licenses when caregivers:

(a) Request to withdraw their application; or

(b) Surrender or fail to renew their license.

### OTS-6031.1

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-148-1326      Can I get a license to care for a specific child, and what are the requirements?

## WSR 25-01-102

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed December 16, 2024, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-182.

Title of Rule and Other Identifying Information: WAC 182-557-0200 Health home program—Eligibility.

Hearing Location(s): On January 22, 2025, 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\\_6bEgewjCTa6c66AYPffGq](https://us02web.zoom.us/webinar/register/WN_6bEgewjCTa6c66AYPffGq).

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 January 23, 2025.

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 December 17, 2024, 8:00 a.m., by January 22, 2025, 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 January 3, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to clarify: (1) Which medicaid clients are eligible for the health home program; and (2) that people with third-party medical coverage are ineligible for this 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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Christine Del Buono, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-0832.

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.

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 on small businesses.

December 16, 2024

Wendy Barcus  
Rules Coordinator



## OTS-5979.1

AMENDATORY SECTION (Amending WSR 17-24-111, filed 12/6/17, effective 1/6/18)

**WAC 182-557-0200 Health home program—Eligibility.** (1) To be eligible for the health home program, a client must:

(a) Be a recipient of categorically needy health care coverage or be eligible for services under an alternative benefits plan (ABP), as described in WAC 182-501-0060, through:

- (i) Fee-for-service, including full dual eligible clients; or
- (ii) An agency-contracted managed care organization.

(b) Have one or more chronic conditions as defined in WAC 182-557-0100; and

(c) Have a risk score of 1.5 or greater measured either with algorithms developed by the department of social and health services or the agency's clinical eligibility tool located at [https://www.hca.wa.gov/assets/billers-and-providers/Clinical\\_Eligibility\\_Tool.xls](https://www.hca.wa.gov/assets/billers-and-providers/Clinical_Eligibility_Tool.xls).

(2) A person is ineligible to receive health home services when:

(a) ~~The person ((has third-party coverage that provides comparable health care services; or))~~ is enrolled in a third-party medical insurance plan. For purposes of this section, a medical insurance plan does not include plans that offer only dental, vision, pregnancy, or maternity care services.

(b) The person has a risk score of less than 1.0 for six consecutive months and has not received health home services.

(3) When the agency determines a client is eligible for health home services, the agency enrolls the client with a qualified health home in the coverage area where the client lives.

(a) The client may decline health home services or change to a different qualified health home or a different health home care coordinator.

(b) If the client chooses to participate in the health home program, a health home care coordinator will:

(i) Work with the participant to develop a health action plan that describes the participant's health goals and includes a plan for reaching those goals; and

(ii) Provide health home services at a level appropriate to the participant's needs.

(4) A participant who does not agree with a decision regarding health home services, including a decision regarding the client's eligibility to receive health home services, has the right to an administrative hearing as described in chapter 182-526 WAC.

## WSR 25-01-103

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed December 16, 2024, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-011.

Title of Rule and Other Identifying Information: Substance use disorder profession (SUDP); proposing updates to reduce barriers to entering and remaining in the SUDP workforce and to streamline and shorten the credentialing process. Amending chapter 246-811 WAC, including repealing sections and creating new sections.

The department of health (department) is proposing rule amendments to implement legislation, including 2SHB 1724 (chapter 425, Laws of 2023), E2SHB 2247 (chapter 371, Laws of 2024), and 2SSB 6228 (chapter 366, Laws of 2024). The department proposes amending requirements including: Ethical and professional standards; the application process; education requirements; supervised experience requirements; approved supervisor requirements; continuing education requirements; and fees.

Hearing Location(s): On February 5, 2025, at 9:30 a.m. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_shDgg2EkQ5iauBbZB0E6Vw](https://us02web.zoom.us/webinar/register/WN_shDgg2EkQ5iauBbZB0E6Vw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: February 12, 2025.

Submit Written Comments to: Claire Wilson, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, email [claire.wilson@doh.wa.gov](mailto:claire.wilson@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview/>, beginning the date and time of this filing, by February 5, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Claire Wilson, phone 564-669-0392, TTY 711, email [claire.wilson@doh.wa.gov](mailto:claire.wilson@doh.wa.gov), by January 22, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2023 legislative session, the legislature passed 2SHB 1724, requiring the department to create recommendations on how to reduce barriers to joining and remaining in the behavioral health workforce and to streamline the credentialing process. The bill also required the department to implement those recommendations in permanent rule. In 2024, E2SHB 2247 and 2SSB 6228 made statutory changes to support the behavioral health workforce.

The department's proposed rules support the goals of these pieces of legislation by making amendments to support the SUDP workforce, ensure that SUDP trainees have appropriate support in their professional growth, and streamline the application process for in-state and out-of-state applications.

The department proposes amendments including:

- (1) Establishing ethical standards;
- (2) Clarifying sexual misconduct standards;
- (3) Amending education requirements to streamline the application process;
- (4) Removing SUDP trainee renewal limits and amending the renewal process;
- (5) Establishing requirements for supervision of SUDP trainees;
- (6) Updating requirements for approved supervisors;
- (7) Decreasing and streamlining continuing education requirements;

(8) Establishing requirements specifically for out-of-state applicants;

(9) Establishing the process for entities to become approved and registered apprenticeship programs; and

(10) Limiting the credential application and renewal fees to \$100 per year.

Reasons Supporting Proposal: In addition to fulfilling the intent of 2SHB 1724, E2SHB 2247, and 2SSB 6228, the proposed rules for this profession will allow the department to consistently uphold standards that protect public safety.

Statutory Authority for Adoption: RCW 18.205.060 and 43.70.250.

Statute Being Implemented: Chapter 18.205 RCW; 2SHB 1724 (chapter 425, Laws of 2023), E2SHB 2247 (chapter 371, Laws of 2024), and 2SSB 6228 (chapter 366, Laws of 2024).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Claire Wilson, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-0392.

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 Claire Wilson, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-0392, TTY 711, email [claire.wilson@doh.wa.gov](mailto:claire.wilson@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 impact only individual behavioral health providers or applicants, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

December 16, 2024  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary of Health

#### OTS-5905.4

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

**WAC 246-811-010 Definitions.** The definitions in RCW 18.205.020 and in this section apply throughout this chapter unless the context clearly states otherwise.

(1) "Agency" means a community behavioral health agency or facility operated, licensed, or certified by the state of Washington, a federally recognized Indian tribe located with the state, a county, a federally qualified health center, or a hospital.

(2) "Apprentice" means an individual enrolled in an approved and registered apprenticeship program.

(3) "Approved and registered apprenticeship program" means a substance use disorder apprenticeship program approved by the secretary under chapter 18.205 RCW and registered by the department of labor and industries under chapter 49.04 RCW.

(4) "Approved school" means any college or university accredited by a state, national, or regional accrediting body, at the time the applicant completed the required education or other educational programs approved by the secretary.

(5) "Approved supervisor" is a certified substance use disorder professional who meets the requirements of WAC 246-811-049 and provides oversight to substance use disorder professional trainees under WAC 246-811-048.

(6) "Competent instructor" has the same meaning as provided in WAC 296-05-003.

~~((6)) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee, that offer, assist, or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential.))~~

(7) "Continuing competency enhancement plan" is a plan listing professional development goals to continue proficiency. This plan is based on core competencies of substance use disorder counseling listed in WAC 246-811-047 and on forms provided by the department.

(8) "Continuing education" means a program or course (including distance learning), seminar, workshop, or professional conference approved by an industry-recognized organization or institution of higher learning listed in this chapter.

(9) "Core competencies of substance use disorder counseling" means competencies oriented to assist individuals with substance use disorder in their recovery. Core competencies include the following nationally recognized areas:

- (a) Knowledge;
- (b) Skills;
- (c) Attitudes of professional practice, including assessment and diagnosis of substance use disorder;
- (d) Substance use disorder treatment planning and referral;
- (e) Patient and family education in substance use disorder;
- (f) Individual and group counseling;
- (g) Relapse prevention counseling; and
- (h) Case management.

~~((8))~~ (10) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee, that offer, assist, or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential.

(11) "Department" means the department of health.

~~((9))~~ (12) "Direct ((supervision)) observation" means the supervisor is on the premises and ((available for immediate consultation)) within sight and hearing of the trainee.

~~((10))~~ (13) "Enrolled" means actively participating in an approved school or approved and registered apprenticeship program, ~~(whether)~~ where a substance use disorder professional trainee is engaged in or has completed course work as described in WAC 246-811-030 (3) (a) through (w).

~~((11))~~ ~~"Individual formal meetings"~~ means a meeting with an approved supervisor, involving one approved supervisor and no more than four supervisees.

~~(12))~~ (14) "Group supervision" means a meeting with an approved supervisor involving one approved supervisor and no more than four individual supervisees.

(15) "Industry-recognized" is any local, state, national, or international organization or institution of higher learning including, but not limited to, the following:

(a) The Association for Addiction Professionals (NAADAC);

(b) National Association of Addiction Treatment Providers (NAATP);

(c) International Certification and Reciprocity Consortium (IC&RC);

(d) Northwest Indian alcohol/drug specialist certification board;

(e) National Association of Social Workers (NASW);

(f) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the northwest commission on colleges and universities;

(g) Division of behavioral health and recovery (DBHR), health care authority; and

(h) Addiction technology transfer center network.

(16) "Official transcript" means the transcript from an approved college or school, in an envelope readily identified as having been sealed by the school or an official electronic transfer directly from the school.

~~((13))~~ (17) "Out-of-state" means any state or territory of the United States.

~~((14))~~ (18) "Probationary license" means a temporary license issued to out-of-state applicants qualifying for licensure reciprocity in Washington state under the restrictions and conditions of RCW 18.205.140 and this chapter.

~~((15))~~ (19) "Reciprocity" means licensure of out-of-state licensed counselors based on substantial equivalence between Washington state scope of practice and the scope of practice of the other state or territory, subject to a probationary licensure period to complete outstanding Washington state licensure requirements as determined necessary by the secretary to gain full licensure.

~~((16))~~ (20) "Recovery" means a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential. Recovery often involves achieving remission from active substance use disorder.

~~((17))~~ (21) "Related field" means health education, behavioral science, sociology, psychology, marriage and family therapy, mental health counseling, social work, psychiatry, nursing, divinity, criminal justice, and counseling education.

~~((18))~~ (22) "Related/supplemental instruction" or "RSI" has the same meaning as provided in WAC 296-05-003.

~~((19))~~ (23) "Substance use disorder counseling" means employing the core competencies of substance use disorder counseling to assist or attempt to assist individuals with substance use disorder in their recovery.

~~((20))~~ (24) "Substance use disorder professional" or "SUDP" means an individual certified in substance use disorder counseling under chapter 18.205 RCW and this chapter.

~~((21))~~ (25) "Substance use disorder professional trainee" or "SUDPT" means an individual credentialed as an SUDPT and working toward the education and experience requirements for certification as a substance use disorder professional under chapter 18.205 RCW and this chapter.

(26) "Substantially equivalent licensing standards" means out-of-state licensing standards evaluated by the department to be consistent with the education, experience, and examination requirements for substance use disorder professional certification under chapter 18.205 RCW and this chapter.

#### NEW SECTION

**WAC 246-811-015 Ethical standards.** (1) An individual certified under this chapter shall follow an industry-recognized code of ethics, such as NAADAC or the NASW, while acting as a substance use disorder professional or trainee.

(2) An individual certified under this chapter shall have a working knowledge and understanding of the requirements, definitions, and prohibited behaviors qualifying as unprofessional conduct under RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-020 Sexual misconduct.** (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to substance use disorder professionals and a substance use disorder professional trainee except WAC 246-16-100 (4) and (5).

(2) A substance use disorder professional or a substance use disorder professional trainee shall never engage, or attempt to engage, in:

(a) The activities listed in WAC 246-16-100 (1) and (2) with a former patient, former client, or former key party; or

(b) A nontreatment relationship with a former client or former key party that could create a conflict of interest or imbalance of power.

(3) A substance use disorder professional or substance use disorder professional trainee shall never engage in any form of sexual or romantic relationship with any current or former client. This prohibition shall include in-person and electronic interactions or relationships.

(4) A substance use disorder professional or substance use disorder professional trainee shall be prohibited from engaging in counseling relationships with friends or family members and shall not accept as a client anyone with whom they have engaged in a romantic, sexual, social, or familial relationship.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

**WAC 246-811-025 Certification of a substance use disorder professional.** (1)(a) An applicant applying under the traditional pathway for a substance use disorder professional certificate shall submit to the department:

- ~~((a))~~ (i) An application on forms provided by the department;
- (ii) The fee required under WAC 246-811-990; and
- (iii) Any supporting documentation requested by the department.

(b) After the application has been submitted, the department must receive the following supporting documentation from third parties:

(i) Official transcripts or apprenticeship certificate of completion to verify meeting educational requirements under WAC 246-811-030, received directly from the educational institution or approved and registered apprenticeship program;

~~((e))~~ (ii) Verification of meeting supervised experience hour requirements under WAC 246-811-046 or 246-811-050 on forms provided by the department, received directly from an approved supervisor(s); and

~~((d))~~ (iii) Official verification of meeting examination requirements under WAC 246-811-060 (~~and~~

~~(e) The fee required under WAC 246-811-990), received directly from the testing entity.~~

(2)(a) An applicant for a substance use disorder professional certificate under the alternative training path shall submit to the department:

- ~~((a))~~ (i) An application on forms provided by the department;
- (ii) The fee required under WAC 246-811-990; and
- (iii) Any supporting documentation requested by the department.

(b) After the application has been submitted, the department must receive the following supporting documentation from third parties:

(i) Verification of (~~meeting eligibility requirements for the alternative training path~~) holding an eligible credential under WAC 246-811-076;

~~((e))~~ (ii) Official verification of meeting educational requirements under WAC 246-811-077, received directly from the educational institution or approved and registered apprenticeship program;

~~((d))~~ (iii) Verification of obtaining the 1,000 supervised experience hours required under WAC 246-811-046 on forms provided by the department, received directly from an approved supervisor(s); and

~~((e))~~ (iv) Official verification of meeting examination requirements under WAC 246-811-060 (~~and~~

~~(f) The fee required under WAC 246-811-990), received directly from the testing entity.~~

(3) An out-of-state applicant who meets the requirements of WAC 246-811-310 shall submit to the department:

- (a) An application on forms provided by the department;
- (b) Verification of out-of-state credential;
- (c) The fee(s) required under WAC 246-811-990; and
- (d) Any supplemental documentation requested by the department.

(4) An applicant for substance use disorder professional under this chapter shall not practice substance use disorder counseling until their credential has been issued. Practicing counseling on a pending credential is considered unlicensed practice under RCW 18.130.020 and is subject to disciplinary action.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

**WAC 246-811-030 Educational requirements.** Except as provided for in WAC 246-811-077 and 246-811-078, to be eligible for certification as a substance use disorder professional an applicant shall meet the education requirements in this section.

(1) The minimum education requirements for a substance use disorder professional credential are:

(a) An associate's degree or higher in human services, addiction studies, substance use disorder counseling, or related field from an approved school;

(b) Successful completion of 90 quarter or 60 semester college credits in courses from an approved school that meets the course work requirements of subsection (3) of this section; or

(c) Successful completion of an approved and registered apprenticeship program.

(2) The minimum amount of instruction required in topics related to the substance use disorder profession is at least:

(a) Forty-five quarter college credits;

(b) Thirty semester college credits; or

(c) Four hundred fifty hours of related/supplemental instruction provided by a competent instructor in an approved and registered apprenticeship program.

(3) Education and apprenticeship program course work that does not result in an addiction studies or substance use disorder counseling degree must include the following topics specific to individuals with substance use disorder in their recovery:

(a) Understanding addiction;

(b) Pharmacological actions of alcohol and other drugs;

(c) Substance abuse and addiction treatment methods;

(d) Understanding addiction placement, continuing care, and discharge criteria, including American Society of Addiction Medicine (ASAM) criteria;

(e) Cultural diversity including people with disabilities and its implication for treatment;

(f) Substance use disorder clinical evaluation (screening and referral to include comorbidity);

(g) ~~((HIV/AIDS brief risk intervention for individuals with a substance use disorder))~~ Pathogen risk training;

(h) Substance use disorder treatment planning;

(i) Referral and use of community resources;

(j) Service coordination (implementing the treatment plan, consulting, continuing assessment and treatment planning);

(k) Individual counseling;

(l) Group counseling;

(m) Substance use disorder counseling for families, couples and significant others;

(n) Client, family and community education;

(o) Developmental psychology;

(p) Psychopathology/abnormal psychology;

(q) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data;

(r) Substance use disorder confidentiality;

(s) Professional and ethical responsibilities;

(t) Relapse prevention;



- (u) Adolescent substance use disorder assessment and treatment;
- (v) Substance use disorder case management; and
- (w) Substance use disorder rules and regulations.

(4) The department considers an associate degree or higher in addiction studies or substance use disorder counseling to meet the course work requirements in subsection (3) of this section.

(5) An applicant who has been credentialed as a substance use or addiction counselor in another state with substantially equivalent standards under WAC 246-811-310 is considered to meet the education requirements of this section.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

**WAC 246-811-035 Certification and renewal of a substance use disorder professional trainee.** (1) To apply for a substance use disorder professional trainee certificate an applicant shall:

(a) Submit an application on forms provided by the department, including any written documentation needed to provide proof of meeting the eligibility requirements as indicated on the application;

(b) Declare that they are enrolled in an approved school or approved and registered apprenticeship program and ((gaining the)) are actively taking approved course work required for substance use disorder professional certification, or have completed the educational requirements in WAC 246-811-030;

(c) Attest that they are actively working to obtain the supervised experience required to receive a substance use disorder professional credential;

(d) Submit documentation of successful completion of an industry-recognized training in law, ethics, and boundaries lasting at least four hours; and

((e)) (e) Pay applicable fees in WAC 246-811-990.

(2) To apply for annual renewal, a substance use disorder professional trainee ((must)) shall submit to the department applicable fees in WAC 246-811-990 and:

(a) A signed declaration with their annual renewal, on forms provided by the department, that states they:

((a)) (i) Are currently enrolled in an approved educational program or approved and registered apprenticeship program and are actively taking approved course work required for substance use disorder professional certification; or

((b)) (ii) Have completed the educational requirements in WAC 246-811-030 and are obtaining the experience requirements for a substance use disorder professional credential in WAC 246-811-046 or 246-811-050;

(b) Verification of supervised experience hours earned in the previous credential cycle on forms provided by the department and signed by an approved supervisor; and

(c) Transcripts for academic courses completed in the previous renewal cycle or documentation of participation in a registered apprenticeship program during the previous renewal cycle.

(3) ((A substance use disorder professional trainee certificate can only be renewed four times, except as provided in RCW 18.205.095)) An applicant for substance use disorder professional trainee under this chapter shall not practice substance use disorder counseling un-

til their credential has been issued. Practicing counseling on a pending credential is considered unlicensed practice under RCW 18.130.020 and is subject to disciplinary action.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-045 Accumulation of experience.** (1) ~~((The department will consider experience in the field of substance use disorder counseling up to seven years prior to the date of application))~~ All supervised experience earned in Washington state toward application for certification as a substance use disorder professional must be earned under either:

- (a) A substance use disorder professional trainee credential; or
- (b) Another credential listed in WAC 246-811-076.

(2) Accumulation of the experience hours is not required to be consecutive.

(3) Experience ~~((that will count toward certification))~~ must meet the requirements outlined in WAC 246-811-046 through 246-811-049.

(4) ~~((Supervised experience is the practice as referred to in RCW 18.205.090 (1)(c) and is the experience received under an approved supervisor))~~ A practicum or internship taken for credit as part of an education program for substance use disorder certification is applicable experience.

(5) ~~((A practicum or internship taken while acquiring the degree or semester/quarter hours is applicable.~~

~~(6))~~ Applicants who have held an active substance use disorder credential for ~~((the past five consecutive years or more))~~ at least one year in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements of this chapter for Washington state licensure.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

**WAC 246-811-046 Number of experience hours required for certification as a substance use disorder professional.** Except as provided in WAC 246-811-050 and 246-811-070(1), ~~((an applicant))~~ to qualify for substance use disorder professional certification, an applicant shall complete the following experience requirements based on their level of formal education:

(1) Two thousand five hundred hours of substance use disorder counseling, for individuals who have an associate degree or qualifying course work;

(2) Two thousand hours of substance use disorder counseling for individuals who have a baccalaureate degree in human services or a related field from an approved school;

(3) One thousand five hundred hours of substance use disorder counseling for individuals who possess a master or doctoral degree in human services or a related field from an approved school; or

(4) One thousand hours of substance use disorder counseling for individuals who are credentialed according to WAC 246-811-076. The ex-

perience must be supervised by an approved supervisor meeting the requirements under WAC 246-811-049(~~(+8)~~);

(5) Individuals participating in an approved and registered substance use disorder professional apprenticeship program may be asked to complete additional supervised experience as part of their apprenticeship, consistent with department of labor and industries requirements under chapter 296-05 WAC.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-047 Competency—Experience requirements.** (1) (~~It is the intent that~~) An individual applying for a substance use disorder professional (~~certificate has become competent~~) certification shall obtain and maintain competency in the core competencies of (~~chemical~~) substance use disorder counseling through the experience requirements in this section.

(2) Individuals must have the following experiences to gain the core competencies of substance use disorder counseling:

(a) Two hundred hours of clinical evaluation, of which (~~one hundred~~) 100 hours must be face-to-face patient contact hours;

(b) Six hundred hours of face-to-face counseling to include:

(i) Individual counseling;

(ii) Group counseling; and

(iii) Family, couples, and significant others;

(c) Fifty hours of discussion of professional and ethical responsibilities;

(d) Transdisciplinary foundations:

(i) Understanding addiction;

(ii) Treatment knowledge;

(iii) Application to practice; and

(iv) Professional readiness;

(e) Clinical skills, including:

(i) Treatment planning;

~~((f))~~ (ii) Referral;

~~((g))~~ (iii) Service coordination;

~~((h))~~ (iv) Client, family, and community education; and

~~((i))~~ (v) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data.

(3) Of the total experience hours required under WAC 246-811-046, (~~eight hundred fifty~~) 850 hours of experience must be divided among subsection (2) (a) through (c) of this section. The remaining experience hours must be divided among subsection (2) (d) (~~through (i)~~) and (e) of this section as determined by the supervisor.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-048 Supervision requirements.** (1) All of the experience required for substance use disorder professional certification

must be under the direct supervision of an approved supervisor as defined in WAC 246-811-049.

(2) A substance use disorder professional or an individual credentialed according to WAC 246-811-076 may provide substance use disorder assessment, counseling, and case management to patients consistent with his or her education, training, and experience as documented by the approved supervisor.

(a) The first ~~((fifty))~~ 50 hours of any face-to-face patient contact must be under direct ~~((supervision and within sight and hearing))~~ observation of an approved supervisor or a substance use disorder professional designated by the approved supervisor. If the approved supervisor identifies that additional training is necessary, they may require up to 10 additional hours of direct observation after the first 50 hours have been completed.

(b) An approved supervisor or the approved supervisor's designated certified substance use disorder professional must provide ~~((direct))~~ supervision when a supervisee is providing clinical services to patients ~~((until the approved supervisor documents in the employee file that the supervisee has obtained the necessary education, training, and experience))~~ and be immediately available for consultation.

(c) The first 50 hours of face-to-face patient contact described under subsection (a) of this section shall include at least:

(i) Ten hours in assessments;

(ii) Ten hours in individual counseling facilitation; and

(iii) Ten hours in group counseling facilitation.

(3) ~~((Approved supervisors must attest to the department that the supervisee has demonstrated competency in the areas listed in WAC 246-811-047(2) on forms provided by the department))~~ The approved supervisor and trainee shall schedule regular supervision meetings either remotely or in-person.

(a) The frequency of supervision meetings shall be at least once a week, which can either be group supervision or individual supervision meetings.

(b) The approved supervisor and trainee shall have at least two individual supervision meetings each month.

(c) The approved supervisor and trainee shall have at least one in-person supervision meeting each month.

(d) The length of each supervision meeting will be determined jointly by the approved supervisor and trainee, consistent with the trainee's education, experience, and skill level.

(4) Within the first week of a supervisor-trainee relationship, the supervisor and trainee shall develop a written plan for supervision and professional development that includes:

(a) Clinical development goals consistent with the trainee's education, experience, and skill level including, if applicable, prior experience earned at a different workplace under a different approved supervisor, as required in WAC 246-811-047;

(b) Ethical standards and expectations, including a detailed review of an industry-recognized code of ethics, such as the NAADAC or NASW code of ethics;

(c) Identification of the appropriate trainee-to-client ratio, consistent with the trainee's education, experience, and skill level;

(d) Identification of an alternate supervisor, if possible, in case the primary supervisor is unavailable for consultation; and

(e) Review of the trainee's academic progress and identification of appropriate training to assist the trainee in professional skills and competency development.

(5) The plan identified by the approved supervisor and trainee under subsection (4) of this section shall be updated and reviewed at least quarterly to track progress and reflect the trainee's development of clinical skills, education, and experience.

(6) An approved supervisor must attest to the department that the supervisee has demonstrated competency in the areas listed in WAC 246-811-047(2) on forms provided by the department.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-049 Approved supervisors.** (1) An approved supervisor is a certified substance use disorder professional (~~(or a person)~~) who meets (~~(or exceeds)~~) the requirements of this section. Out-of-state experience must be earned under the supervision of a person who meets or exceeds the requirements of a certified substance use disorder professional in the state of Washington, and who would be eligible to take the examination required for certification.

(2) An approved supervisor must have at least (~~(three thousand hours)~~) one year of experience (~~(in a state approved substance use disorder treatment agency in addition to the supervised experience hours required to become a substance use disorder professional)~~) as a certified substance use disorder professional, not including time as a trainee. The approved supervisor's substance use disorder professional certification shall not be subject to ongoing disciplinary action or restrictions.

(3) An approved supervisor (~~(may substitute twenty-eight clock hours of recognized supervisory training for one thousand hours of experience.~~

~~(4) An approved supervisor may substitute five hundred hours of experience with thirty-six hours of education specific to:~~

- ~~(a) Counselor development;~~
- ~~(b) Professional and ethical standards;~~
- ~~(c) Program development and quality assurance;~~
- ~~(d) Performance evaluation;~~
- ~~(e) Administration;~~
- ~~(f) Treatment knowledge; and~~
- ~~(g) Washington state law regarding substance use disorder treatment.~~

~~(5))~~ must complete at least eight hours of industry-recognized clinical supervisor training before or within their first year providing supervision to substance use disorder professional trainees.

(4) An approved supervisor (~~(is)~~) may not be a blood or legal relative, significant other, cohabitant of the supervisee, or someone who has acted as the supervisee's primary counselor.

~~((6))~~ (5) A substance use disorder professional trainee (SUDPT) must receive documentation of his or her approved supervisor's qualifications before training begins.

~~((7))~~ (6) An approved supervisor or other certified substance use disorder professional must review and sign all substance use disorder professional trainee clinical documentation.

~~((8))~~ (7) An approved supervisor is responsible for all patients assigned to the substance use disorder professional trainee they supervise.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

**WAC 246-811-050 Certification of a substance use disorder professional or trainee through an apprenticeship program.** (1) An apprentice accepted into an approved and registered apprenticeship program:

- (a) May begin completing related/supplemental instruction at any time after becoming an apprentice; and
  - (b) Must be credentialed as a substance use disorder professional trainee under WAC 246-811-035 to obtain hours of supervised experience in substance use disorder counseling under subsection (2)(b) of this section.
- (2) To be eligible for certification as a substance use disorder professional under WAC 246-811-025, an apprentice shall:
- (a) Complete education requirements under WAC 246-811-030;
  - (b) Complete at least 2,500 hours of supervised experience in substance use disorder counseling, or more as required by an apprenticeship program under chapter 296-05 WAC;
  - (c) Meet supervision requirements under WAC 246-811-048; and
  - (d) Meet examination requirements under WAC 246-811-060.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-060 Examination requirements for a substance use disorder professional certification.** (1) An applicant (~~(must)~~) shall take and pass the (~~(National)~~) Association (~~(of Alcoholism and Drug Abuse Counselors)~~) for Addiction Professionals (NAADAC) National Certification Examination for Addiction Counselors or International Certification and Reciprocity Consortium (IC&RC) Certified Addiction Counselor Level II or higher examination.

(2) The department will accept the passing score set by the testing company.

(3) An applicant may schedule the examination:

- (a) With department approval, after applying for certification as a substance use disorder professional; or
- (b) Directly with a testing entity if the applicant meets the testing entity's eligibility requirements.

(4) An applicant who has been credentialed as a substance use or addiction counselor in another state with substantially equivalent standards under WAC 246-811-310 is considered to meet the examination requirements of this section.

AMENDATORY SECTION (Amending WSR 24-03-139, filed 1/23/24, effective 2/23/24)

**WAC 246-811-070 National certification.** (1) A person who is certified through the (~~(National)~~) Association (~~(of Alcoholism and Drug Abuse Counselors)~~) for Addiction Professionals (NAADAC) or the International Certification and Reciprocity Consortium (IC&RC) as an alcohol and drug counselor (ADC) or advanced alcohol and drug counse-

lor (AADC), is considered to meet the experience requirements of WAC 246-811-046.

(2) A person who is certified through NAADAC or IC&RC as an ADC or AADC is considered to have met the education requirements of WAC 246-811-030(~~(+2)~~).

(3) Verification of certification must be sent directly to the department from NAADAC or IC&RC.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-080 ((What happens if my certification expires?))**  
**Expired certification.** (1) If the substance use disorder professional or substance use disorder professional trainee certification has expired for five years or less, the individual must meet the requirements of chapter 246-12 WAC(~~(, Part 2)~~).

(2) If a substance use disorder professional certification has lapsed for more than five years, the applicant must demonstrate continued competency and must pass an examination, if an examination was not successfully passed for the initial certification. In addition, the requirements of chapter 246-12 WAC(~~(, Part 2)~~), must be met.

(3) If a substance use disorder professional trainee certification has lapsed for more than five years, the applicant must meet the requirements of chapter 246-12 WAC(~~(, Part 2)~~).

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-081 Retired active substance use disorder professional (SUDP) credential.** A certified substance use disorder professional may obtain a retired active credential. Refer to the requirements of chapter 246-12 WAC(~~(, Part 5)~~).

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-100 Disclosure statement requirements.** (1) The following information must be printed on all disclosure statements provided to counseling clients in language that can be easily understood by the client:

(a) Name of firm, agency, business, or substance use disorder professional's practice.

(b) Employment address and telephone number.

(c) Name, credential, and credential number.

(d) Billing information, including:

(i) Client's cost per each counseling session;

(ii) Billing practices, including any advance payments and refunds.

(e) A list of the acts of unprofessional conduct in RCW 18.130.180 including the name, address, and contact telephone number within the department of health.

(2) A substance use disorder professional trainee must provide all the information required in subsection (1) of this section as well as their approved supervisor's name, credential number, and contact information.

(3) The substance use disorder professional or substance use disorder professional trainee and the client must sign and date a statement indicating that the client has been given a copy of the required disclosure information, and the client has read and understands the information provided.

AMENDATORY SECTION (Amending WSR 23-23-034, filed 11/3/23, effective 1/1/24)

**WAC 246-811-220 Continuing competency program requirements.** The purpose of a continuing competency program is to enhance the professional competency of the substance use disorder professional. A successful continuing competency program focuses on all aspects of professional practice to ensure that the practitioner is competent to provide safe and quality care to patients. The purpose of the professional development activities is to broaden the experience that a substance use disorder professional may undertake to maintain competency. A substance use disorder professional, regardless of method of certification, must complete:

(1) An enhancement plan as described in WAC ((246-811-200(7))) 246-811-010(7); and

(2) ((Twenty-eight)) Twenty hours of continuing education as described in WAC 246-811-240(;; and

~~(3) Twelve hours of other professional development activities as described in WAC 246-811-200(7) and 246-811-260)), including up to four hours of other professional development activities as described in WAC 246-811-260.~~

AMENDATORY SECTION (Amending WSR 23-23-034, filed 11/3/23, effective 1/1/24)

**WAC 246-811-240 ((Number)) Types of continuing education hours required.** (1) A certified substance use disorder professional must complete ((28)) 20 hours of continuing education ((-CE)) every two years, which may include up to four hours of professional development activities described in WAC 246-811-260.

((a) At least 14 hours must be completed in one or more of the topic areas as described in WAC 246-811-030 (3) (a) through (w).

~~(b))~~ (2) At least four hours must be in professional ethics and law.

((c) The additional 10 hours shall be in areas relating to the various phases of their professional career.

(d) The training in suicide assessment listed in subsection (2) of this section shall count towards meeting the CE requirements.

(e) The health equity training listed in WAC 246-811-290 shall count towards meeting the CE requirements.

(2) Once every six years a certified substance use disorder professional must complete at least three hours of training in suicide



assessment, including screening and referral, as specified in WAC 246-811-280.

~~(a) Except as provided in (b) of this subsection, the first training must be completed during the first full CE reporting period after initial certification.~~

~~(b) An individual applying for initial certification as a substance use disorder professional may delay completion of the first required training for six years after initial certification if they can demonstrate completion of a three-hour training in suicide assessment, including screening and referral that:~~

~~(i) Was completed no more than six years prior to the application for initial certification; and~~

~~(ii) Meets the qualifications listed in WAC 246-811-280(1).~~

~~(3) After January 1, 2024, substance use disorder professionals are required to complete) (3) At least three hours every six years must be completed in suicide assessment training as listed under WAC 246-811-280.~~

~~(4) At least two hours ((of)) every four years must be completed in health equity training ((every four years as specified in)) under WAC 246-811-290.~~

~~((4)) (5) Nothing in this section is intended to expand or limit the existing scope of practice of a certified substance use disorder professional or certified substance use disorder professional trainee credentialed under chapter 18.205 RCW.~~

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-250 Acceptable continuing education.** Acceptable continuing education may include, but is not limited to, the following:

(1) Programs having a featured instructor, speaker(s), or panel that is industry-recognized;

(2) Distance learning programs, which are industry-recognized education obtained to enhance proficiency in one or more of the professional development activities, through sources such as internet course work, telecourses, or correspondence courses which require comprehension tests upon completion;

(3) Agency sponsored trainings, which are provided by an agency, but not limited to its employees, and qualify as a professional development activity under WAC 246-811-260;

(4) Course work at institutions of higher learning that are accredited by a national or regional accrediting body recognized by the commission on recognition of postsecondary accreditation; or

(5) In-service training programs limited to seven hours per reporting period, which are trainings provided by an agency that are limited to people working within that agency and are a professional development activity under WAC 246-811-260.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-260** (~~((Completion of the twelve hours of other))~~) **Acceptable professional development activities.** (1) A substance use disorder professional (~~((SUDP))~~) may obtain up to four hours per continuing education cycle through professional development activities including the following:

- (a) Practicum;
  - (b) Peer-review including serving on a formal peer review panel or committee, or individual review of a sole provider, where the purpose of the review is to determine whether appropriate treatment was rendered;
  - (c) Public presentation including preparing and presenting lectures or education that contribute to the professional competence of a substance use disorder professional. The substance use disorder professional may accumulate the same number of hours obtained for continuing education purposes by attendees as required in WAC 246-12-220. The hours for presenting a specific topic lecture or education may only be used for continuing education credit once during each reporting period;
  - (d) Publication of writings;
  - (e) Participation in the substance use disorder certification advisory committee meetings, legislative hearings, rule workshops, or other state-led activities involving the substance use disorder profession; and
  - (f) Other activities as determined by the substance use disorder professional's supervisor(~~(~~
- ~~(f) Continuing education; these continuing education hours are in addition to the twenty-eight hours of continuing education as listed in WAC 246-811-240)).~~
- (2) All documentation must include the dates the continuing competency activity that took place, and if appropriate, the title of the course, the location of the course, and the name of the instructor.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-270** **Acceptable audit documentation for continuing education, professional development activities, and the enhancement plan.** (1) For audits for continuing education, professional development activities, and the enhancement plan, acceptable documentation must be specific to the program completed and include:

- (a) Transcripts, letters from course instructors, or certificate of completion;
  - (b) Written report by the substance use disorder professional explaining how they achieved the competencies in WAC 246-811-047; or
  - (c) Signed agreement between parties involved.
- (2) A substance use disorder professional must comply with the requirements of chapter 246-12 WAC(~~(, Part 7)~~).

AMENDATORY SECTION (Amending WSR 23-23-034, filed 11/3/23, effective 1/1/24)

**WAC 246-811-280 Suicide assessment training standards.** (1) A certified substance use disorder professional must complete a training in suicide assessment, including screening and referral. The training must be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions. The training must be completed at least once every six years. Except as provided in subsection (2) of this section, the first training must be completed during the first full continuing education reporting period after initial certification.

(2) An individual applying for initial certification as a substance use disorder professional may delay completion of the first required training for six years after initial certification if they can demonstrate completion of a three-hour training in suicide assessment, including screening and referral, that:

(a) Was completed no more than six years prior to the application for initial certification; and

(b) Meets the requirements listed in subsection (1) of this section.

(3) The training must be on the department's model list for training programs in suicide assessment, treatment, and management which was developed in accordance with RCW 43.70.442.

~~((2))~~ (4) A certified substance use disorder professional who is a state or local government employee is exempt from the requirements of this section if they receive a total of at least three hours of training in suicide assessment, including screening and referral from their employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

~~((3))~~ (5) A certified substance use disorder professional who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a substance use disorder program certified under chapter 70.96A RCW is exempt from the requirements of this section if they receive a total of at least three hours of training in suicide assessment, including screening and referral from their employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

AMENDATORY SECTION (Amending WSR 23-23-034, filed 11/3/23, effective 1/1/24)

**WAC 246-811-290 Health equity training standards.** (1) Beginning January 1, 2024, a substance use disorder professional must complete training in health equity as part of their continuing competency program. The substance use disorder professional must complete at least two hours of health equity training every four years. The training may be in-person or virtual but must meet the course requirements in WAC 246-12-830, including strategies to reduce implicit bias and assess the provider's ability to apply health equity concepts into practice.

(2) The hours spent completing training in health equity education count towards the ~~((28))~~ 20 total hours of continuing education.

**CERTIFICATION THROUGH RECIPROCITY**NEW SECTION

**WAC 246-811-310 Out-of-state substantial equivalency.** (1) An applicant who has been credentialed as a substance use or addiction counselor in another state with substantially equivalent licensing standards, as determined by the department under RCW 18.130.077, is considered to meet:

- (a) Education requirements under WAC 246-811-030;
- (b) Examination requirements under WAC 246-811-060; and
- (c) Experience requirements under WAC 246-811-045 through 246-811-047.

(2) An applicant for substance use disorder professional under subsection (1) of this section is eligible for out-of-state substantial equivalency if they:

- (a) Have held their credential in another state for at least two years immediately preceding their application, with no interruption in licensure lasting longer than 90 days;
- (b) Have not been subject to disciplinary action for unprofessional conduct or impairment in any state, federal, or foreign jurisdiction;
- (c) Are not subject to denial of license; and
- (d) Are not under investigation or subject to charges in any state, federal, or foreign jurisdiction during the pendency of their application.

**SUBSTANCE USE DISORDER PROFESSIONAL APPRENTICESHIP PROGRAMS**NEW SECTION

**WAC 246-811-410 Apprenticeship program review and approval process.** (1) An apprenticeship program must apply to the department of health and the department of labor and industries for approval.

(2) Applications to the department of health shall be reviewed by the substance use disorder certification advisory committee and the secretary of health under chapter 18.205 RCW.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-990 Substance use disorder professional and substance use disorder professional trainee—Fees and renewal cycle.** (1) A substance use disorder professional (SUDP) certificate must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC (~~(Part 2)~~).

(2) A substance use disorder professional trainee certificate must be renewed every year to correspond with issuance date.

(3) Except as provided under subsection (6) of this section, the following nonrefundable fees will be charged for a certified substance use disorder professional:

<b>Title of Fee</b>	<b>Fee</b>
Application	\$260.00
Initial certification	295.00
Active renewal	300.00
Active late renewal penalty	150.00
Retired active renewal	115.00
Retired active late renewal penalty	60.00
Expired certification reissuance	115.00
Duplicate certification	10.00
Verification of certificate	25.00

(4) Except as provided under subsection (6) of this section, the following nonrefundable fees will be charged for a certified substance use disorder professional trainee:

<b>Title of Fee</b>	<b>Fee</b>
Application and initial certification	\$110.00
Renewal	90.00
Late renewal penalty	50.00
Expired certification reissuance	50.00
Duplicate certification	10.00
Verification of certificate	25.00

(5) Probationary licensure. Except as provided under subsection (6) of this section, to receive an initial or renewal of a probationary license as described in WAC 246-811-300 (3) and (4), the following nonrefundable fees will be charged:

<b>Title of Fee</b>	<b>Fee</b>
Application and initial certification	\$555.00
Active renewal	300.00
Active late renewal penalty	150.00
Expired certification reissuance	115.00
Duplicate certification	10.00
Verification of certificate	25.00

(6) Subject to appropriations under RCW 43.70.250, all application and renewal fees for substance use disorder professionals and trainees shall not exceed \$100.00 between July 1, 2024, and June 30, 2029. If funds are not appropriated for this purpose, fees shall be charged under subsections (3) through (5) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-811-200 Continuing competency definitions.
- WAC 246-811-210 Purpose of a continuing competency program.

**WSR 25-01-107**

**WITHDRAWAL OF PROPOSED RULES**

**PIERCE COLLEGE**

(By the Code Reviser's Office)

[Filed December 16, 2024, 10:24 a.m.]

WAC 132K-200-010, 132K-200-020, 132K-200-030, and 132K-200-040, proposed by Pierce College in WSR 24-09-065, appearing in issue 24-09 of the Washington State Register, which was distributed on May 1, 2024, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 25-01-108**

**WITHDRAWAL OF PROPOSED RULES**

**BUILDING CODE COUNCIL**

(By the Code Reviser's Office)

[Filed December 16, 2024, 10:25 a.m.]

WAC 51-50-0200, 51-50-0305, and 51-50-0308, proposed by the building code council in WSR 24-08-036, appearing in issue 24-08 of the Washington State Register, which was distributed on April 17, 2024, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register



**WSR 25-01-109**

**WITHDRAWAL OF PROPOSED RULES**

**BUILDING CODE COUNCIL**

(By the Code Reviser's Office)

[Filed December 16, 2024, 10:25 a.m.]

WAC 51-54A-0202, proposed by the building code council in WSR 24-08-037, appearing in issue 24-08 of the Washington State Register, which was distributed on April 17, 2024, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 25-01-113**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed December 16, 2024, 12:02 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): On January 30, 2025, at 10:00 a.m., at the NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA; or video and teleconference <https://us06web.zoom.us/j/81500220767>, Meeting ID 815 0022 0767, phone 253-215-8782.

Date of Intended Adoption: February 13, 2025.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), fax 360-428-1620, beginning January 2, 2025, at 9:00 a.m., by January 30, 2025, at 4:30 p.m.

Assistance for Persons with Disabilities: Contact Tanya Asmundson, phone 360-428-1617, fax 360-428-1620, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), by January 21, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the regulation of the NWCAA to reflect the incorporation of San Juan County into the NWCAA jurisdiction as of July 1, 2025 (NWCAA Section 100).

Modify NWCAA section 570 to generically reference the counties within NWCAA jurisdiction (NWCAA Section 570).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: RCW 70A.15.1540 and [70A.15.]1550.

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

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. Not applicable under RCW 70A.15.2040.

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.

Explanation of exemptions: Not applicable under RCW 70A.15.2040.

Scope of exemption for rule proposal:

Is fully exempt.

December 13, 2024  
Mark Buford  
Executive Director

AMENDATORY SECTION

SECTION 100 - NAME OF AGENCY

100.1 The multi-county agency, consisting of Island, Skagit and Whatcom Counties and, as of July 1, 2025, San Juan County, having been

formed pursuant to the Washington State Clean Air Act RCW 70A.15, shall be known and cited as the "Northwest Clean Air Agency", and hereinafter may be cited as the "NWCAA" or the "Authority."

100.2 Any reference to the Northwest Air Pollution Authority, the Authority or the NWAPA in any document previously issued by the agency, including without limitation orders, permits, judgments, letters and the like shall be deemed reference to the Northwest Clean Air Agency or the NWCAA.

PASSED: January 8, 1969 AMENDED: July 14, 2005, August 8, 2024, February 13, 2025

#### AMENDATORY SECTION

#### SECTION 570 - ASBESTOS CONTROL STANDARDS

570.1 The Board of Directors of the Northwest Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect the public health. In addition, the Board has adopted these regulations to coordinate with the United States Environmental Protection Agency (EPA) asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP); the federal Occupational Safety & Health Administration (OSHA) asbestos regulation; the Washington State Department of Labor & Industries asbestos regulations; the Washington State Department of Ecology Dangerous Waste regulation; and the solid waste regulations of the counties in NWCAA jurisdiction. ((~~Island, Skagit and Whatcom Counties.~~))

#### 570.2 DEFINITIONS

AHERA BUILDING INSPECTOR - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan (40 CFR Part 763, Subpart E, Appendix C, I.B.3) and whose certification is current.

AHERA PROJECT DESIGNER - A person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR Part 763, Subpart E, Appendix C, I.B.5) and whose certification is current.

ASBESTOS - The asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

ASBESTOS-CONTAINING MATERIAL - Any material containing more than 1 percent asbestos as determined using the method specified in 40 CFR Part 763 Subpart E, Appendix E, Section 1, Polarized Light Microscopy. This definition includes any loose vermiculite, unless sampled using the Cincinnati Method (EPA 600/R-04/004) and found to contain 1 percent or less asbestos.

ASBESTOS-CONTAINING WASTE MATERIAL - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters.

Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

**ASBESTOS PROJECT** - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of asbestos-containing material, or any other action that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of stored asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

**ASBESTOS SURVEY** - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.85 & 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

**COMPETENT PERSON** - A person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate them, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal OSHA, or the EPA (whichever agency has jurisdiction).

**COMPONENT** - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

**DEMOLITION** - Wrecking, razing, leveling, dismantling, or burning of a structure, making all or part of the structure permanently uninhabitable or unusable.

**FRIABLE ASBESTOS-CONTAINING MATERIAL** - Asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

**LEAK-TIGHT CONTAINER** - A dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

**NONFRIABLE ASBESTOS-CONTAINING MATERIAL** - Asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

**OWNER-OCCUPIED, SINGLE-FAMILY PRIMARY RESIDENCE (OOSFPR)** - Any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is currently used by one family who owns the property as their primary residence. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

**PERSON** - Any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

RENOVATION - Altering a facility or a component in any way, except demolition.

SURFACING MATERIAL - Material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

SUSPECT ASBESTOS-CONTAINING MATERIAL - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and siding.

THERMAL SYSTEM INSULATION - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

### 570.3 ASBESTOS SURVEY REQUIREMENTS

#### (A) Requirements for Renovations

It shall be unlawful for any person to cause or allow a renovation unless the property owner or the owner's agent determines whether there are suspect asbestos-containing materials in the work area and obtains an asbestos survey of any suspect asbestos-containing materials by an AHERA building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of an owner-occupied, single-family primary residence.

(1) If there are no suspect materials in the work area, this determination shall either be posted at the work site or communicated in writing to all contractors involved in the renovation.

(2) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(3) Except for renovations of an owner-occupied, single-family primary residence, only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(4) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

#### (B) Requirements for Demolitions

It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey by an AHERA building inspector of the structure to be demolished.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

### 570.4 NOTIFICATION REQUIREMENTS

#### (A) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the NWCAA on approved

forms, in accordance with the advance notification period requirements contained in NWCAA 570.4(D).

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects except demolition involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material.

(3) Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by NWCAA Section 570.

(4) Notification is required for all demolitions of structures with a greater than 120 square feet footprint even if no asbestos-containing material is present. All other demolition requirements remain in effect.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in NWCAA 324.8 unless prior arrangements for payment have been made with the NWCAA.

(6) A copy of the notification, all amendments to the notification, the asbestos survey, and any written approval from NWCAA for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

(7) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(a) The annual notification shall be filed with the NWCAA before commencing work on any asbestos project included in an annual notification;

(b) The total amount of asbestos-containing material for all asbestos projects in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(c) The property owner submits quarterly written reports to the Control Officer on NWCAA-approved forms within 15 days after the end of each calendar quarter.

(B) Mandatory Amendments

An amendment shall be submitted to the Control Officer for the following changes in a notification:

(1) Increases in the project type or job size category that increase the fee or change the advance notification period;

(2) Changes in the type of asbestos-containing material that will be removed; or

(3) Changes in the start date, completion date, or work schedule, including hours of work.

(C) Emergencies

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(4) The project must proceed to avoid imposing an unreasonable burden.

(D) Notification Period

Project Categories	Notification Waiting Period
Owner-Occupied Single-Family Primary Residence (OOSFPR) Projects ≥10 Ln Ft or ≥48 Sq Ft Demolition* Emergency (NWCAA 570.4(C))	Prior notice 10 days Prior notice
Other Projects 10-259 Ln Ft or 48-159 Sq Ft 260-999 Ln Ft or 160-4999 Sq Ft 1,000-9,999 Ln Ft or 5,000-49,999 Sq Ft ≥10,000 Ln Ft or ≥50,000 Sq Ft Demolition* Emergency (NWCAA 570.4(C)) Annual (NWCAA 570.4 (A)(7))	3 days 10 days 10 days 10 days 10 days Prior notice Prior notice
Alternate Means of Compliance and Amendments Alternate Means of Compliance (NWCAA 570.5(B)) Amendment (NWCAA 570.4(B))	10 days Prior notice

\*At the request of the applicant, NWCAA may reduce or waive the waiting period for demolition projects with an asbestos survey showing <10 linear feet or <48 square feet of asbestos.

The Control Officer may waive the notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

570.5 ASBESTOS REMOVAL REQUIREMENTS PRIOR TO RENOVATION OR DEMOLITION

(A) Removal of Asbestos Prior to Renovation or Demolition

Except as provided in NWCAA 570.6(C), it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(B) Exception for Hazardous Conditions

Asbestos-containing material need not be removed prior to a demolition, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material. This submittal, referred to as an alternative means of compliance, shall be submitted to NWCAA for written approval.

570.6 PROCEDURES FOR ASBESTOS PROJECTS

(A) Training Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal OSHA, or the EPA (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to individuals who work on asbestos projects on their own owner-occupied single-family primary residence, no part of which is used for any commercial purpose.

(B) Asbestos Removal Work Practices

Except as provided in NWCAA 570.6(C), it shall be unlawful for any person to cause or allow the removal of asbestos-containing material unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

(3) Absorbent, asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated, absorbent, asbestos-containing materials exposed during removal shall be immediately saturated with a liquid wetting agent.

(4) Nonabsorbent, asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent, asbestos-containing materials exposed during removal shall be immediately coated with a liquid wetting agent.

(5) Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material are exempt from the requirements of NWCAA 570.6 (B) (3) and 570.6 (B) (4) if all access to the asbestos-containing material is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

(6) Except for surfacing materials being removed inside a negative pressure enclosure, asbestos-containing materials that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged.

(7) All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(8) All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers while saturated with a liquid wetting agent. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers while coated with a liquid wetting agent.

(9) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor & Industries or the federal OSHA.

(10) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which



the waste was generated. This marking must be readable without opening the container.

(11) Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(12) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(C) Method of Removal for Nonfriable Asbestos-Containing Roofing Material

The following asbestos removal method shall be employed for asbestos-containing roofing material that has been determined to be nonfriable by a Competent Person or an AHERA Project Designer:

(1) The nonfriable asbestos-containing roofing material shall be removed using methods such as spud bar and knife. Removal methods such as sawing or grinding shall not be employed;

(2) Dust control methods shall be used as necessary to assure no fugitive dust is generated from the removal of nonfriable asbestos-containing roofing material;

(3) Nonfriable asbestos-containing roofing material shall be carefully lowered to the ground to prevent fugitive dust;

(4) After being lowered to the ground, the nonfriable asbestos-containing roofing material shall be immediately transferred to a disposal container; and

(5) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material.

#### 570.7 COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the Washington State Department of Labor & Industries, the federal OSHA, and the EPA. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

#### 570.8 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

(A) Except as provided in NWCAA 570.8(C), it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 days of removal at a waste disposal site authorized to accept such waste.

(B) Waste Tracking Requirements

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless the following requirements are met:

(1) Maintain waste shipment records, beginning prior to transport, using a form that includes the following information:

(a) The name, address, and telephone number of the waste generator;

(b) The approximate quantity in cubic meters or cubic yards;

(c) The name and telephone number of the disposal site operator;

(d) The name and physical site location of the disposal site;

(e) The date transported;

(f) The name, address, and telephone number of the transporter;

and

(g) A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper

condition to transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site at the same time the asbestos-containing waste material is delivered.

(3) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

(4) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(C) Temporary Storage Site

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all the following conditions are met:

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(D) Disposal of Asbestos Cement Pipe

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

PASSED: November 12, 1998 AMENDED: July 14, 2005, November 8, 2007, September 11, 2014, November 10, 2022, February 13, 2025

**WSR 25-01-120**  
**PROPOSED RULES**  
**BOARD OF REGISTRATION**  
**FOR PROFESSIONAL ENGINEERS**  
**AND LAND SURVEYORS**

[Filed December 16, 2024, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-018.

Title of Rule and Other Identifying Information: Chapter 196-09 WAC, Board practices and procedures. A new section is being created regarding public indexes.

Hearing Location(s): On January 28, 2025, at 2:00 p.m., at the Board of Registration for Professional Engineers and Land Surveyors (Board) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or WebEx meeting. The board is holding this hearing in person at the board's offices in Olympia. The public may also virtually participate in the hearing by accessing the hearing link on the board's rule-making page: <https://brpels.wa.gov/current-laws-and-rules/rulemaking-activity>.

Date of Intended Adoption: February 13, 2025.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email [Shanan.Gillespie@brpels.wa.gov](mailto:Shanan.Gillespie@brpels.wa.gov), beginning January 2, 2025, 7:30 a.m., by January 28, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Mackenzie Wherrett, phone 360-664-1568, TTY 711, email [Mackenzie.Wherrett@brpels.wa.gov](mailto:Mackenzie.Wherrett@brpels.wa.gov), by January 22, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Public Records Act (RCW 42.56.070) requires state agencies to create, maintain, and make available to the public indexes of certain records and enact a rule describing the indexing system.

Reasons Supporting Proposal: Allowing certain board records to be readily available to the public creates transparency and reduces occurrences of public records requests, thereby eliminating unnecessary bureaucracy.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 42.56.070.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., #201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., #201, Olympia, WA 98501, 360-664-1575.

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 one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

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.

Explanation of exemptions: This rule is exempt per RCW 34.05.310 (4)(b) because 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.

December 16, 2024

Ken Fuller

Director

## OTS-6050.1

### NEW SECTION

**WAC 196-09-152 Records index.** (1) **Purpose.** This rule implements RCW 42.56.070 (5) and (6) and 34.05.220 (2) and (3).

(2) The board has implemented an indexing system for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the board has maintained an index which include final orders and board orders;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) indexed by type of order, date issued, profession, case number, and respondent name;

(c) Policy statements as defined in RCW 34.05.010(15) that were entered after June 30, 1990;

(d) Minutes of board meetings shall be indexed chronologically.

(3) Most indexes are available online at [brpels.wa.gov](http://brpels.wa.gov) and are available for public inspection and copying weekdays, excluding legal holidays or other days the agency is closed, between 8:30 a.m. and 4:30 p.m. at the board's office, 605 11th Ave SE, Suite 201, Olympia, Washington.

(4) The indexes are updated quarterly. In addition to the indexing system, the board also maintains and continually updates its website at [brpels.wa.gov](http://brpels.wa.gov), which includes board laws and rules; board forms; board meeting agendas and materials; and other agency documents.

**WSR 25-01-136**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed December 17, 2024, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-044.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment?

Hearing Location(s): On January 22, 2025, at 10:00 a.m., virtually via Microsoft Teams or call in. See the 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 January 23, 2025.

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 December 18, 2024, by 5:00 p.m. on January 22, 2025.

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 January 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments clarify that overpayments due to intentional trafficking of food benefits will represent the entire value of the benefits determined to have been trafficked.

Reasons Supporting Proposal: 7 C.F.R. 273.18.

Statutory Authority for Adoption: RCW 43.20A.550, 43.20B.630, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: 7 C.F.R. 273.18.

Rule is necessary because of federal law, 7 C.F.R. 273.18 (c)(2).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

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 are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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: 7 C.F.R. 273.18 (c)(2). Proposed amendments clarify WAC and better align with federal rule.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:  
Is fully exempt.

December 12, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5061.1

AMENDATORY SECTION (Amending WSR 17-13-006, filed 6/8/17, effective 7/9/17)

**WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment?** (1) We calculate the amount of your basic food, Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment by counting ~~((the difference between))~~:

(a) The difference between the benefits your assistance unit (AU) received ~~((+))~~ and

~~((b) The))~~ the benefits your AU should have received.

(b) The entire amount trafficked when the overpayment was incurred due to trafficking as defined in WAC 388-446-0020 (3) (c).

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and

(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) We must set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) The overpayment is over ~~((eighty-five dollars))~~ \$85 and you currently receive basic food, FAP, or WASHCAP benefits; or

(c) The overpayment is over ~~((one hundred twenty-five))~~ \$125 dollars and you do not currently receive basic food, FAP, or WASHCAP benefits.

(5) We do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

(a) We did not discover the overpayment through the federal quality control process;

(b) You do not currently receive basic food, FAP, or WASHCAP benefits; and

(c) The total amount your household was overpaid was ~~((one hundred twenty-five dollars))~~ \$125 or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will

not set up or start collecting the overpayment if doing so could negatively impact this process.

(7) We must set up an intentional program violation overpayment based on the results of an administrative disqualification hearing under chapter 388-02 WAC, unless:

(a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to (~~twelve~~) 12 months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than (~~twenty-four~~) 24 months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few basic food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have not already issued you benefits to replace what you were underpaid; and

(b) We have not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. Sec. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

(a) By operation of law if you do not respond within (~~ninety~~) 90 days of service of the overpayment notice;

(b) By administrative order if you timely request a hearing; or

(c) By written agreement.

(12) You may request a hearing to contest an overpayment of your basic food, FAP, or WASHCAP benefits.

(a) The hearing may include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution in accordance with WAC 388-446-0001(4), you may request that the administrative hearing related to the overpayment be postponed.

## WSR 25-01-139

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed December 17, 2024, 11:47 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-060.

Title of Rule and Other Identifying Information: WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services, 182-531-1710 Alcohol and substance misuse counseling, and 182-538D-0200 Behavioral health services—Definitions.

Hearing Location(s): On January 22, 2025, 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\\_6bEgwejCTa6c66AYPffGqQ](https://us02web.zoom.us/webinar/register/WN_6bEgwejCTa6c66AYPffGqQ).

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 January 23, 2025.

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 December 18, 2024, 8:00 a.m., by January 22, 2025, 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 January 3, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these sections to add behavioral support specialists as an eligible provider type as directed by SSB 5189, section 11, chapter 270, Laws of 2023, and adds behavioral health support specialist definition which aligns with the state plan definition.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.227.100, 41.05.021, 41.05.160.

Statute Being Implemented: RCW 18.227.100, 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: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Yvonne Keller, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563.

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.

Explanation of exemptions: This rule making implements RCW 18.227.100 (SSB 5189, section 11, chapter 270, Laws of 2023).

Scope of exemption for rule proposal:

Is fully exempt.



December 17, 2024  
Wendy Barcus  
Rules Coordinator

**OTS-5916.2**

AMENDATORY SECTION (Amending WSR 24-12-036, filed 5/30/24, effective 7/1/24)

**WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services.** (1) The mental health services covered in this section are different from the mental health services covered under community mental health and involuntary treatment programs in chapter 182-538D WAC.

(2) Inpatient and outpatient mental health services not covered under chapter 182-538D WAC may be covered by the medicaid agency under this section.

**Inpatient mental health services**

(3) For hospital inpatient psychiatric admissions, providers must comply with chapter 182-538D WAC.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric mental health nurse practitioner-board certified (PMHNP-BC), or psychologist in conjunction with the prescribing provider;

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services provided when making rounds. The agency considers services provided during rounds to be direct client care services and may include, but are not limited to:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day, and only when performed by a psychiatrist.

**Outpatient mental health services**

(5) The agency covers outpatient mental health services when provided by the following licensed or certified health care practitioners who are eligible providers under chapter 182-502 WAC:

(a) Psychiatrists;

(b) Psychologists;

(c) Psychiatric advanced registered nurse practitioners (ARNP);

(d) Psychiatric mental health nurse practitioners-board certified (PMHNP-BC);

(e) Mental health counselors;

(f) Mental health counselor associates;

(g) Independent clinical social workers;

(h) Independent clinical social worker associates;

(i) Advanced social workers;

- (j) Advanced social worker associates;
- (k) Marriage and family therapists; ((~~o~~))
- (l) Marriage and family therapist associates; or
- (m) Certified behavioral health support specialists.

(6) With the exception of child psychiatrists, as defined in RCW 71.34.020, qualified practitioners listed in subsection (5) of this section who diagnose and treat clients age 18 and younger must meet one of the following:

(a) The education and experience requirements for a child mental health specialist found in WAC 182-538D-0200; or

(b) Be working under the supervision of a practitioner who meets these requirements.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency evaluates a request for covered outpatient mental health services in excess of the limitations in this section under WAC 182-501-0169.

(9) The agency covers outpatient mental health services with the following limitations:

(a) Diagnostic evaluations. One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(i) For clients 20 years of age and younger, additional evaluations are paid for when medically necessary and authorized by the agency, per WAC 182-534-0100 and 182-501-0165.

(ii) For clients five years of age and younger, the agency pays for the following without requiring prior authorization:

(A) Up to five sessions to complete a psychiatric diagnostic evaluation; and

(B) Evaluations in the home or community setting, including reimbursement for provider travel.

(iii) For clients age five through age 20, the services in (a)(ii)(A) and (B) of this subsection are paid for when medically necessary and authorized by the agency.

(b) Psychotherapy. One or more individual or family/group psychotherapy visits, with or without the client, per day, per client, when medically necessary.

(c) Medication management. One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP);

or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(10) To receive payment for providing mental health services, providers must bill the agency using the agency's published billing instructions.

AMENDATORY SECTION (Amending WSR 21-20-132, filed 10/6/21, effective 11/6/21)

**WAC 182-531-1710 Alcohol and substance misuse counseling. (1)**

The medicaid agency covers alcohol and substance misuse counseling

through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed physician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify, reduce and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. SBIRT can be used to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings such as primary care centers, hospital emergency rooms, trauma centers, and dental offices.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) Substance use disorder professionals (SUDP), in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselors, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapists, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social workers, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physicians, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistants, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologists, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentists, in accordance with chapters 18.260 RCW and 246-817 WAC; (~~and~~)

(l) Dental hygienists, in accordance with chapters 18.29 RCW and 246-815 WAC; and

(m) Certified behavioral health support specialists, in accordance with chapters 18.227 RCW and 246-821 WAC.

(4) To become a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete agency-approved SBIRT training and mail or fax the SBIRT training certificate or other proof of this training completion to the agency; or

(b) Have an addiction specialist certification and mail or fax proof of this certification to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

(i) Advanced registered nurse practitioners;

(ii) Mental health counselors;

- (iii) Marriage and family therapists;
- (iv) Independent and advanced social workers;
- (v) Physicians;
- (vi) Psychologists;
- (vii) Dentists; and
- (viii) Dental hygienists.

(6) The agency evaluates a request for additional sessions in excess of the limitations or restrictions according to WAC 182-501-0169.

(7) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

## OTS-5917.2

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

**WAC 182-538D-0200 Behavioral health services—Definitions.** The following definitions and those found in chapters 182-500, 182-538, and 182-538C WAC apply to this chapter. If conflict exists, this chapter takes precedence.

**"Adult"** means a person age (~~(eighteen)~~) 18 or older. For purposes of the medicaid program, people age (~~(eighteen)~~) 18 through age (~~(twenty)~~) 20 have the early and periodic screening, diagnostic and treatment (EPSDT) benefit described in chapter 182-534 WAC. In the medicaid program, EPSDT is available until a person reaches age (~~(twenty-one)~~) 21.

**"Assessment"** means the process of obtaining all pertinent biopsychosocial information, as identified by the person, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

**"Behavioral health"** means the prevention, treatment of, and recovery from substance use disorders, mental health disorders or problem and pathological gambling disorders.

**"Behavioral health administrative service organization (BH-ASO)"** See WAC 182-538-050.

**"Behavioral health agency"** means an entity licensed by the department of health (DOH) to provide behavioral health services, including services for mental health disorders and substance use disorders.

**"Certified behavioral health support specialist (BHSS)"** means a person who delivers brief behavioral health services under the supervision of a provider outlined in WAC 246-821-410. To provide services as a BHSS, this person must have a bachelor's degree and have completed the BHSS educational program recognized by DOH.

**"Chemical dependency professional" or "CDP"** means a person credentialed by (~~(the department of health)~~) DOH as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

**"Child"** means a person under the age of (~~(eighteen)~~) 18. For the purposes of the medicaid program, people age (~~(eighteen through age twenty)~~) have the early and periodic screening, diagnostic and treatment

(EPSDT)) 18 through age 20 have the EPSDT benefit described in chapter 182-534 WAC. In the medicaid program, EPSDT is available until a person reaches age ~~((twenty-one))~~ 21.

**"Clinical record"** means a paper or electronic file that is maintained by the provider and contains pertinent psychological, medical, and clinical information for each person served.

**"Community support services"** means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available ~~((twenty-four))~~ 24 hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX ~~((early and periodic screening, diagnosis, and treatment (EPSDT)))~~ EPSDT program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health administrative service organizations (BH-ASOs) and managed care organizations (MCOs).

**"Complaint"** See "grievance" in WAC 182-538-050.

**"Consent"** means agreement given by a person after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

**"Consultation"** means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by people with appropriate knowledge and experience to make recommendations.

**"Crisis"** means an actual or perceived urgent or emergent situation that occurs when a person's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the person's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

**"Cultural competence"** or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which people from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging people to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

**"Designated crisis responder (DCR)"** means a mental health professional appointed by the county, or an entity appointed by the county, to perform the duties described in chapter 71.05 RCW.

**"Disability"** means a physical or mental impairment that substantially limits one or more major life activities of a person and the person:

- (a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

**"Ethnic minority"** or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

- (a) African American;
- (b) An American Indian or Alaskan native, which includes:
  - (i) A person who is a member or considered to be a member in a federally recognized tribe;
  - (ii) A person determined eligible to be found Indian by the secretary of interior;
  - (iii) An Eskimo, Aleut, or other Alaskan native; and
  - (iv) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization.
- (c) Asian/Pacific Islander; or
- (d) Hispanic.

**"Housing services"** means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs.

**"Integrated managed care (IMC)"** See WAC 182-538-050.

**"Less restrictive alternative (LRA)"** See WAC 182-538C-050.

**"Mental health professional"** means a person who meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by (~~the department of health~~) DOH as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of people with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by (~~the department of health~~) DOH or attested to by the licensed behavioral health agency.

**"Mental health specialist"** means:

(a) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(i) A minimum of (~~one hundred~~) 100 actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(ii) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(b) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(i) A minimum of (~~one hundred~~) 100 actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age (~~sixty~~) 60 and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age (~~sixty~~) 60 and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including:

(i) Evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

~~((i))~~ (ii) One of the following:

(A) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

~~((ii))~~ (B) A minimum of ~~((one hundred))~~ 100 actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minorities.

(d) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means a person with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(i) If the consumer is deaf, the specialist must be a mental health professional with:

(A) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(B) Ability to communicate fluently in the preferred language system of the consumer.

(ii) The specialist for people with developmental disabilities must be a mental health professional who:

(A) Has at least one year experience working with people with developmental disabilities; or

(B) Is a developmental disabilities professional as defined in RCW 71.05.020.

**"Peer counselor"** means a person recognized by the medicaid agency as a person who:

(a) Is a self-identified consumer of behavioral health services who:

(i) Has applied for, is eligible for, or has received behavioral health services; or

(ii) Is the parent or legal guardian of a person who has applied for, is eligible for, or has received behavioral health services;

(b) Is a counselor credentialed under chapter 18.19 RCW;

(c) Has completed specialized training provided by or contracted through the medicaid agency. If the person was trained by trainers approved by the department of social and health services before October 1, 2004, and has met the requirements in (a), (b) and (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training;

(d) Has successfully passed an examination administered by the medicaid agency or an authorized contractor; and

(e) Has received a written notification letter from the medicaid agency stating that the medicaid agency recognizes the person as a "peer counselor."

**"Quality plan"** means an overarching system ~~((and/))~~ or process, or both, whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a ~~((behavioral health administrative service organization's (BH-ASO's) or managed care organization's (MCO's))~~ BH-ASO's or MCO's operations.

**"Residential services"** means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for people who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

**"Resource management services"** means the planning, coordination, and authorization of residential services and community support services for people who are:

- (a) Adults and children who are acutely mentally ill;
- (b) Adults who are chronically mentally ill;
- (c) Children who are severely emotionally disturbed; or
- (d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

**"Substance use disorder"** means a cluster of cognitive, behavioral, and physiological symptoms indicating that a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

**"Supervision"** means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

**"Youth"** means a person who is age (~~seventeen~~) 17 or younger.



**WSR 25-01-142**  
**PROPOSED RULES**  
**OLYMPIC COLLEGE**

[Filed December 17, 2024, 4:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-157.

Title of Rule and Other Identifying Information: Olympic College (college) student conduct code.

Hearing Location(s): On January 31, 2025, 2:30 - 4:00 p.m., at the Olympic College, Bremerton Campus, Building 4, Room 108; and Zoom <https://olympic.zoom.us/j/98144830370>?pwd=JxbBOenlA9V2z4HFcYH6CvdhJGhlqd.1, Meeting ID 981 4483 0370, Pass-code 559518.

Date of Intended Adoption: February 18, 2025.

Submit Written Comments to: Renee Lafreniere, 1600 Chester Avenue, Bremerton, WA 98337-1699, email [rlafreniere@olympic.edu](mailto:rlafreniere@olympic.edu).

Assistance for Persons with Disabilities: Contact student disability services, phone 360-475-7540, email [disabilityservices@olympic.edu](mailto:disabilityservices@olympic.edu), <https://www.olympic.edu/about/policies-procedures/accessibility-accommodations>.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Final Title IX regulations provide greater clarity regarding: The definition of "sex-based harassment"; the scope of sex discrimination, including schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and schools' obligations to provide an educational environment free from discrimination based on sex.

Reasons Supporting Proposal: 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, the 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.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.020.

Rule is necessary because of federal law, 34 C.F.R. 106.1.

Name of Proponent: Olympic College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Igor Lukashin, Olympic College, Bremerton, 4-203L, 360-475-6836.

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. Olympic College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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.

December 17, 2024

Renee Lafreniere

Chief of Staff, President's Office

Rules Coordinator

### OTS-5708.1

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-022 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 conduct, and harassment, including (~~sexual harassment~~) sex 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 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-065 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or 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) **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.

(2) **Other 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, abuse, threats, intimidation, harassment and stalking.** 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, persistent, or pervasive physical or verbal abuse and 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 perpetra-

tor 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 firearm in his or her 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 his delegee 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.

(9) **Hazing.** 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.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, or sale 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 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, or sale of any legend drug (any drug that requires a prescription including both controlled substances and nonnarcotic drugs), 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.** Use of tobacco, electronic cigarettes, and related products is prohibited in all buildings owned or controlled by the college, in all college vehicles, and on all college property, except in designated areas. All smoking materials are to be lit, smoked and extinguished in designated areas only. "Related products" include, but are 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/family status; marital status; age (40+); 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, but is not limited to, sexual harassment, sexual intimidation, and sexual violence. Use of alcohol or other drugs will not function as a defense to a violation of college policies regarding sexual misconduct. Cases involving allegations of sexual misconduct are subject to special discipline procedures; see WAC 132C-120-300 through 132C-120-315.~~

~~(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 person to participate in or benefit from the college's educational programs/activities 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.** 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, or 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.) **Sex discrimination,** as defined in WAC 132C-120-325.~~

(14) **Harassment.** Unwelcome and offensive conduct, other than sex discrimination, 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 (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 communications.

(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. Retaliation is considered a separate offense, regardless of the outcome of the original complaint.

(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 violations include 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.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-100 Statement of jurisdiction.** The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college (~~sponsored~~) programs or activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. 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, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, campus housing, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a 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. 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 that occurs off campus.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-101 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 of the student services area or designee. The student conduct officer, or a designee, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-120 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; and

(c) One 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 administrator 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))~~ servicing 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.

(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 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).

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-200 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))~~ calendar 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 com-



munity. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent 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))~~ 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 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 ~~((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.

(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 offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, 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 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-300 ((Supplemental sexual misconduct procedures.))**

**Reserved.** ~~((Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.~~

~~The college reserves the right to take whatever protective measures it deems necessary in response to an allegation of sexual misconduct in order to protect the rights and personal safety of our campus community members. Such measures include, but are not limited to, reasonable changes to academic/housing arrangements, no-contact orders, counseling, interim suspension from campus pending a proceeding, and reporting the matter to local police. The college will consider the concerns and rights of both the recipient of and the person accused of~~

~~the sexual misconduct. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, from warning to dismissal, depending on the severity of the offense.~~

~~Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132C-120-010 through 132C-120-200. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.)~~

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-305 ((Supplemental definitions.)) Reserved.** ((The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) "Complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking;

(e) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.)

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-310 ((Supplemental complaint process.)) Reserved.** ((The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the vice president for the student services area for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

~~(3) In no event shall mediation be used to resolve complaints involving allegations of sexual violence.~~

~~(4) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.~~

~~(5) The student conduct officer, prior to initiating disciplinary action, 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.~~

~~(6) 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.)~~

AMENDATORY SECTION (Amending WSR 15-03-078, filed 1/16/15, effective 2/16/15)

**WAC 132C-120-315 ((Supplemental appeal rights.)) Reserved.**

~~((1) The following actions by the student conduct officer may be appealed by the complainant:~~

~~(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.~~

~~(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132C-120-310(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.~~

~~(3) 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.~~

~~(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.~~

~~(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:~~

- ~~(a) Exoneration and dismissal of the proceedings;~~
  - ~~(b) A disciplinary warning;~~
  - ~~(c) A written reprimand;~~
  - ~~(d) Disciplinary probation;~~
  - ~~(e) Suspensions of ten instructional days or less; and/or~~
  - ~~(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.~~
- ~~(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.~~
- ~~(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.~~
- ~~(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.~~
- ~~(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective non-attorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.~~
- ~~(10) 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 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 his or her appeal rights.~~
- ~~(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.~~
- ~~(12) 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.))~~

OTS-5701.1

**SUPPLEMENTAL ((TITLE IX)) SEX DISCRIMINATION STUDENT CONDUCT CODE AND PROCEDURES**

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-320 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence.** ((These)) This supplemental ((procedures apply)) student conduct code and procedures applies to allegations of ((sexual harassment)) 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 ((Olympic)) the college's standard ((disciplinary)) student conduct code and procedures, WAC 132C-120-010 through 132C-120-315, these supplemental student conduct code and procedures shall take precedence.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-325 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 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 "((sexual harassment)) sex discrimination."

For purposes of these supplemental procedures, ((("sexual harassment" encompasses)) the following ((conduct)) 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;

(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 evi-

dence 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 ((college)) 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 of the college on an individual's participation in unwelcome sexual conduct.

((2)) (ii) Hostile environment. Unwelcome sex-based conduct that ((a reasonable person would find to be so severe, pervasive)), based on the totality of the circumstances is subjectively and objectively offensive and is so severe or pervasive that it ((effectively)) limits or denies a ((person equal access to the college's educational programs or activities, or employment)) 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.

((3)) (iii) Sexual ((assault. Sexual assault includes the following conduct:)) violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

((a)) (A) Nonconsensual sexual intercourse((-)) is 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))~~ (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.

~~((e))~~ (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 ~~((eighteen))~~ 18.

~~((d))~~ (D) Statutory rape~~((-Consensual))~~ (rape of a child) is nonforcible sexual intercourse ~~((between someone who is eighteen years of age or older and someone))~~ with a person who is under the statutory age of ~~((sixteen))~~ consent.

~~((4))~~ (E) Domestic violence~~((-))~~ is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ~~((e))~~ 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.

~~((5))~~ (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))~~ (I) The length of the relationship;

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

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

~~((6))~~ (G) Stalking~~((-))~~ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for ~~((their))~~ 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 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 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-330 ((Title IX)) Sex discrimination—Jurisdiction.**

~~((1))~~ These supplemental procedures apply only if the alleged misconduct ~~(~~

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

~~(b) Occurred during a college educational program or activity;~~

and

~~(c))~~ meets the definition of ~~((sexual harassment))~~ "sex discrimination" as that term is defined in ~~((these supplemental procedures.~~

~~(2) For purposes of these supplemental procedures, an "educational program or activity" is defined as locations, events, or circumstances over which the college 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 college.~~

~~(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 college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132C-120-065.~~

~~(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.)~~ WAC 132C-120-325 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 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-335 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);~~
- ~~(e) Explain that the complainant and the respondent 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 college 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.)) 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 132C-120-200, 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) The 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 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-340 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 132C-120-122. 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.)~~ 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 132C-120-122(2), 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 132C-120-122(2), 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 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-350 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 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.

AMENDATORY SECTION (Amending WSR 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-355 Sex discrimination—Initial order.** (~~((1) In addition to complying with WAC 132C-120-122, 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 college's education programs or activities; and~~
- ~~(h) Describes the process for appealing the initial order to the college 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 21-07-094, filed 3/19/21, effective 4/19/21)

**WAC 132C-120-360 Sex discrimination—Appeals.** (~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132C-120-139.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

~~(3) President's office shall serve the final decision on the parties simultaneously.))~~ (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 25-01-144

## PROPOSED RULES

## WASHINGTON STATE UNIVERSITY

[Filed December 18, 2024, 8:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-128.

Title of Rule and Other Identifying Information: Chapter 504-31 WAC, Conduct on campus code (title is being updated to Conduct on university property).

Hearing Location(s): On January 22, 2025, at 4:00 p.m., via Zoom meeting. Join from [wsu.zoom.us/](https://wsu.zoom.us/j/93478188239) or the Zoom app, Meeting ID 934 7818 8239, Passcode 039982; or join by phone 253-215-8782 (enter meeting ID and password at prompt). For help connecting to a Washington State University (WSU) Zoom meeting, see <https://tinyurl.com/2kbrhrjt>.

Date of Intended Adoption: March 7, 2025.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email [prf.forms@wsu.edu](mailto:prf.forms@wsu.edu), beginning January 2, 2025, by January 22, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, email [prf.forms@wsu.edu](mailto:prf.forms@wsu.edu), by January 17, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSU administration is updating this rule as follows: (1) Adds a notice of trespass section (WAC 504-31-030) from chapter 504-35 WAC, Facility use rules for other than first amendment/free speech activities; and (2) clarifies that this rule applies to all WSU properties, whether on a specific campus or not. The title of the rule is changed to reflect that the rule applies to all WSU properties.

Reasons Supporting Proposal: The current rule does not reflect current practices related to conduct on WSU property.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Executive Director, Policy and Governance, French Administration Room 225, Pullman, WA 99164-1023, 509-335-6893; Implementation: Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration 442, Pullman, WA 99164-1048, 509-335-5524; and Enforcement: Vicky Murray, Associate Vice President, WSU Police, Public Safety, French Administration 442, Pullman, WA 99164-1048, 509-335-5524.

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. WSU does not consider this rule to be a significant legislative 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 19.85.025(3) as the 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).

Scope of exemption for rule proposal:

Is fully exempt.

December 18, 2024  
Deborah L. Bartlett, Director  
Policies, Records, and Forms

OTS-6020.1

**Chapter 504-31 WAC**  
**CONDUCT ON ((CAMPUS CODE)) UNIVERSITY PROPERTY**

AMENDATORY SECTION (Amending WSR 13-08-033, filed 3/27/13, effective 4/27/13)

**WAC 504-31-010 General policy.** It is the policy of Washington State University to support and promote each individual's right to express their views and opinions for or against actions or ideas in which the individual has an interest, to associate freely with others, and to assemble peacefully.

The above rights exist in equal measure for each member of the university community. They exist regardless of the professional stature or rank of the individual and regardless of the degree of acceptability among others of the views or opinions advocated. (~~Each individual~~) Everyone has an obligation to respect the rights of all members of the university community.

This rule shall be read and applied together with any other applicable university policies and rules, and in the event of a conflict more specific provisions shall take precedence. WAC (~~504-35-150 shall~~) 504-31-030 and applicable student or employee or both disciplinary processes apply to violations of this rule.

AMENDATORY SECTION (Amending WSR 21-24-027, filed 11/22/21, effective 12/23/21)

**WAC 504-31-020 Prohibited conduct.** In order to assure the above rights to all members of the university community and to maintain a peaceful atmosphere in which the university may continue to make its unique contribution to society, the following types of conduct are (~~hereby~~) prohibited on or in any property (~~either~~) owned, leased, controlled, or operated by the university (~~which~~) that is used or set aside for university purposes (~~, hereinafter referred to as the university campus~~) (university property):

(1) Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities (~~on the university campus~~);

(2) Physical abuse of any person or conduct that unlawfully threatens imminent bodily harm or endangers the health or safety of any person (~~on the university campus~~);

(3) Malicious damage to or malicious misuse of university property, or the property of any person (~~where~~) when such property is located on (~~the~~) university (~~campus~~) property;

(4) Refusal to comply with any lawful order to leave ~~((the))~~ university ~~((campus))~~ property or any portion thereof;

(5) Possession or use of firearms, explosives (including fireworks), dangerous chemicals or other dangerous weapons or instrumentalities on ~~((the))~~ university ~~((campus))~~ property. This prohibition does not apply to possession of such items for authorized university purposes; possession of such items by authorized law enforcement officers; individuals who have obtained prior written approval from the university chief of police, president, or designee; or lawful possession of firearms by persons other than students in privately owned vehicles while on ~~((any))~~ university ~~((campus))~~ property;

(6) Unlawful possession, use, distribution, or manufacture of alcohol or controlled substances on ~~((the))~~ university ~~((campus))~~ property or during university-sponsored activities;

(7) Intentionally inciting others to engage immediately in any of the conduct prohibited herein, which incitement leads directly to such conduct. (Inciting is advocacy that prepares the group addressed for imminent action and steels it to the conduct prohibited herein.)

#### NEW SECTION

**WAC 504-31-030 Notice of trespass.** (1) Access to university property. Any individual who is on university property must comply with university rules. Access to university property may be limited to certain times, certain uses, or certain groups of people. See also chapter 504-33 WAC. People who are on university property or within a university building without permission may be ordered to leave by any university official, university police or public safety officer, or any other police or public safety officer acting within their authority and as requested by the university.

(2) 24-hour trespass order. People who remain on university property without permission, who disrupt university activities, interfere with people's ability to access buildings, or whose conduct threatens the health, safety, or security of anyone on university property may be removed from university property or a portion thereof and given a 24-hour trespass notice by any university official, university police or public safety officer, or any other police or public safety officer acting within their authority and as requested by the university. A 24-hour trespass notice is not subject to appeal.

(3) Trespass orders for more than 24-hours. In the event a person's conduct poses a continued threat to the health, safety, or security of anyone on university property, a continuing violation of university policies or disruption of university activities, the president or president's designee, a university police officer, or a campus security officer may trespass the person from university property for up to five years, except expelled students may permanently be trespassed from university property in accordance with chapter 504-26 WAC. Any prior license or privilege to be on university property is revoked by the notice of trespass.

(4) Contents of notice. A person who is trespassed from university property for any duration is given a written notice of trespass identifying:

- (a) The reason why the person is being trespassed;
- (b) The duration and scope of the trespass;
- (c) The method for appealing the notice, if any; and

(d) A warning that failing to comply with the notice may result in the person's arrest and criminal charges under chapter 9A.52 RCW. The notice shall be delivered in the manner specified in chapter 9A.52 RCW.

(5) Students. The authority to bar current students from all or a portion of university property under this section is separate from, and in addition to, the authority to impose disciplinary sanctions pursuant to chapter 504-26 WAC. However, when a current student is to be trespassed for more than 24 hours from any area they need to perform their academic studies or work, including their assigned university housing (except as provided in the housing agreement), the individual issuing the trespass order (in accordance with subsection (3) of this section) is to contact either the dean of students, the center for community standards, the campus vice chancellor for student affairs, or all, so that the applicable student conduct process is initiated during the initial 24-hour trespass whenever possible. The student conduct process may include WAC 504-26-050 or 504-26-409. Any appeals of the trespass order are conducted in accordance with chapter 504-26 WAC.

(6) Employees. The authority to bar current employees from all or a portion of university property under this section is separate from, and in addition to, the authority to impose disciplinary sanctions pursuant to applicable employee disciplinary procedures (e.g., those in the Faculty Manual, Administrative Professional Employee Handbook, or civil service regulations). However, if an employee is trespassed from any area they need to perform their work or from all university property, the individual issuing the trespass order is to contact human resource services as soon as possible in the trespass process. The employee may be considered to be placed on home assignment or paid administrative leave by issuance of the trespass notice, and the university shall follow its normal employment processes for investigating the alleged behavior and determining what level of discipline, if any, is appropriate. Any appeals of the trespass order are conducted pursuant to the applicable employee disciplinary process.

(7) Appeals.

(a) Current students and employees. If a current student or employee is trespassed for more than 24 hours from a portion of university property and they do not need access for their studies or work, they may appeal the decision under (b) of this subsection. Otherwise, any appeals are as provided in subsection (5) or (6) of this section. Appeal processes are referenced on the trespass notice.

(b) Nonstudents or nonemployees. Persons other than current students and employees who have been removed or trespassed from university property may appeal the decision by submitting an appeal letter stating the reasons they should not be barred from university property. The appeal should be submitted to the executive vice president for finance and administration or designee, by certified mail, within 21 days of issuance of the trespass notice. The trespass notice remains in effect during the pendency of any review period. The executive vice president for finance and administration or designee reviews all relevant information and issues a written order affirming, modifying, or revoking the trespass order within 20 days after the appeal letter is received. This decision is the university's final decision.

## WSR 25-01-145

## PROPOSED RULES

## WASHINGTON STATE UNIVERSITY

[Filed December 18, 2024, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-129.

Title of Rule and Other Identifying Information: Facility use rules for other than first amendment/free speech activities, chapter 504-35 WAC.

Hearing Location(s): On January 23, 2025, at 4:00 p.m., via Zoom meeting. Join from [wsu.zoom.us/](https://wsu.zoom.us/j/98768907010) or the Zoom app, Meeting ID 987 6890 7010, Passcode 319718; or join by phone 253-215-8782 (enter meeting ID and password at prompt). For help connecting to a Washington State University (WSU) Zoom meeting see <https://tinyurl.com/2kbrhrjt>.

Date of Intended Adoption: March 7, 2025.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email [prf.forms@wsu.edu](mailto:prf.forms@wsu.edu), beginning January 2, 2025, by January 23, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, email [prf.forms@wsu.edu](mailto:prf.forms@wsu.edu), by January 17, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSU is updating the facility use rules for other than first amendment/free speech activities. This revision (1) eliminates reference to the "campus use committee," which no longer exists; (2) requires risk management and each campus to maintain a list of approving authorities for facilities that may be rented for outside use; (3) requires a facility use agreement for outside use of WSU facilities; (4) requires fees for facility use to recoup all costs, direct and indirect; (5) specifically authorizes approving authorities to deny a request for outside use; (6) requires approving authorities to notify risk management prior to approving certain specified requests that involve higher risk; and (7) moves the administrative trespass section to chapter 504-31 WAC, Conduct on university property.

Reasons Supporting Proposal: The current rule is out of date and does not correspond with existing WSU committee structures or practices, nor does it reflect best practices in terms of cost recovery or risk mitigation.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Executive Director, Policy and Governance, French Administration Room 225, Pullman, WA 99164-1023, 509-335-6893; Implementation: Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration 442, Pullman, WA 99164-1048, 509-335-5524; and Enforcement: Vicky Murray, Associate Vice President, WSU Police, Public Safety, French Administration 442, Pullman, WA 99164-1048, 509-335-5524.

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. WSU does not consider this rule to be a significant legislative 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 19.85.025(3) as the 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).

Scope of exemption for rule proposal:

Is fully exempt.

December 18, 2024  
Deborah L. Bartlett, Director  
Policies, Records, and Forms  
University Rules Coordinator

## OTS-6022.2

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-010 Use of university facilities—General policy and purpose.** Washington State University is an educational institution provided and maintained by the people of the state of Washington (~~in order~~) to carry out its broad missions of (~~teaching, research~~) education, scholarship, and (~~public service~~) outreach. As a state agency, the university is under no obligation to make its public facilities available to the community for private purposes, and the university generally reserves its facilities, buildings, and grounds for its mission-related activities (~~, including: instruction, research, public assembly, student activities, and recreational activities related to education~~). (~~However,~~)

The university (~~makes~~) may make its facilities available at a reasonable cost for a variety of uses (~~which are of benefit to the general public~~) under the conditions set forth in these regulations if such general uses substantially relate to, and do not interfere with, university missions. RCW 42.52.160 prohibits university employees from allowing private use of university facilities for nonuniversity purposes, except in very limited circumstances. Therefore, when outside use is permitted, the university imposes costs and fees in accordance with WAC 504-35-026 unless a specific exemption applies (e.g., WAC 504-35-050(3)).

The purpose of these regulations is to establish procedures and reasonable controls for:

(1) The use of university facilities by individuals (~~and~~), entities (~~other than the university itself, including university employees, students, and registered student organizations, as well as individuals and groups~~), and groups that are not related to or affiliated with the university; and

(2) The use of university facilities for nonuniversity purposes. These regulations do not apply to university use of university facilities for educational, scholarship, outreach, or other university purposes.

In reviewing conflicting requests to use university facilities, primary consideration is given to activities specifically related to the university's mission. Additionally, no use (~~will be~~) is allowed that may interfere with, or operate to the detriment of, the universi-

ty's own (~~teaching or public service~~) education, scholarship, or outreach programs, or university operations. (~~Additionally,~~) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-015 First amendment/free speech activities not covered.** Use of university facilities for first amendment/free speech activities is governed by the rules set forth in chapter 504-33 WAC. This chapter does not apply to those individuals or groups (~~using~~) seeking to use university facilities for first amendment activities.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-020 Definitions and powers.** (1) "Affiliated entities" or "university affiliates" means those entities (including those entities' officers, agents, and employees acting on behalf of the affiliate) that have formal relationship(~~s~~) agreements (e.g., affiliation agreements or operating agreements) with the university (~~and also encompass those entities' officers, agents, and employees~~). Affiliated entities include, but are not limited to, (~~the university research foundation,~~) the university foundation(, the 4-H foundation) and the university alumni association, the office of the attorney general, and the United States Department of Agriculture—Agricultural Research Service. (~~A list of affiliated entities is available on the campus use committee website. The website can be found by accessing the university's website at: http://www.wsu.edu/.~~)

(2) "Approving authority" means a university employee (~~who has authority, consistent with these regulations and with the procedures established by the campus use committee,~~) or committee with authority to review, approve, or deny individual requests for use of facilities.

(a) (~~The university~~) Each university campus maintains a list of the approving authorities for those facilities that are most frequently used on a short-term basis by individuals and groups. That list is available (~~from the office of business and finance at the Pullman campus, 442 French Administration Building, or by going online to the campus use committee website. The website can be found by accessing the university's website at: http://www.wsu.edu/~~) on each campus's website and on the WSU system risk management website.

(b) Only university employees with signature authority delegated to them by the university president may sign facility use agreements.

(~~(b)~~) (c) The approving authority for all long-term uses of facilities is the executive vice president for (~~business and~~) finance and administration, the university president, or designee.

(3) A "ballot proposition" means any measure, initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or of any municipal corporation, political subdivision, or

other voting constituency from the time that proposition has been filed with the appropriate election officer of the constituency.

~~(4) ((The "campus use committee" is the group that is charged with establishing procedures for review of requests to use university facilities at the Pullman campus; to establish, within the framework of these regulations, procedures governing use of facilities throughout the university system; to review rental schedules where appropriate, and to review individual requests for use where such requests are not reviewed by another university unit or department under these rules. Review of requests to use facilities at the Vancouver, Spokane, and Tri-Cities campuses will be reviewed by the campus use committees for those campuses.~~

~~(5) "Campus use committee Vancouver," "campus use committee Tri-Cities," and "campus use committee Spokane" mean the groups responsible to review individual requests for use of university facilities operated under the oversight of the Vancouver, Tri-Cities and Spokane campuses where such requests are not reviewed by another university unit or department under these rules.~~

~~(6)) A "candidate forum" means a forum where all registered candidates for a potential elected seat are invited to speak regarding their candidacy and position on issues.~~

~~((7)) (5) "First amendment activities" include, but are not ((necessarily)) limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints.~~

~~((8)) (6) An "issue forum" means a forum where supporters and opponents of a ballot proposition are invited to speak on their positions regarding the ballot proposition.~~

~~((9)) (7) "Limited public forum areas" means those areas of each campus that the university has chosen to be open as places for expressive activities protected by the first amendment ("first amendment activities"), subject to reasonable time, place, or manner restrictions. The use of limited public forum areas for first amendment activities is governed by chapter 504-33 WAC. The provisions of this chapter govern the use of limited public forum areas for nonfirst amendment activities, such as student sponsored concerts or dances. Limited public forum areas are identified in WAC 504-33-015.~~

~~((10)) (8) "Long-term use" means the use of a university facility for a period of longer than five consecutive business days in any ((thirty)) 30 calendar-day period or the use of a university facility for a period that ((will)) exceeds ((ten)) 10 days in any ((thirty)) 30 calendar-day period.~~

~~((11)) (9) A "measure" means any question or proposition submitted to voters.~~

~~((12)) (10) "Nonuniversity group," for the purposes of this policy, means a collection of individuals that is neither a university affiliate, a registered student organization, nor a recognized employee group. The term also includes the individual members of these groups when acting on behalf of the group, and individuals who are not currently enrolled students, current university employees, or employees of a university affiliate.~~



~~((13))~~ (11) "Registered student organization" means a student group or association that has officially signed up with the university pursuant to WAC 504-28-010.

~~((14))~~ (12) "Short-term use" means a use of a university facility on a daily or hourly basis, not to exceed five consecutive calendar days, or ~~((ten))~~ 10 calendar days in any ~~((thirty))~~ 30 calendar-day period. Approving authorities may enter agreements authorizing sporadic use of facilities under their control for periods of up to one year, if ~~((the approving authority utilizes))~~:

(a) The agreement is signed by a university employee with signature authority;

(b) The agreement uses the template approved by the WSU system office of ~~((business and))~~ finance and administration for such agreements; and ~~((if))~~

(c) The authorized use ~~((will))~~ does not exceed ~~((ten))~~ 10 days in any ~~((thirty))~~ 30 calendar-day period.

~~((15))~~ (13) "University group," for purposes of this policy, means a registered student organization or a recognized employee group (an employee group created to further professional development of its members or the mission of the university) of the university~~((r))~~ and also encompasses the individual members of these groups when acting on behalf of the group. The term ~~((also))~~ "also" includes individuals who are currently enrolled students or current employees.

~~((16))~~ (14) "University facilities" means all buildings and grounds owned or controlled by the university, including all campuses and locations, and the streets, sidewalks, malls, parking lots, and roadways within the boundaries of property owned or controlled by the university.

~~((17))~~ (15) "Use of facilities" includes, but is not limited to, the holding of any event or forum, the posting of signs, all forms of advertising, commercial solicitation or the conduct of other commercial activities, the distribution of pamphlets or similar written materials, and the charitable solicitation or the conduct of other charitable activities on or using university facilities.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-022 ~~((Requests for))~~ Process for requesting use of facilities for other than first amendment activities.** (1) Requests for short-term use of university facilities must be ~~((directed))~~ submitted to the approving authority ~~((who has authority to consummate rental agreements consistent with the rental rates established by the university, these facility regulations, and any guidelines developed by the campus use committee, including the requirement that the approving authority use university approved facilities use templates. A list of the individuals having authority to approve requests))~~ for that facility or to the campus's designated process for routing such requests to the approving authority. A list of approving authorities for short-term uses of identified university facilities is available ~~((in the university office of business and finance at the Pullman campus or by going online to the campus use committee website. The website can be found by accessing the university's website at: http://www.wsu.edu/))~~ on each campus's website and on the WSU system risk management website.

(2) An approving authority may deny any request if they determine it is incompatible or interferes with university activities or operations, violates any of the limitations set forth in WAC 504-35-030, or if the requestor is unwilling to comply with university requirements for the use of facilities, as authorized by these rules.

(3) The approving authority must email the university's office of compliance and risk management at compliance.risk@wsu.edu at least 14 days in advance (30 days advance notice is recommended when possible), with a copy to the applicable campus safety department or police department, prior to granting a use request for any of the following scenarios:

(a) Is open to the general public or nonuniversity participants for which 100 or more attendees are anticipated;

(b) Involves amplified sound outdoors (see WAC 504-35-030(9));

(c) Involves serving alcohol;

(d) Involves minors;

(e) Involves airspace above a university location, except for drones and other unmanned aircraft systems (UAS), which are subject to the university's UAS policy (BPPM 50.37);

(f) Involves interaction with animals or where animals are in close proximity, except for trained service animals or service animal trainees (see WAC 504-36-020);

(g) Requires coordination with nonuniversity law enforcement, or for which campus safety or campus police recommend additional review; and

(h) Involves inherently hazardous activities, potential property damage, or for which the approving authority determines that additional risk assessment or review is warranted.

Compliance and risk management may impose conditions on the facility use and/or refer the request to the risk management advisory group (or applicable subcommittee) for review.

(4) Requests for charitable use must follow the approval process in university executive policy 45, section 3.2 (see also WAC 504-35-050).

~~((2))~~ (5) Requests for long-term use of university facilities must be directed to the executive vice president for ~~((business and))~~ finance and administration, the university president, or designee.

~~((3) If a requestor is uncertain where to direct a request to use a particular facility, or if the approving authority for a particular facility is not on the university list, he or she should address his or her request to the campus use committee or to the vice president for business and finance or designee.))~~

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-024** ~~((Scheduling and reservation practices for other than first amendment activities—Duties of requestor.))~~ Facility use agreement, insurance, and other conditions. (1) ~~((The primary purpose of university facilities is to serve the university's instructional, research, and public service activities. However, facilities when not required for scheduled university use, may be available for rental by the public in accordance with current fee schedules and other relevant terms and conditions for such use.~~

~~(2))~~ No university facilities may be used by individuals or groups unless the facilities, including buildings, equipment, and land, have been reserved and a written facility use agreement is executed by the requestor and the university.

~~((3) Requests to use university facilities are made to the approving authority, as defined in WAC 504-35-020(2) and in accordance with WAC 504-35-022.~~

~~(4) The approving authority may deny the request to use university facilities where he or she determines that such use would violate any of the limitations set forth in WAC 504-35-030 or where the requestor is unwilling to comply with university requirements for the use of facilities, as authorized by these rules.~~

~~(5))~~ (2) The university may require an individual or organization to make an advance deposit, post a bond and/or obtain insurance to protect the university against cost or other liability as a condition to allowing use of any university facility.

~~((6))~~ (3) When the university grants permission to an individual or organization to use its facilities it is with the understanding and on the condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the university against any loss or damage claim arising out of such use.

~~((7))~~ (4) The university and/or government authorities may specify fire, safety, sanitation, and special regulations for the use or event. It is the responsibility of the user to obey those regulations, as well as to comply with other applicable university policies, procedures, rules, regulations, and state, local, and federal laws.

~~((8))~~ (5) When the university grants permission to an individual or organization to use its facilities, it is with the understanding and on the condition that the individual or organization is responsible to clean the facility and leave it in its original condition at the conclusion of its use or event. The facility may be subject to inspection by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-026 Facility rental/use fees.** (1) The university assesses fees based upon the actual costs, direct and indirect (including, but not limited to, overhead and university staff time), of using a university facility. Fees for the short-term use of most facilities are set forth on a schedule ((available in the office of business and finance at the Pullman campus or by going online to the campus use committee website. The website can be found by accessing the university's website at: <http://www.wsu.edu/>)) maintained by the approving authority for that facility. The university reserves the right to make changes to fees without prior written notice, except that such fee changes do not apply to facility use agreements already approved by the university. Approving authorities may not waive or reduce established fees.

(2) In the event that the fee for the use of a particular facility has not been placed on ~~((the))~~ a schedule, and if the university

determines to allow the use of the facility, the university (~~(will assess)~~) assesses a fee based upon the full cost, direct and indirect, of using the facility.

(3) Fees for the long-term use of facilities are individually negotiated between the requestor and the office of (~~(business and)~~) finance and administration, with the fee charged reflecting the full costs of the use, as offset by any resulting university benefit.

~~((4) Student government organizations and registered student organizations may be allowed to use space in many university facilities at no charge or at a reduced rate. The fees charged to student government and registered student organizations for facilities are available in the university office of business and finance at the Pullman campus or by going online to the campus use committee website. The website can be found by accessing the university's website at: <http://www.wsu.edu/>.)~~

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-030 Limitations on use.** The following limitations apply to all uses of any university facilities:

(1) University facilities may not be used in ways which obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the university, any university building or facility, or that obstruct or disrupt educational activities or other lawful activities on university grounds, university-controlled facilities, or at university sponsored events.

(2) University facilities may not be used in ways that interfere with educational, (~~(research)~~) scholarship, or (~~(public service)~~) out-reach activities inside or outside any university building or otherwise prevent the university from fulfilling its missions and achieving its primary purposes.

(3) University facilities may not be used for the purpose of campaigning regarding a ballot proposition or by, for, or against candidates who have filed for public office, except that:

(a) University departments, student government organizations, or registered student organizations may sponsor candidate forums as well as issue forums regarding ballot propositions;

(b) Candidates for office and proponents or opponents of ballot propositions may rent university facilities on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;

(c) Candidates for office and proponents or opponents of ballot propositions may use the limited public forum areas using the procedures of chapter 504-33 WAC to the same extent and on the same basis as may other individuals or groups; and

(d) A registered student organization may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 504-35-024.

(4) University facilities may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, or invitees.

(5) University facilities may not be used for commercial purposes, including: Advertising, commercial solicitation, sales, or other

activities to promote a product, except as allowed under WAC 504-35-050.

(6) University facilities may not be used in furtherance of or in connection with illegal activity.

(7) University facilities may not be used in such manner as to create a hazard or result in damage to university facilities.

(8) University facilities may not be used where such use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); except that the use of limited public forum areas for a first amendment activity may not be halted simply because the event may require additional university security or police costs.

(9) Advance permission by the approving authority is required to use audio amplifying equipment. Use of audio amplifying equipment is permitted only in locations and at times that ~~((will))~~ do not interfere with the normal conduct of university affairs.

(10) Alcoholic beverages may be served only as allowed under university policies. It is the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor control board and adhere to their regulations, as well as all local ordinances, university rules, and regulations.

(11) No person may erect a tent or other shelter on university facilities or remain overnight on university facilities, including in a vehicle, trailer, tent, or other shelter, with the following exceptions:

(a) The use and occupancy of university housing in accordance with chapter 504-24 WAC;

(b) The use of facilities by a university employee or agent who remains overnight to fulfill the responsibilities of ~~((his or her))~~ their position;

(c) The use of facilities by a university student who remains overnight to fulfill the responsibilities of ~~((his or her))~~ their course of study;

(d) The use of facilities where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university, such as staying in the RV lots during home football games, commencement, and special weekends.

(12) Signs and posters and visual displays may be placed only at those locations authorized under, and in accordance with the restrictions of WAC 504-34-140.

(13) Handbills, leaflets, pamphlets, flyers, and similar materials may be distributed only in accordance with WAC 504-34-140.

(14) Animals are not allowed in or on university facilities, except in accordance with WAC 504-36-020.

(15) Smoking ~~((is))~~ and tobacco use are not allowed in or on university facilities ~~((, except in accordance with chapter 70.160 RCW))~~.

(16) Mopeds, ~~((Segways))~~ ebikes, electric scooters, Segways, skateboards, roller skates, roller blades, bicycles, and similar personal transportation devices may be used on campus only as allowed by ~~((WAC 504-14-250, 504-14-930, 504-15-250, 504-15-930, 504-19-250, and 504-19-930))~~ chapters 504-13, 504-14, 504-15, and 504-19 WAC.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-050** (~~(Private or commercial enterprise)~~) **Commercial or charitable use.** (1) University facilities may not be used for private or commercial gain ~~((,))~~ including, but not limited to: Commercial advertising; solicitation and merchandising of any food, goods, wares, service, or merchandise of any nature whatsoever; or any other form of sales or promotional activity; except that commercial activity is allowable:

(a) ~~If ((the campus use committee has determined that the commercial activity or use will serve an educational or public service purpose related to the university's mission;~~

~~(b) By special permission granted by the university president, or designee, if))~~ part of an approved corporate sponsorship or promotion in which an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity;

~~((e))~~ (b) To the extent it represents the regular advertising, promotional, or sponsorship activities carried on, by, or in any university media, The Daily Evergreen or other campus newspaper, or at NCAA athletic events;

~~((d))~~ (c) In designated areas of each residence hall when related to the university's mission and approved by the university president ~~((, the vice president for student affairs, or such other person as may be designated by the university president))~~ or designee; and

~~((e))~~ (d) If the campus's or WSU university system's purchasing ~~((department))~~ office has authorized vendor representatives to solicit university departments, colleges, or business units, and where those representatives have appropriate university identification.

(2) University facilities may not be used by faculty or staff in connection with compensated outside service, with the following exceptions:

(a) Faculty or staff may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may other private citizens; and

(b) Faculty may make private use of facilities to encourage basic and applied research and to engage in outside scholarship activities, in accordance with the provisions of the university executive policy 45 adopted pursuant to RCW 42.52.220 and 42.52.360 ~~(or, for technology transfer activities, in accordance with the university's executive policy 27).~~

(3) University facilities may not be used to benefit a charitable organization, with the following exceptions:

(a) ~~(Charities that are licensed in the state of Washington may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may private citizens;~~

~~(b) Charities that are licensed in the state of Washington may use facilities without charge by special permission granted by the university president, or designee, or the vice president for business and finance where the university has determined that the charitable activity or use will serve an educational or public service purpose related to the university's mission and an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in a charitable event))~~ Charitable activities that have been approved by the chief

compliance and risk officer, university president, or designee, in accordance with the university executive policy 45. The university may require a facility use agreement, lease, or other agreement between the university and the charitable organization or individual desiring to engage in the charitable activity, in addition to other conditions; and

~~((e))~~ (b) Student government organizations, registered student organizations, and university units that have followed university policies and procedures to conduct fund-raising or charitable activities and have adhered to all scheduling requirements and other university policies.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-070 Outdoor dances, concerts, carnivals and fairs.**

Street dances, outdoor concerts, carnivals, or fairs may be held at approved locations when sponsored by student governments or registered student organizations on days and at times approved by the office delegated oversight responsibility for student government organizations and registered student organizations on each campus ~~((, following consultation with appropriate university departments))~~. Such office emails the university's office of compliance and risk management at [compliance.risk@wsu.edu](mailto:compliance.risk@wsu.edu) at least 14 days in advance (30 days advance notice is recommended when possible).

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

**WAC 504-35-080 Parades.**

Permits for parades on university streets and roads on the Pullman campus may be obtained upon approval of the university chief of police. Permits for parades on university streets and roads at the ~~((Vancouver))~~ Everett, Spokane, ~~((and))~~ Tri-Cities, and Vancouver campuses may be obtained upon the approval of the person identified by the ~~((university))~~ specific campus, as set forth on the list of approving authorities available ~~((from the office of business and finance at the Pullman campus or by going online to the campus use committee website. The website can be found by accessing the university's website at: <http://www.wsu.edu/>))~~ on each campus's website. Notification of the university's office of compliance and risk management is required in accordance with WAC 504-35-022.

Parades must be scheduled so as not to interfere with rush-hour traffic or with university events or activities.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 504-35-150 Administrative control—Trespass.

**WSR 25-01-148**  
**PROPOSED RULES**  
**CENTER FOR DEAF AND**  
**HARD OF HEARING YOUTH**  
[Filed December 18, 2024, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-073.

Title of Rule and Other Identifying Information: Student conduct code, chapter 148-120 WAC.

Hearing Location(s): On January 31, 2025, at 10:00 a.m., at 611 Grand Boulevard, Bilyeu Room CH150, Vancouver, WA 98661; or Zoom <https://us02web.zoom.us/j/89254644823?from=addon>.

Date of Intended Adoption: January 31, 2025.

Submit Written Comments to: Erica Rader, 611 Grand Boulevard, Vancouver, WA 98661, email [erica.rader@cdhy.wa.gov](mailto:erica.rader@cdhy.wa.gov), fax 360-696-6291, phone 360-418-0401, beginning December 23, 2024, at 8:00 a.m., by January 30, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Erica Rader, phone 360-418-0401, fax 360-696-6291, email [erica.rader@cdhy.wa.gov](mailto:erica.rader@cdhy.wa.gov), by January 30, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the Center for Deaf and Hard of Hearing Youth's (Washington school for the deaf (school)) student conduct code, chapter 148-120 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 school and its students. Additionally, rule changes are needed to update the student conduct code for consistency with the office of superintendent of public instruction's (OSPI) rules, chapter 392-400 WAC, regarding student discipline. These updates ensure that the code's prohibited conduct and procedures adequately protect the interests of the school's community and the constitutional and procedural rights of individual students. Behavioral violations will be more clearly defined and expanded to cover additional undesirable behaviors.

Reasons Supporting Proposal: The school must review its student conduct code, chapter 148-120 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 must respond to allegations of sexual discrimination consistent with Title IX's prohibition against sex discrimination. In addition, other revisions to the student conduct code are necessary to align with the current processes and changes in practice for student conduct. The changes ensure that the interests of the school's community and procedural rights of students are adequately protected.

Statutory Authority for Adoption: RCW 34.05.010(16), 72.42.041(2), 72.40.0191(12), 72.40.0191(17); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: RCW 72.42.041(2), 72.40.0191(12), 72.40.0191(17), 28A.600.010 through 28.600.022; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Proponent: Center for Deaf and Hard of Hearing Youth, governmental.



Name of Agency Personnel Responsible for Drafting: Shelley Williams, Assistant Attorney General, 1220 Main Street, Suite 510, Vancouver, WA 98660, 360-619-4412; Implementation: Piper Gallucci, Vice Principal, 611 Grand Boulevard, Vancouver, WA 98661, 253-271-9021; and Enforcement: Shannon Graham, Principal, 611 Grand Boulevard, Vancouver, WA 98661, 360-334-5775.

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 school is not mandated to comply with RCW 34.05.328. Further, the school 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 of the Education Amendments of 1972, 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 school's student conduct code, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses. Moreover, the proposed rule is necessary to comply with 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.

December 18, 2024  
Shauna Bilyeu  
Executive Director

## OTS-5994.2

AMENDATORY SECTION (Amending WSR 16-10-061, filed 5/2/16, effective 6/2/16)

**WAC 148-120-001 Purpose and application.** (~~The purpose of this chapter is to establish standards of conduct for students and pre-~~

~~scribe the substantive and procedural due process rights of students at the Washington school for the deaf. The procedures and standards set forth in this chapter shall govern the imposition of discipline. "Discipline" means all forms of corrective action other than emergency removal from a class, subject, or activity, suspension, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided that the student is in the custody of a school employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or on behalf of the school. Discipline is considered part of the school's educational process. In every case of misconduct, the nature and circumstances of the violation will be considered and appropriate discipline will be administered on a less restrictive alternative basis including, but not limited to, time out, detention, behavior contracts, restriction of privileges, reprimand, restitution, suspension or expulsion.)~~ WAC 392-400-010, the rule for purpose, is incorporated by reference.

#### NEW SECTION

**WAC 148-120-005 Definitions.** For the purposes of this student conduct code, the following definitions apply:

- (1) "Assistant principal" means the assistant principal of the Washington school for the deaf or designee.
- (2) "Behavioral violation" means a student's behavior that violates the school's student conduct code or discipline policies.
- (3) "Board" means the board of trustees for the Washington center for deaf and hard of hearing youth.
- (4) "Classroom exclusion" means the exclusion of a student from a classroom and instructional or activity area for a discretionary behavioral violation that creates a disruption of the educational process in violation of the school's disciplinary policies subject to the requirements in WAC 148-120-330 through 148-120-335.
- (5) "Corrective action" means disciplinary and nondisciplinary actions taken by a certificated educator. Nondisciplinary actions include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations.
- (6) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.
- (7) "Director" means the director of the Washington center for deaf and hard of hearing youth or designee.
- (8) "Discretionary discipline" means a disciplinary action taken by the school for student behavior that violates rules of student conduct adopted by the board under RCW 28A.600.015(6). Discretionary discipline does not include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations.
- (9) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.
- (10) "Emergency removal" means the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and

continuing threat of material and substantial disruption of the educational process, subject to the requirements in WAC 148-120-510 through 148-120-530.

(11) "Expulsion" means a denial of admission to the Washington school for the deaf in response to a behavioral violation, subject to the requirements in WAC 148-120-430 through 148-120-480.

(12) "Length of an academic term" means the total number of school days in a semester, as defined by the school.

(13) "Nondiscretionary discipline" means:

(a) Violations of RCW 28A.600.420;

(b) An offense listed in RCW 13.04.155;

(c) Two or more violations of RCW 9A.46.120, 9.41.280, 28A.600.455, 28A.635.020, or 28A.635.060 within a three-year period; or

(d) Behavior that adversely impacts the health or safety of other students or educational staff. RCW 28A.600.015.

(14) "Parent" has the same meaning as in WAC 392-172A-01125.

(15) "Principal" means the principal of the Washington school for the deaf or designee.

(16) "School" means the Washington school for the deaf.

(17) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the school is open to the public for business.

(18) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

(19) "Superintendent" means the superintendent of the Washington school for the deaf or designee.

(20) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including expulsions or emergency removals.

(a) "In-school suspension" means a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school placement for up to 10 consecutive school days, subject to the requirements in WAC 148-120-430 through 148-120-470.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than 10 consecutive school days, subject to the requirements in WAC 148-120-430 through 148-120-470.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to 10 consecutive school days, subject to the requirements in WAC 148-120-430 through 148-120-470.

AMENDATORY SECTION (Amending WSR 16-10-061, filed 5/2/16, effective 6/2/16)

**WAC 148-120-010 Student responsibilities and duties.** Washington school for the deaf is dedicated to offering its students an opportunity for the best education for deaf and hard-of-hearing students in the state of Washington. Concomitant to the rights and privileges guaranteed by federal and state law to students are duties and responsibilities of each student to pursue (~~his/her~~) their course of studies, show respect for the rights of others, comply with written rules adopted herein and set forth in student handbooks, and submit to reasonable corrective action for violation(s) for such rules. This chap-

ter is intended to assure that corrective action is imposed for just cause and in a fair and reasonable manner.

NEW SECTION

**WAC 148-120-025 Referral to and action by law enforcement and judicial authorities.** (1) Nothing in Part B of the Individuals with Disabilities Education Act, or this chapter prohibits the Washington school for the deaf from reporting a crime committed by a student to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student.

(2) When reporting a crime committed by a student, the school shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

NEW SECTION

**WAC 148-120-030 Application.** This chapter must be construed in a manner consistent with the following laws and rules:

(1) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(2) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(3) Chapter 392-190 WAC, prohibiting unlawful discrimination in Washington public schools, including the requirement under WAC 392-190-048 that school districts annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency (i.e., English learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and Part B of the Individuals with Disabilities Education Act;

(4) WAC 392-172A-05140 through 392-172A-05175, and 34 C.F.R. Part 300.530 through 300.536, regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act; and

(5) RCW 28A.415.410, regarding training to support school personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

AMENDATORY SECTION (Amending WSR 16-10-061, filed 5/2/16, effective 6/2/16)

**WAC 148-120-110 (~~(Prohibited student conduct.)~~) Behavioral violations.** Having sought the participation of school personnel, students, parents, families, and the community, the school has developed

definitions for the following behavioral violations, which state the types of behaviors for which discipline may be administered.

The school may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, ~~((an act(s) of misconduct))~~ behavioral violations set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means.

(1) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, extortion, hazing, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(a) Bullying is physical or verbal abuse, repeated over time, and 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.

(c) Extortion is obtaining money, property, sexual favors, or other consideration by violence or threat of violence or forcing a person to do something against their will by violence or threat of violence.

(d) Hazing includes any initiation into a student organization or involvement in any pastime or amusement with said organization that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(2) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, conversion, or other nonaccidental damaging or destruction of school property or the property of another person; including possession of such property or money after it has been stolen. Property for purposes of this subsection includes computer passwords, access codes, identification cards, other confidential personal information, and intellectual property.

(3) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment 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 school's educational programs/activities or that creates an intimidating, hostile, or offensive educational environment.

Sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or

cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording.

(c) **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. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, sexual coercion, sexual exploitation, or gender- or sex-based stalking. A person may be incapable of giving consent because she or he is underage, unable to understand what is happening, or is disoriented, helpless, asleep or unconscious for any reason, including due to drug or alcohol consumption, is disabled, or cannot consent because of threat or intimidation.

(d) **Lewd conduct.** Engaging in inappropriate sexual or social behavior, such as sexual acts, either singly or consensually with another person, including: Sexual intercourse, oral sex, sexual touching, indecent exposure, or voyeurism.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, administrative, or other functions, procedures, services, programs, or activities of the school. The term includes disorderly conduct, breach of the peace, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, or interfering with the orderly conduct of school investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Failure to comply.** Refusal or failure to comply with instructions or directions of school officials, refusing to comply with any term or condition of a disciplinary sanction.

(6) **Safety violations.** Any nonaccidental conduct that interferes with or otherwise compromises any school policy, equipment, or procedure relating to the safety and security of the center and school community, including tampering with or disabling safety equipment and triggering false alarms or other emergency response systems.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of school records, furnishing false or misleading information, or falsely accusing any person of misconduct.

(8) **Academic dishonesty.** All forms of cheating, plagiarism and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment. This includes assisting another to commit an act of academic dishonesty or allowing someone to do these things for one's benefit.

(b) **Plagiarism.** 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.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to a teacher concerning the completion of an assignment.

(9) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the school or the property of another person, including any computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(10) **Alcohol, drug and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, or being visibly under the influence of any alcoholic beverages.

(b) **Marijuana.** Use, possession, delivery, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form.

(c) **Drug.** Use, possession, distribution, delivery, 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. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Drug or alcohol paraphernalia.** Use, possession, distribution, or delivery of any drug or alcohol related paraphernalia. Possession of paraphernalia includes any item that can be used to ingest or conceal drugs or alcohol.

(e) **Tobacco.** Smoking or use of tobacco, tobacco products, electronic smoking devices, vape products, or other smoking devices.

(11) **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 other school policies, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(12) **Weapons violations.** A "weapons violation" includes possessing, carrying, displaying, exhibiting, or storing any firearm or dangerous weapon. Dangerous weapons include, but are not limited to, firearms, dangerous chemicals, explosives, (~~slungshots~~) slingshots, sand clubs, metal knuckles, daggers, dirks, spring blade knives, nunchaku sticks, throwing stars, air guns, stun guns, and devices used or intended to be used as a weapon to injure a person by an electric shock, charge, or impulse.

(13) **Harassment, intimidation, or bullying.** Harassment, intimidation, or bullying means any intentional electronic, written, signed, verbal or physical act including, but not limited to, one shown to be motivated by race, color, religion, ancestry, national origin, gender, sexual orientation including gender identity or expression, mental or physical disability, socio-economic status, physical appearance, or other distinguishing characteristic, when the act:

(a) Physically harms a student or damages the student's property;

(b) Has the effect of substantially interfering with a student's education;

(c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

"Intentional act" refers to the individual's choice to engage in the act rather than the ultimate impact of the action(s).

Harassment, intimidation, and bullying are often carried out through acts of misconduct, which are addressed and prohibited under other rules in this chapter.

(14) **Gang activity.** Claiming membership in, association with, affiliation with, or participation in a gang, in gang-related activities or similar destructive or illegal group behavior at school, during school-related functions, or on any school property. "Gang" has the meaning given the term under RCW 28A.600.455.

(15) **Theft or misuse of electronic resources.** Theft or misuse of computer time or other electronic information resources of the school. 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 harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person;
- (g) Use of such time or resources to interfere with normal operation of the school's computing system or other electronic information resources;
- (h) Use of such time or resources in violation of applicable copyright or other law;
- (i) Failure to comply with the student computing resources policy.

(16) **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.

(17) **Prohibited items.** The school prohibits:

(a) Pornography. Possession, distribution, display, creation, or production of sexually explicit or erotic material. Sexually explicit material includes material defined in RCW 9.68.130. Erotic material includes material defined in RCW 9.68.050.

(b) Disruptive items. Possession, distribution, or use of items that may disrupt the educational process during school hours. Disruptive items include sound amplification devices, squirt guns, water balloons, firecrackers, skateboards, rollerblades, other "recreational wheels," skiing gloves, or video games.



(c) Discriminatory materials. Possession, distribution, or use of materials that degrade, insult, or malign another person based on that person's race, color, national origin, religion, disability, age, gender, sexual orientation, or other protected status.

(18) Violation of other laws or policies. Violation of any federal, state, local law, rule, or regulation or other school rules or policies which are published annually in the student/parent handbook.

AMENDATORY SECTION (Amending WSR 16-10-061, filed 5/2/16, effective 6/2/16)

**WAC 148-120-205 Limitations.** (1) ~~((No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement:))~~ The school will not administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements; provided, that a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) ~~((Corporal punishment as defined by the superintendent of public instruction in WAC 392-400-235(2) as now or hereafter amended, is prohibited.))~~ The school will not suspend the provision of educational services to a student in response to behavioral violations.

(3) The school will not administer any discipline in a manner that would result in the denial or delay of a nutritionally adequate meal to the student.

AMENDATORY SECTION (Amending WSR 16-10-061, filed 5/2/16, effective 6/2/16)

**WAC 148-120-210 ((Emergency removal from class or activity.))**  
**Staff authority to impose discipline.** ~~((1) Notwithstanding any other provision of this chapter, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the principal or his/her designee: Provided, That the teacher or administrator has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the school. The removal from classes, subjects, or activities shall continue only until:~~

~~(a) The danger or threat ceases; or~~

~~(b) The principal or his/her designee acts to impose disciplinary action pursuant to this chapter.~~

~~(2) The principal or his/her designee shall meet with the student as soon as reasonably possible following the student's removal and initiate or take appropriate corrective action. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the next school day. Prior to or at the time any such student is returned to the class(es), subject(s), or activity(ies), the principal or his/her designee shall notify the teacher or administrator who removed the student therefrom of the action which has been taken.))~~ (1) In accordance with this chapter and school policy, staff

will administer discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible.

(2) The director has general authority to administer discipline, including all exclusionary discipline.

(3) The director designates disciplinary authority to impose:

(a) In-school suspension and short-term suspension to the assistant principal, principal, or superintendent;

(b) Long-term suspension to the assistant principal, principal, or superintendent;

(c) Expulsion to the assistant principal, principal, or superintendent; and

(d) Emergency removal to the assistant principal, principal, or superintendent.

(4) The director authorizes the director of residential services, assistant principal, principal, or superintendent to administer discretionary or nondiscretionary discipline that excludes a student from transportation services or extracurricular activities or imposes detention.

(a) The school will not exclude a student from transportation services without providing access to alternative transportation the student needs to participate fully in educational services.

(b) Authorized staff may administer lunch or after school detention for not more than 60 minutes on any given day.

(c) Before assigning detention, the staff member will inform the student of the specific behavioral violation prompting their decision to administer detention and provide the student with an opportunity to share their perspective and explanation regarding the behavioral violation.

(d) At least one school staff member will directly supervise students during the direction of any detention.

(e) Students and parents may challenge the administration of discretionary and nondiscretionary discipline other than suspensions, expulsions, and emergency removals, including discipline that excludes a student from transportation or extracurricular activity, using the school's grievance procedures under WAC 148-120-215.

#### NEW SECTION

**WAC 148-120-215 Grievance procedures for discretionary and non-discretionary discipline other than suspensions, expulsions, and emergency removals.** (1) Any parent or student who is aggrieved by the administration of discretionary and nondiscretionary discipline other than suspensions, expulsions, and emergency removals, including discipline that excludes a student from transportation or extracurricular activity, may request an informal conference with the principal for resolving the grievance.

(2) At the informal conference, the student and parent will have the opportunity to voice issues and concerns related to the grievance. The principal will have opportunity to address issues and questions raised and to ask questions of the parent or student.

**CLASSROOM EXCLUSIONS**NEW SECTION

**WAC 148-120-330 Classroom exclusions—Conditions and limitations.** (1) **Authority to administer classroom and instructional or activity area exclusions.** Discretionary discipline leading to a classroom exclusion gives the highest consideration to the judgment of qualified certificated educators regarding the conditions necessary to maintain the optimum learning experience.

(2) A teacher may exclude a student from the teacher's individual classroom and instructional or activity area while the student is under the teacher's immediate supervision, subject to the requirements in WAC 392-400-110. Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action. A classroom exclusion does not include actions that result in missed instruction for a brief duration when:

(a) A teacher or other school personnel uses evidence-based classroom management practices outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations; and

(b) The student remains under the supervision of the teacher or other school personnel during such brief duration.

(3) **Duration of classroom exclusion.**

(a) A classroom exclusion may be administered for all or any portion of the balance of the school day, or up to the following two school days, or until the principal and teacher have conferred, whichever occurs first.

(b) A classroom exclusion that exceeds this time period, and if such students have repeatedly disrupted the learning of other students, may be considered a suspension in accordance with this chapter and must provide for the early involvement of parents in attempts to improve the student's behavior.

(4) All staff will work cooperatively toward consistent enforcement of proper student behavior throughout the school, as well as within each classroom.

(5) **Assignments and tests.** The school must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.

NEW SECTION

**WAC 148-120-335 Classroom exclusion—Notice and procedure.** Following a classroom exclusion under WAC 148-120-330:

(1) The teacher must communicate and collaborate with students, families, and all educational stakeholders in an ethical and professional manner to promote student learning. WAC 392-400-110.

(2) **Notice to principal.** The teacher or other school personnel must report the classroom exclusion, including the behavioral violation that led to the classroom exclusion, to the principal as soon as reasonably possible.

(3) **Notice to parents.** The teacher or principal must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(4) **Emergency circumstances.** When a teacher administers a classroom exclusion on the grounds that the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process:

(a) The teacher or other school personnel must immediately notify the principal; and

(b) The principal must meet with the student as soon as reasonably possible and administer appropriate discipline.

## SUSPENSIONS AND EXPULSIONS

### NEW SECTION

**WAC 148-120-430 Suspensions and expulsions—General conditions and limitations.** WAC 392-400-430, the rule for suspensions and expulsions, general conditions and limitations, is incorporated by reference.

### NEW SECTION

**WAC 148-120-435 Short-term and in-school suspensions—Additional conditions and limitations.** WAC 392-400-435, the rule for short-term and in-school suspensions, additional conditions and limitations, is incorporated by reference.

### NEW SECTION

**WAC 148-120-440 Long-term suspensions—Additional conditions and limitations.** WAC 392-400-440, the rule for long-term suspensions, additional conditions and limitations, is incorporated by reference.

NEW SECTION

**WAC 148-120-445 Expulsions—Additional conditions and limitations.** WAC 392-400-445, the rule for expulsions, additional conditions and limitations, is incorporated by reference.

NEW SECTION

**WAC 148-120-450 Suspensions and expulsions—Initial hearing with student.** WAC 392-400-450, the rule for suspensions and expulsions, initial hearing with student, is incorporated by reference.

NEW SECTION

**WAC 148-120-455 Suspensions and expulsions—Notice to student and parents.** WAC 392-400-455, the rule for suspensions and expulsions, notice to student and parents, is incorporated by reference.

NEW SECTION

**WAC 148-120-460 Suspensions and expulsions—Optional conference with principal.** WAC 392-400-460, the rule for suspensions and expulsions, optional conference with principal, is incorporated by reference.

NEW SECTION

**WAC 148-120-465 Suspensions and expulsions—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school's superintendent orally or in writing.

(2) **Time limit.** A request for an appeal should be submitted within 21 calendar days from the date the school provides written notice under WAC 148-120-455.

(3) **Short-term and in-school suspensions.**

(a) **Appeal.** The superintendent must provide the student and parents the opportunity to share the student's perspective and explanation regarding the behavioral violation orally or in writing.

(b) **Appeal decision.** The superintendent must deliver a written appeal decision to the student and parents in person, by mail, or by email within two school business days after receiving the appeal. The written appeal decision is an initial order. The initial order must include:

- (i) The decision to affirm, reverse, or modify the suspension;
- (ii) The duration and conditions of the suspension, including the dates on which the suspension will begin and end;
- (iii) The educational services the school will offer to the student during the suspension under WAC 148-120-610; and

(iv) Notice of the student's and parents' right to request review and reconsideration of the initial decision under WAC 148-120-470, including where and to whom to make the request. If no request for review is filed within 21 calendar days of service of the initial order, the initial order shall be deemed the final order.

**(4) Long-term suspensions and expulsions.**

(a) Student disciplinary proceedings under this section 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.

(b) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent must provide the student and parents written notice in person, by mail, or by email of:

(i) The time, date, and location of the appeal hearing;

(ii) The name(s) of the official(s) presiding over the appeal;

(iii) The student's and parents' rights to inspect the student's education record under (f) of this subsection;

(iv) The student's and parents' right to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under (f) of this subsection;

(v) The student's and parents' rights under (g) of this subsection; and

(vi) Whether the school will offer to hold a reengagement meeting under WAC 148-120-710 before the appeal hearing.

(c) **Reengagement.** Before the appeal hearing, the student, parents, and school may agree to hold a reengagement meeting and develop a reengagement plan under WAC 148-120-710. The student, parents, and school may mutually agree to postpone the appeal hearing while participating in the reengagement process.

(d) **Appeal hearing.** The school must hold an appeal hearing within three school business days from the date the superintendent received the appeal request, unless otherwise agreed to by the student or parents.

(e) **Presiding officials.** The superintendent will serve as the presiding official to hear and decide appeals for long-term suspensions and expulsions under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to suspend or expel the student and must be knowledgeable about the rules in this chapter, chapters 392-400 and 148-108 WAC, and of the school's discipline policies.

**(f) Evidence and witnesses.**

(i) Upon request, the student, parents, and school may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(ii) Upon request, the student and parents may review the student's education records. The school must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(iii) If a witness for the school cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the school establishes that:

- (A) The school made a reasonable effort to produce the witness;  
and
- (B) The witness's failure to appear is excused by fear of reprisal or another compelling reason.
- (g) **Student and parent rights.** During the appeal hearing, the student and parents have the right to:
- (i) Be represented by legal counsel;
  - (ii) Question witnesses;
  - (iii) Share the student's perspective and explanation regarding the behavioral violation; and
  - (iv) Introduce relevant documentary, physical, or testimonial evidence.
- (h) **Recording of hearing.** The appeal hearing must be recorded by analog, digital, or other type of recording device. The school must provide the recording to the student or parents upon request.
- (i) **Appeal decision.** The presiding official(s) must base the decision solely on the evidence presented at the hearing. The presiding official(s) must provide a written decision to the student and parents in person, by mail, or by email within three school business days after the appeal hearing. The written decision must include:
- (i) The findings of fact;
  - (ii) A determination whether:
    - (A) The student's behavior violated the school's student code of conduct, chapter 148-120 WAC;
    - (B) The behavioral violation reasonably warrants the suspension or expulsion and the length of the suspension or expulsion; and
    - (C) The suspension or expulsion is affirmed, reversed, or modified;
  - (iii) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;
  - (iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 148-120-470, including where and to whom to make the request; and
  - (v) Notice of the opportunity to participate in a reengagement meeting under WAC 148-120-710 and the contact information for the person who will coordinate scheduling of the reengagement meeting.
- (5) **Language assistance.** The school must ensure that the notice, appeal proceedings, and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.
- (6) **Pending appeal.** If the student or parents request any appeal under this section, the school may temporarily continue to administer the suspension or expulsion during the appeal period subject to the following requirements:
- (a) The school may temporarily continue to administer the suspension or expulsion for no more than 10 consecutive school days from the initial hearing under WAC 148-120-450 or until the appeal is decided, whichever is earlier;
  - (b) Any days that the student is temporarily suspended or expelled before the appeal is decided must be applied to the term of the student's suspension or expulsion and may not extend the term of the student's suspension or expulsion;
  - (c) If the student who is temporarily suspended or expelled returns to school before the appeal is decided under this section, the school must provide the student with an opportunity to make up assign-

ments and tests missed during the suspension or expulsion upon the student's return.

NEW SECTION

**WAC 148-120-470 Suspensions and expulsions—Review and reconsideration.** (1) **Requesting review.** For the purposes of this section, "reviewing officer" means the director who reviews and reconsiders the school's appeal decision under WAC 148-120-465. The student or parents may request the review orally or in writing.

(2) **Time limit.** A request for a review of short-term suspension, in-school suspension, long-term suspension, or expulsion should be submitted within 21 calendar days from the date the school provides written notice under WAC 148-120-465.

(3) **Review procedure.**

(a) In reviewing the school's decision, the reviewing officer must consider all documentary and physical evidence related to the behavioral violation, and any records from the appeal under WAC 148-120-465, relevant state law, and the school's student conduct code under this chapter.

(b) The reviewing officer may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The reviewing officer must not have been involved in the behavioral violation, the decision to suspend or expel the student, or the appeal decision under WAC 148-120-465.

(4) **Decision.** The reviewing officer must provide a written decision to the student and parents in person, by mail, or by email within 10 school business days after receiving the request for review and reconsideration. The written decision must state:

(a) Whether the reviewing officer affirms, reverses, or modifies the suspension or expulsion;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension and expulsion will begin and end;

(c) For long-term suspensions or expulsions, notice of the opportunity to participate in a reengagement meeting under WAC 148-120-710; and

(d) A notice that the reviewing officer's decision shall be final and shall include a notice of any rights to request reconsideration or judicial review. A request for review may be deemed to have been denied if the reviewing officer does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) **Language assistance.** The school must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.



NEW SECTION

**WAC 148-120-475 Discipline appeal council.** The board designates a discipline appeal council to review and reconsider the superintendent's written decision granting a petition to extend expulsion under WAC 148-120-480. A discipline appeal council must consist of at least three persons appointed by the board for fixed terms. All members of the discipline appeal council must be knowledgeable about the rules in this chapter and of the school's discipline policies and procedures.

NEW SECTION

**WAC 148-120-480 Petition to extend expulsion.** (1) **Petition.** When risk to public health or safety warrants extending a student's expulsion, the principal may petition the school's superintendent for authorization to exceed the academic term limitation on an expulsion. The petition must inform the superintendent of:

- (a) The behavioral violation that resulted in the expulsion and the public health or safety concerns;
- (b) The student's academic, attendance, and discipline history;
- (c) Any nonacademic supports and behavioral services the student was offered or received during the expulsion;
- (d) The student's academic progress during the expulsion and the educational services available to the student during the expulsion;
- (e) The proposed length of the expulsion; and
- (f) The student's reengagement plan.

(2) **Time limit.** The principal may petition to extend an expulsion only after the development of a reengagement plan under WAC 148-120-710 and before the end of the expulsion. For violations of WAC 148-120-820, the principal may petition to extend an expulsion at any time.

(3) **Notice.** The school must provide written notice of the petition to the student and parents in person, by mail or by email within one school business day from the date the superintendent received the petition. The written notice must include:

- (a) A copy of the petition;
- (b) The student's and parents' right to an informal conference with the superintendent to be held within five school business days from the date the school provided written notice to the student and parents; and
- (c) The student's and parents' right to respond to the petition orally or in writing to the superintendent within five school business days from the date the school provided written notice.

(4) **Written decision.** The superintendent may grant the petition only if there is substantial evidence that, if the student were to return to the school after the length of an academic term, the student would pose a risk to public health or safety. The superintendent must deliver a written decision to the principal, the student, and the student's parents in person, by mail, or by email within 10 school business days after receiving the petition.

- (a) If the petition is granted, the written decision must include:
  - (i) The date on which the extended expulsion will end;

(ii) The reason that, if the student were to return before the initial expulsion end date, the student would pose a risk to public health or safety; and

(iii) Notice of the student's or parents' right to request review and reconsideration of the appeal decision under subsection (5) of this section, including where and to whom to make the request.

(b) If the petition is not granted, the written decision must identify the date on which the expulsion will end.

**(5) Review and reconsideration.**

(a) **Requesting review.** The student or parents may request that the discipline appeal council review and reconsider the decision to extend the student's expulsion. The student or parents may request the review orally or in writing.

(b) **Time limit.** A request for review should be submitted within 21 calendar days from the date the school provides a written decision under subsection (4) of this section.

**(c) Review procedure.**

(i) The discipline appeal council may request to meet with the student or parents or the principal to hear further arguments and gather additional information.

(ii) The decision of the discipline appeal council may be made only by council members who were not involved in the behavioral violation, the decision to expel the student, or the appeal decision under WAC 148-120-465.

(d) **Decision.** The discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within 10 school business days after receiving the request for review and reconsideration. The written decision must state:

(i) Whether the council affirms, reverses, or modifies the decision to extend the student's expulsion;

(ii) The date on which the extended expulsion will end; and

(iii) A notice that judicial review may be available. A request for review may be deemed to have been denied if the discipline appeal council does not make a disposition of the matter within 20 calendar days after the request is submitted.

(6) **Duration.** Any extension of an expulsion may not exceed the length of an academic term.

(7) **Language assistance.** The school must ensure that any petition proceedings, notices, and decisions are provided in a language the student and parents understand, which may require assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(8) **Annual reporting.** The school must annually report the number of petitions approved and denied to the office of the superintendent of public instruction.

**EMERGENCY REMOVAL**

NEW SECTION

**WAC 148-120-510 Emergency removals—Conditions and limitations.** WAC 392-400-510, the rule for emergency removals, conditions and limitations, is incorporated by reference.

NEW SECTION

**WAC 148-120-515 Emergency removals—Notice to student and parents.** WAC 392-400-515, the rule for emergency removals, notice to student and parents, is incorporated by reference.

NEW SECTION

**WAC 148-120-520 Emergency removals—Options conference with principal.** WAC 392-400-520, the rule for emergency removals, optional conference with principal, is incorporated by reference.

NEW SECTION

**WAC 148-120-525 Emergency removals—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal an emergency removal to the superintendent orally or in writing.

(2) **Time limit.** A request to appeal an emergency removal should be submitted within 21 calendar days from the date the school provides the written notice of the emergency removal.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent must provide the student and parents written notice in person, by mail, or by email of:

- (a) The time, date, and location of the appeal hearing;
- (b) The name(s) of the official(s) presiding over the appeal;
- (c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;
- (d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and
- (e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The superintendent will decide appeals under this section. The superintendent may not have been involved in the student's behavioral violation or decision to emergency remove the student and must be knowledgeable about the rules in this chapter, chapter 392-400 WAC, and the school's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the school establishes that:

(i) The school made a reasonable effort to produce the witness; and

(ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

(a) Be represented by legal counsel;

(b) Question witnesses;

(c) Share the student's perspective and provide explanation regarding the events that led to the emergency removal; and

(d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by analog, digital, or other type of recording device. The school must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

(a) The findings of fact;

(b) A determination whether the student's presence continues to pose:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(c) Whether the school will end the emergency removal or convert the emergency removal to a suspension or expulsion. If the school converts the emergency removal to a suspension or expulsion, the school must provide the student and parents notice and due process under WAC 148-120-430 through 148-120-470; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 148-120-530, including where and to whom to make the request.

(10) **Language assistance.** The school must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION**WAC 148-120-530 Emergency removals—Review and reconsideration.**

(1) **Requesting review.** The student or parents may request that the director review and reconsider the school's appeal decision under WAC 148-120-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A request for review under this section should be submitted within 21 calendar days from the date the school provided the written appeal decision to the student and parents under WAC 148-120-525.

(3) **Review procedure.**

(a) In reviewing the school's decision, the director must consider all documentary and physical evidence related to the events that led to the emergency removal, any records from the appeal under WAC 148-120-525, relevant state law, and the school's discipline policy and procedures.

(b) The director may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather information.

(c) The director must not have been involved in the events that led to the emergency removal, the decision to emergency remove the student, or the appeal decision under WAC 148-120-525.

(4) **Decision.** The director must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must state:

(a) Whether the director affirms or reverses the school's decision that the student's presence posed:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process;

(b) If the emergency removal has not yet ended or been converted, whether the school will end the emergency removal or convert the emergency removal to a suspension or expulsion. If the school converts the emergency removal to a suspension or expulsion, the school must provide the student and parents notice and due process under WAC 148-120-430 through 148-120-470; and

(c) A notice that judicial review may be available.

(5) **Language assistance.** The school must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

**EDUCATIONAL SERVICES**

NEW SECTION

**WAC 148-120-610 Educational services during suspension, expulsion, or emergency removal.** WAC 392-400-610, the rule for educational services during suspension, expulsion, or emergency expulsion, is incorporated by reference.

**REENGAGEMENT**NEW SECTION

**WAC 148-120-710 Student reengagement after long-term suspension or expulsion.** WAC 392-400-710, the rule for student reengagement after long-term suspension or expulsion, is incorporated by reference.

**ADDITIONAL DUE PROCESS PROTECTIONS**NEW SECTION

**WAC 148-120-810 Exceptions for the purpose of protecting victims.** WAC 392-400-810, the rule for exceptions for the purpose of protecting victims, is incorporated by reference.

NEW SECTION

**WAC 148-120-815 Behavior agreements.** (1) **Authorization.** The school authorizes the assistant principal, principal, or superintendent to enter into behavior agreements with students and parents in response to behavioral violations.

(2) **General.** Behavior agreements include agreements to reduce the length of a suspension conditioned on the student's participation in treatment services, agreements in lieu of suspension or expulsion, or agreements holding a suspension or expulsion in abeyance. Behavior agreements will describe the school's actions planned to support students in meeting behavioral expectations. Behavior agreements may be supplemental to but will not replace best practices and strategies implemented at the classroom level to support students in meeting behavioral expectations.

(3) Behavior agreements entered into with students and parents under this section may not replace or negate provisions within a student's Individual Education Plan (IEP), 504 Plan, or Behavioral Intervention Plan (BIP).

(4) **Reengagement meetings and educational services.** A behavior agreement does not waive a student's opportunity to participate in a reengagement meeting under WAC 148-120-710, or receive educational services as provided under WAC 148-120-610.

(5) **Duration.** The duration of behavior agreements must not exceed the length of an academic term.

(6) **Subsequent behavioral violation.** Nothing in this section precludes the school from administering discipline for behavioral violations that occur after the school enters into an agreement with the student and parents.

(7) **Language assistance.** The school will ensure that any behavior agreement under this section is provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

#### NEW SECTION

**WAC 148-120-820 Firearms exceptions.** WAC 392-400-820, the rule for firearm exceptions, is incorporated by reference.

#### NEW SECTION

**WAC 148-120-825 Corporal punishment, restraint, and isolation.** WAC 392-400-825, the rule for corporal punishment, restraint, and isolation, is incorporated by reference.

### **SUPPLEMENTAL SEX DISCRIMINATION STUDENT CONDUCT CODE AND PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX**

#### NEW SECTION

**WAC 148-120-900 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 procedures conflict with the Washington school for the deaf's standard disciplinary procedures, WAC 148-120-001 through 148-120-825,

or any provisions set forth in student handbooks, and other school or agency policies and procedures, these supplemental procedures will take precedence.

NEW SECTION

**WAC 148-120-905 Prohibited conduct under Title IX.** (1) Pursuant to chapter 392-400 WAC and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Washington school for the deaf may impose disciplinary sanctions up to and including expulsion against a student who has been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging or assisting another person to commit or engage in acts of sex discrimination, which include sex-based harassment.

(2) For the purposes of this supplemental procedure, the following conduct is prohibited:

- (a) Sex discrimination;
- (b) Sex-based harassment;
- (c) Sexual violence;
- (d) Stalking; and
- (e) Retaliation.

NEW SECTION

**WAC 148-120-910 Definitions.** For the purposes of this supplemental procedure, the following definitions apply:

(1) "Agency" means the center for deaf and hard of hearing youth.

(2) "Complainant" means:

(a) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or

(b) A person other than a student who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the agency's education program or activity at the time of the alleged discrimination under Title IX or its regulations.

(3) "Complaint" means a written or oral request to the agency that objectively can be understood as a request for the agency to investigate and make a determination about alleged sex discrimination.

(4) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.

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

(b) 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.

(c) 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 they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.



- (d) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.
- (5) "Decision maker" means the school's principal or designee.
- (6) "Director" means the director of the Washington center for deaf and hard of hearing youth or designee.
- (7) "Disciplinary sanctions" means consequences imposed on a respondent following a determination that the respondent violated the agency's policy prohibiting sex discrimination or the school's conduct code.
- (8) "Impermissible evidence" means privileged communications, unless the privilege has been effectively waived by the holder, and irrelevant evidence about a complainant's prior sexual behavior.
- (a) Privileged communications include:
- (i) Spousal/domestic partner privilege;
- (ii) Attorney-client and attorney work product privileges;
- (iii) Privileges applicable to members of the clergy and priests;
- (iv) Privileges applicable to medical providers, mental health therapists, and counselors;
- (v) Privileges applicable to sexual assault and domestic violence advocates; or
- (vi) Other legal privileges identified in RCW 5.60.060.
- (b) Prior sexual behavior. 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:
- (i) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (ii) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.
- (9) "Investigation procedure" is the process the agency uses to initiate, informally resolve, and/or investigate allegations that a student has violated agency policies prohibiting sex discrimination or sex-based harassment.
- (10) "Party" means a complainant or respondent.
- (11) "Peer retaliation" means retaliation by a student against another student.
- (12) "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.
- (13) "Program" or "programs and activities" means all operations of the agency.
- (14) "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.
- (15) "Remedies" means appropriate measures provided after the agency determines that sex discrimination occurred to restore or preserve a complainant or any other person's equal access to the agency's education program or activity.
- (16) "Respondent" means a student who is alleged to have violated the student conduct code.

(17) "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.

(18) "School" means the Washington school for the deaf.

(19) "Sex discrimination" occurs when a respondent causes a complainant more than de minimis (insignificant) harm by treating the complainant differently from other similarly situated individual(s) based on:

- (a) Sex stereotypes;
- (b) Sex characteristics;
- (c) Pregnancy or related conditions;
- (d) Sexual orientation; or

(e) Gender identity. Conduct that prevents a person 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.

(20) "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:

(a) Quid pro quo harassment. A student, employee, agent, or other person authorized by the agency to provide an aid, benefit, or service under the agency'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) 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 school'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:

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

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

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

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

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

(c) "Sexual violence." Sexual violence includes the following conduct:

(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 (fondling). 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) 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 (rape of a child). Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(v) Domestic violence. 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.

(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.

(d) Stalking. 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.

(21) "Supportive measures" means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to:

(a) Restore or preserve that party's access to the agency's education program or activity, including measures that are designed to protect the safety of the parties or the agency's educational environment; or

(b) Provide support during the agency's grievance procedures or during an informal resolution process.

(22) "Title IX coordinator" is the administrator or designee responsible for processing Title IX complaints and conducting or overseeing formal investigations and coordinating supportive measures in accordance with agency policy.

NEW SECTION

**WAC 148-120-915 Jurisdiction.** This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 148-120-910 and occurs:

- (1) On agency premises;
- (2) At or in connection with agency programs or activities; or
- (3) Off agency premises, if in the judgment of the agency, the conduct has an adverse impact on the school's community, the pursuit of its objectives, or the ability of a student or agency personnel to participate in the agency's education programs and activities.

NEW SECTION

**WAC 148-120-920 Rights of parties.** The provisions of these supplemental procedures shall apply equally to the respondent and the complainant.

The school bears the burden of offering and presenting sufficient evidence to establish that the respondent is responsible for engaging in sex discrimination, sex-based harassment, or retaliation related to or arising from such allegations by a preponderance of the evidence.

The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

NEW SECTION

**WAC 148-120-925 Emergency removal for alleged sex-based harassment under Title IX.** The school may remove a respondent on an emergency basis consistent with WAC 148-120-510 through 148-120-530 provided that the school:

- (1) Undertakes an individualized safety and risk analysis;
- (2) Determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal; and
- (3) Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

NEW SECTION

**WAC 148-120-930 Initiation of discipline.** (1) The agency's Title IX coordinator or designee shall review, process, and, if applicable, investigate the complaint 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.

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

(3) When emergency removal or other restriction proceedings are conducted under WAC 148-120-925, the complainant shall be notified that an emergency removal has been imposed on the same day that the emergency removal notice is served on the respondent. The school will also provide the complainant with timely notice of any subsequent changes to the emergency removal order.

#### NEW SECTION

**WAC 148-120-935 Notice of investigative report.** (1) At least 15 calendar days prior to a determination regarding responsibility, the school shall provide the parties with a report that provides equal written notice as to the findings of the investigation and provides a fair summary of any relevant evidence that is directly related to the allegations raised in the complaint and obtained as part of the investigation.

(2) The notice of investigative report will state that:

(a) The report findings will be provided to the decision maker;

(b) The parties have been given an accurate description of the evidence and, upon request, they have an equal opportunity to inspect and review relevant and not otherwise impermissible evidence;

(c) The parties have 10 calendar days from receipt of the notice to review the description of the evidence, request to review the evidence, and submit a written response for the decision maker to consider before making a decision;

(d) The parties have an equal opportunity to ask specific, relevant questions about the evidence or identify areas where they believe further investigation is necessary;

(e) Any questions or evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless it is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or unless it concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.

#### NEW SECTION

**WAC 148-120-940 Determination.** (1) Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the decision maker:

(a) Will review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) or remedies will be recommended;

(b) May question parties and witnesses to adequately assess a party's or witness's creditability to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. This process involves:

(i) The decision maker will request the party or witness to attend an interview; and

(ii) During the interview, the decision maker may ask questions that do not seek irrelevant or impermissible evidence;

(c) Will use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decision maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decision maker is not persuaded under this standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decision maker will not determine that sex discrimination occurred;

(d) Will notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal. The written notice must include:

(i) Identification of the allegations potentially constituting sex discrimination under Title IX's regulations;

(ii) Findings supporting the determination;

(iii) An application of the school's policy prohibiting sex discrimination to the facts and a statement of conclusion as to whether a preponderance of the evidence substantiated that the complainant was subjected to sex discrimination;

(iv) If sex discrimination was substantiated, then the decision must also include a determination regarding responsibility, any disciplinary or other sanctions imposed on the respondent, whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant, and the corrective measures the school deems necessary, including assurance that the school will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate; and

(v) Notice of the parties' right to appeal to the director and the necessary filing information;

(e) Will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination;

(f) Will comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent;

(g) Will not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred; and

(h) Will make a determination of responsibilities within 15 calendar days after the investigation's completion.

(2) Upon receipt of the decision maker's decision, the Title IX coordinator shall review all supportive measures and, within five school 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 school's Title IX investigative procedure.

(3) If there is a determination that sex discrimination occurred, the Title IX coordinator will, as appropriate:

(a) Coordinate the provision and implementation of remedies to a complainant and other people the agency identifies as having had equal access to the agency's education program or activity limited or denied by sex discrimination;

(b) Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and

(c) Take other appropriate prompt and effective steps to ensure that sex discrimination does not recur within the agency's education program or activity.

NEW SECTION

**WAC 148-120-945 Dismissal.** (1) The decision maker may recommend dismissal of the complaint if:

- (a) The school is unable to identify the respondent after taking reasonable steps to do so;
- (b) The respondent is not participating in the school's education programs or activities;
- (c) The complainant has provided voluntary, written notice that withdraws any or all of the allegations in the complaint, the Title IX coordinator declines to open a complaint, and any allegations that were not withdrawn, even if proven, would not constitute sex discrimination under Title IX;
- (d) The school determines the conduct in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the school will make reasonable efforts to clarify the allegations with the complainant;
- (e) The school determines that the complaint lacks sufficient detail to objectively understand what sex-based discriminatory acts are alleged, and when or where they occurred. Before dismissing the complaint for lack of sufficient detail, the school will provide the complainant with notice, in writing, of what information is needed and that the school may dismiss the complaint if the information is not received within 21 calendar days; or
- (f) The conduct alleged by the complainant falls outside the school's disciplinary jurisdiction.

(2) Notice of dismissal. Upon dismissal, the school will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the school will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

(3) Notice of right to appeal dismissal. The school will provide the complainant with notice of the opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the school will also notify the respondent that the dismissal may be appealed. Dismissal may be appealed on the following bases:

- (a) Procedural irregularity that would change the outcome;
  - (b) New evidence that would change the outcome and that was not reasonably available when the dismissal was made; or
  - (c) The Title IX coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
- (4) When a complaint is dismissed, the school will, at a minimum:
- (a) Offer supportive measures to the complainant as appropriate;
  - (b) If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
  - (c) Take other prompt and effective steps, as appropriate, through the Title IX coordinator to ensure that sex discrimination

does not continue or recur within the school's education program or activity.

NEW SECTION

**WAC 148-120-950 Disciplinary sanctions and remedies.** (1) Following a determination that sex-based harassment occurred, the school may impose disciplinary sanctions. "Disciplinary sanctions" means consequences imposed on a respondent following a determination under WAC 148-120-940 that the respondent violated the school's prohibition on sex discrimination. The school will administer any disciplinary sanctions in accordance with this chapter.

(2) Any discipline imposed under this section is subject to the requirements in WAC 148-120-025, and 392-172A-05140 through 392-172A-05175.

(3) Following a determination that sex-based harassment occurred, the school may provide remedies. "Remedies" means measures provided, as appropriate, to a complainant or any other person the school identifies as having had their equal access to the school's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the school's education program or activity. Remedies may include:

- (a) A continuation of supportive measures;
- (b) Referrals to counseling or health services;
- (c) Course and registration adjustments, such as retroactive withdrawals or changes in schedules;
- (d) Provision of school safety escorts;
- (e) Implementation of long-term contact limitations between the parties; or
- (f) Implementation of adjustments to academic deadlines or course schedules.

NEW SECTION

**WAC 148-120-955 Appeals—Dismissal.** (1) Any party may appeal a dismissal under WAC 148-120-945 by submitting a notice of appeal to the director within 21 calendar days following the date upon which the party received the notice of dismissal.

(2) If the dismissal is appealed, the school will:

- (a) Notify the parties of any appeal, including notice of the allegations, if the notice was not previously provide to the respondent;
- (b) Implement appeal procedures equally for the parties;
- (c) Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- (d) Ensure that the decision maker for the appeal has been trained consistent with the Title IX regulations;
- (e) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- (f) Notify the parties of the result of the appeal and the rationale for the result within 20 calendar days after the filing of the notice of appeal.



NEW SECTION**WAC 148-120-960 Appeals—Determination of responsibility.** (1)

If a party disagrees with the decision maker's written determination of responsibility, the disagreeing party may appeal the determination by filing a written notice of appeal with the director within 21 calendar days following the date upon which the party received the determination.

(2) Notice of appeal and hearing. The school will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed. The director will schedule a hearing to commence by the 20th calendar day following the filing of the written notice of appeal.

(3) Appeal decision maker. The director will serve as the appeal decision maker. The appeal decision maker must be an individual who is impartial and does not have any conflicts or bias for any of the parties. The appeal decision maker must be trained consistent with the requirements of Title IX. The school will ensure that the decision maker for the appeal is not the same decision maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator.

(4) Appeal hearing. The hearing will commence by the 20th calendar day following the filing of the written notice of appeal. Both parties will be allowed a reasonable, equal opportunity to present such witnesses and testimony as the decision maker, on appeal, deems relevant and material in support of or challenging the outcome of the initial determination.

(5) The decision maker, on appeal, will render a written decision within 20 calendar days following the filing of the notice of appeal and provide the parties with a copy of the decision. The written decision will describe the result of the appeal and the rationale for the result. The decision will be provided in a language the parties can understand, which may require language assistance for complainants with limited-English proficiency in accordance with Title VI of the Civil Rights Act.

NEW SECTION**WAC 148-120-965 Appeals or reviews—Imposition of discipline.**

(1) If a party disagrees with the decision maker's imposition of discipline, the disagreeing party may appeal or seek review of the discipline under WAC 148-120-465, 148-120-470, or 148-120-480, as applicable.

(2) The school will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed.

(3) Both parties will be allowed a reasonable, equal opportunity to submit a written statement in support of or challenging the decision maker's imposition of discipline.

NEW SECTION

**WAC 148-120-970 Extension of time frames.** The time frames in these supplemental procedures may be extended on a case-by-case basis for good cause and with notice to the parties that includes the reason for the delay.

(1) The Title IX coordinator, decision maker, or director, will send written notice to the parties stating the extension of the time frame for a major stage and the reason for the extension; or

(2) A party may submit a written request to the Title IX coordinator asking for an extension of the time frame for a major stage and the reason for requesting the extension.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 148-120-260	Reentry meeting following suspension.
WAC 148-120-313	Referral to and action by law enforcement and judicial authorities.
WAC 148-120-400	Emergency expulsion—Limitations.
WAC 148-120-405	Emergency expulsion—Notice of hearing—Waiver of hearing right.
WAC 148-120-410	Emergency expulsion—Prehearing and hearing process.

**WSR 25-01-149**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF TRANSPORTATION**

[Filed December 18, 2024, 8:40 a.m.]

The Washington state department of transportation (WSDOT) hereby withdraws the proposed expedited change to WAC 468-06-140 Department index, which was filed under WSR 24-11-161 on May 22, 2024.

However, WSDOT is not withdrawing the proposed change to WAC 468-06-060 Requesting public records, which was also filed under WSR 24-11-161. The change to WAC 468-06-060 is proceeding through the regular rule-making process. It was subsequently filed under WSR 24-22-137 on November 6, 2024.

Sam Wilson, Director  
Business Support Services

**WSR 25-01-150**  
**PROPOSED RULES**  
**CENTER FOR DEAF AND**  
**HARD OF HEARING YOUTH**  
[Filed December 18, 2024, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [24-18-074].

Title of Rule and Other Identifying Information: Practice and procedure; brief adjudicative procedure, WAC 148-108-100.

Hearing Location(s): On January 31, 2025, at 10:00 a.m., at 611 Grand Boulevard, Bilyeu Room CH150, Vancouver, WA 98661; or Zoom <https://us02web.zoom.us/j/89254644823?from=addon>.

Date of Intended Adoption: January 31, 2025.

Submit Written Comments to: Erica Rader, 611 Grand Boulevard, Vancouver, WA 98661, email [erica.rader@cdhy.wa.gov](mailto:erica.rader@cdhy.wa.gov), fax 360-696-6291, phone 360-418-0401, beginning December 23, 2024, at 8:00 a.m., by January 30, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Erica Rader, phone 360-418-0401, fax 360-696-6291, email [erica.rader@cdhy.wa.gov](mailto:erica.rader@cdhy.wa.gov), by January 30, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Center for Deaf and Hard of Hearing Youth (agency) is updating the rules regarding practice and procedure, chapter 148-108 WAC.

Reasons Supporting Proposal: The proposed amendments modify, clarify, and update the rules regarding practice and procedure including student conduct hearings and appeals. The proposed amendments include changes to incorporate legal requirements and help ensure that the students' rights are well protected throughout the process.

Statutory Authority for Adoption: RCW 34.05.010(16), 72.42.041(2), 72.40.0191(12), 72.40.0191(17).

Statute Being Implemented: RCW 72.42.041(2), 72.40.0191(12), 72.40.0191(17).

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

Name of Proponent: Center for Deaf and Hard of Hearing Youth, governmental.

Name of Agency Personnel Responsible for Drafting: Shelley Williams, Assistant Attorney General, 1220 Main Street, Suite 510, Vancouver, WA 98660, 360-619-4412; Implementation: Piper Gallucci, Vice Principal, 611 Grand Boulevard, Vancouver, WA 98661, 253-271-9021; and Enforcement: Shannon Graham, Principal, 611 Grand Boulevard, Vancouver, WA 98661, 360-334-5775.

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 agency is not mandated to comply with RCW 34.05.328. Further, the agency 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 19.85.025(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 amendments to the practice and procedure rules only apply to students at the Washington School for the Deaf, and therefore do not effect business or commerce in any way.

Scope of exemption for rule proposal:

Is fully exempt.

December 18, 2024  
Shauna Bilyeu  
Executive Director

### OTS-5993.1

AMENDATORY SECTION (Amending WSR 90-16-013, filed 7/19/90, effective 8/19/90)

**WAC 148-108-100 Brief adjudicative procedure.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used ((in all matters related)), unless provided otherwise by another rule or determined otherwise in a particular case by the director, in regard to:

(1) Student conduct ~~((~~or~~))~~ disciplinary proceedings ~~((pursuant to chapter 148-120 WAC))~~ involving in-school suspension or suspensions of 10 instructional days or less and any conditions or terms placed on a student;

(2) Amendment of education records pursuant to WAC 148-280-030;  
and

(3) Residency determinations made pursuant to WAC 148-130-040.

## WSR 25-01-155

## PROPOSED RULES

## GRAYS HARBOR COLLEGE

[Filed December 18, 2024, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-153.

Title of Rule and Other Identifying Information: Title IX Sexual harassment and nondiscrimination, policy 406; student conduct code.

Hearing Location(s): On Monday, January 27, 2025, 12:30 - 1:15 p.m., via Zoom <https://ghc.zoom.us/j/83014726206>, Meeting ID 830 1472 6206; or One-tap mobile +12532050468,,83014726206# US, +12532158782,,83014726206# US (Tacoma). Participants can attend via Zoom or submit written comments prior to the hearing.

Date of Intended Adoption: February 11, 2025.

Submit Written Comments to: Ja'Shonae Cooks, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, email [jashonae.cooks@ghc.edu](mailto:jashonae.cooks@ghc.edu), fax 360-538-4299, by January 27, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact accessibility services, phone 360-538-4143, email [accessibility@ghc.edu](mailto:accessibility@ghc.edu), by January 27, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will bring the Grays Harbor College's student conduct code (chapter 132B-125 WAC) into compliance with the United States Department of Education's Title IX final rule released on April 19, 2024. Updates will also address inconsistencies and clarity issues created by the revisions necessary to comply with the final rule, align with state laws, and ensure proper protections for the college community.

Reasons Supporting Proposal: To ensure compliance with federal Title IX regulations and state law, and to address gaps in procedural and definitional clarity. The amendments are necessary to safeguard the rights of students and uphold institutional responsibilities in handling sex-based discrimination and other conduct issues.

Statutory Authority for Adoption: Chapter 34.05 RCW and 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: Grays Harbor College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Laurie Franklin, Grays Harbor College, 3291, 360-538-4007.

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. Grays Harbor College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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.

December 16, 2024

Ja'Shonae Cooks

Executive Assistant to the President  
and Special Projects**OTS-5707.1**

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-105 Authority.** The Grays Harbor 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. Administration of the disciplinary procedures is the responsibility of the student conduct officer or their designee. (~~Unless otherwise specified~~) Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-110 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 federal and state law and college rules, policies, and procedures:

(1) **Academic freedom.**

(a) Students are guaranteed rights of free inquiry, expression and peaceful 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) (College board—Powers and duties), available space in the class, and meeting any required prerequisites.

(c) Students have the right to a learning environment, which is free from unlawful discrimination, inappropriate or disrespectful conduct, and any and all harassment, including sexual harassment.

(d) Students are 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.

(2) **Nondiscrimination.** Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, gender identity and expression, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status, or any other legally protected class.

(3) **Due process.** The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(a) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(b) A student accused of violating this code of student conduct is entitled to procedural due process as set forth in this chapter.

(4) **Right to assembly.** Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies are in compliance with procedures established in Administrative Procedure 516.03, Rules for Use of Campus as Public Forums, and other behavioral expectations outlined in the code of conduct.

(5) **Grievances.** Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated process in WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures.

(6) **Conduct code revision.** The associated students of Grays Harbor College has the right to participate in the formulation and review of all policies and rules pertaining to student conduct.

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-120 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 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, including submitting for credit without authorization academic work also submitted for credit in another course.

(d) 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 faculty member's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. 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.

(e) 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.

~~((2))~~ **(4) 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.))~~

**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.

**(b) 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))~~ 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, ~~((Legend drugs—Prescription drugs,))~~ or any other controlled substance under chapter 69.50 RCW, ~~((Uniform Controlled Substances Act,))~~ 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 ~~((twenty-five))~~ 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 re-

stricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

~~((3))~~ (5) 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.

~~((4))~~ (6) Classroom conduct. Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may order a student removed for the single class session in which disruptive conduct occurs. The instructor will report any such removal from the class to the student conduct officer, or their designee, immediately following the class. The student conduct officer services or designee may initiate further conduct proceedings as provided in this procedure.

(c) The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be ordered removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investigation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student conduct officer or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

~~((5))~~ (7) Cyber misconduct. Cyberstalking, cyberbullying or on-line harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, social media sites, and other communication apps, 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 or malware, sending false messages to third parties using another's identity, non-consensual recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010, and nonconsensual distribution or disclosing of a recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010.

~~((6))~~ (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 ((conduct)) harassment.** ((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 (40+); religion; creed; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification.))~~

~~(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.~~

~~((7)) (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.~~

~~((8)) (11) **Failure to comply with directive.** Failure to comply with the direction of 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.~~

~~((9)) (12) **Harassment or bullying.**~~

~~((a) 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.~~

~~(b) 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 and expression; 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)) 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.

~~((10))~~ (13) Hazing. ~~((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, regardless of whether the victim has consented))~~ 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.

~~((11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.~~

~~(12))~~ (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, abusive, threatening, or harassing 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;
  - (i) Use of college electronic resources to intentionally disseminate viruses, destructive, malicious or invasive programs;
  - (j) Failure to comply with the college's electronic use policy;
- or
- (k) Illegal peer-to-peer file sharing or distribution of copyrighted works using campus resources. In addition to code of conduct sanctions, students may be subject to criminal and civil penalties if they engage in such unauthorized activity.
- ((+13+)) **(16) Motor vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or contrary to posted signs or college procedures.
- ((+14+)) **(17) Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:
- (a) 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.
  - (c) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal operations. The person in charge may order a student removed for up to the full day in which such disruptive behavior occurs. When such behavior results in such removal from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal operations, the student may be ordered removed again for a single day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office, department, or facility disruption, the student conduct officer will proceed with the investigation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student has the right to appeal any disciplinary action of a college employee to the student conduct officer in accordance with the procedures set forth in this code.

~~((15))~~ **(18) Other 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.

~~((16))~~ **(19) 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))~~ **(20) Retaliation.** Harming, threatening, intimidating, coercing, or ~~(taking)~~ other 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))~~ 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))~~ **(21) 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))~~ **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in WAC 132B-125-405 Prohibited conduct under Title IX.

(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.) **(22) 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:

(a) **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.

(b) **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:

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

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

(iii) 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;

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

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

(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. 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 (fondling). 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) 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 ~~((7))~~ and adopted children under the age of ~~((eighteen))~~ 18.

(iv) Statutory rape (rape of a child). ~~((Consensual))~~ Nonforcible sexual intercourse ~~((between))~~ with a person who is ~~((eighteen years of age or older, and a person who is))~~ under the statutory age of ~~((sixteen))~~ consent.

(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 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))~~ 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.

(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 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.) fear for the person's safety or the safety of others or to suffer substantial emotional distress.~~

(d) **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.



~~((20))~~ **(23) Student procedure violations.** 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 other disciplinary official; or

(g) Failure to comply with any disciplinary sanction(s), action, term, or condition imposed under this chapter.

~~((21))~~ **(24) 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.

**(25) Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, code or other restricted means of access to college property, unauthorized entry onto or into college property, or entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official. In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

~~((22))~~ **(26) Unauthorized use.** Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.

~~((23))~~ **(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, 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))~~ legally issued weapons permits may store their weapon in their vehicle parked on campus in accordance with RCW 9.41.050 Carry-

ing firearms, 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.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

~~((24))~~ (28) 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.

~~((25))~~ (29) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory 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 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 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-125 ((Disciplinary sanctions.)) Corrective action, disciplinary sanctions, terms and conditions.** ~~((More than one sanction may be imposed for any single violation as appropriate. The following disciplinary sanctions may be imposed upon students found to have violated))~~ (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code:

~~((1) Disciplinary))~~ (a) 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))~~ (b) 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))~~ (c) Disciplinary probation. Formal action placing 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 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))~~ (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. Access may be denied to all or part of college facilities.

~~((5))~~ (e) **Discretionary sanctions.** These may include, but are not limited to:

~~((a))~~ (i) Work assignments;

~~((b))~~ (ii) Service to college or community;

~~((c))~~ (iii) Class/workshop attendance; or

~~((d))~~ (iv) Other discretionary assignments, such as educational interventions intended as learning experiences.

~~((6))~~ (f) **Loss of recognition.** A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Loss of recognition may include, but is not limited to, withdrawal of use of information technology resources, funding, college facility use and rental, and involvement in organizational activities.

~~((7))~~ (g) **Loss of privileges.** Loss of specific college privileges for a specified period of time. These may include, but are not limited to, student activities, athletic events, drama or music performances, or club participation.

~~((8))~~ (h) **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.

~~((9))~~ (i) **No trespass.** A student may be prohibited from entering upon or remaining upon college facilities and premises. Refer to WAC 132B-125-205 Trespass.

~~((10))~~ (j) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.

~~((11))~~ (k) **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.

(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:

~~((1))~~ (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.

~~((2))~~ (b) **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.

~~((3))~~ (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:

~~((a))~~ (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.

~~((b))~~ (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.

~~((4))~~ (d) **Disqualification from athletics.** Any student found by the college to have violated this is subject to additional sanctions, including disqualification from college-sponsored athletic events.

~~((5) **Hazing sanction.** Any student found to have violated RCW 28B.10.900 related to hazing, by virtue of a criminal conviction or by final decision of the college president or designee shall, in lieu of, or in addition to, any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to state-funded grants, scholarships, or awards of a period of time determined by the college.~~

~~In addition, any organization or association found to have knowingly permitted 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.))~~

#### NEW SECTION

**WAC 132B-125-130 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 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.

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-305 Definitions.** As used in this document the following words and phrases shall mean:

(1) **"Assembly"** shall mean any activity engaged in by two or more persons the object of which is to gain publicity, advocate a view, pe-

tion for a cause, or disseminate information to any person, persons or group of persons.

(2) **"Board"** shall mean the board of trustees of Community College District No. 2, state of Washington.

(3) **"Business day"** means a weekday, excluding weekends and college holidays.

(4) **"College"** shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

~~((4))~~ (5) **"College community"** shall mean all employees and students of the college.

~~((5))~~ (6) **"College facilities"** shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated websites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

~~((6))~~ (7) **"College official"** shall mean any person employed by the college performing assigned duties.

~~((7))~~ (8) **"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.

(9) **"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.

(10) **"Conduct review officer"** is a college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(11) **"Day"** means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays. Business day is used when a time period of less than 10 days. Calendar day is used when the time period is 10 days or more, unless otherwise specified.

~~((8))~~ (12) **"Disciplinary action"** is the process by which ~~((discipline is imposed against a student for a violation of the student conduct code by the student conduct officer))~~ the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

~~((9))~~ (13) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer as provided in WAC 132B-125-320 Appeal from disciplinary action. The student conduct committee hears disciplinary appeals from a suspension in excess of ~~((ten))~~ 10 instructional days or a dismissal/expulsion. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

~~((10))~~ (14) **"Employee"** shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

~~((11))~~ (15) **"Faculty"** shall mean any person employed on a full- or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty

of other colleges (whether or not employed by Grays Harbor College (GHC)) that provide instruction to GHC students through distance education.

~~((12))~~ (16) **"Filing"** is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review or 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/or first-class mail to the recipient's college 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.

~~((13))~~ (17) **"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.

(18) **"President"** is the president of the college appointed by the board of trustees. The president is authorized to delegate any of their responsibilities as set forth in this chapter as ~~((they deem appropriate))~~ may be reasonably necessary and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

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

~~((14))~~ (20) **"RCW"** shall mean the Revised Code of Washington.

~~((15))~~ (21) **"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.

(22) **"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.

(23) **"Respondent"** is ~~((the student against whom disciplinary action is initiated))~~ a student who is alleged to have violated the student conduct code.

~~((16))~~ (24) **"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 by email and/or 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 into the mail.

~~((17))~~ (25) **"Student"** shall mean and include any person who is enrolled in courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, non-credit 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 col-

lege, or who have been notified of their acceptance for admission are considered "students."

~~((18))~~ (26) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The student conduct officer is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

~~((19))~~ (27) **"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.

(28) **"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.

(29) **"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.

(30) **"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.

(31) **"Vice president for student services"** is the administrator responsible for implementing and enforcing the student conduct code. The vice president is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-315 Disciplinary process. ~~((1))~~ Initiating disciplinary action (except summary suspension).**

~~((a))~~ All disciplinary actions will be initiated by the student conduct officer. If that person is the subject of a complaint initi-

ated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

~~(b) The student conduct officer shall initiate disciplinary action by notifying the respondent to attend a disciplinary meeting. At the meeting, the student will be presented with the allegations, the provisions of the conduct code the respondent is alleged to have violated; and the range of possible sanctions for the alleged violation. This information will be provided in writing, either at the meeting or within three business days of the meeting. 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.~~

~~(c) 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 disciplinary decision letter 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.~~

~~(d) The student conduct officer may take any of the following disciplinary actions:~~

~~(i) Exonerate the respondent and terminate the proceedings;~~

~~(ii) Impose a disciplinary sanction(s), as described in WAC 132B-125-125;~~

~~(iii) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate.~~

~~(e) Sexual harassment complaints or concerns may be directed to the Title IX coordinator or human resources office.~~

~~(f) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.~~

~~(2) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision letter 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.)~~ (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 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.

(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 132B-125-125; 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 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-320 Appeal from disciplinary action.** (~~((1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within ten 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 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) 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 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; and~~

~~(c) 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.)~~ (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132B-125-315, the respondent may appeal a disciplinary action by filing a written notice

of appeal with the student conduct officer within 10 business 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;

(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.

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-330 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided (~~(the respondent)~~) a party files a written request for review with the student conduct officer within (~~(ten calendar)~~) 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 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 (~~(ten)~~) 10 business days. 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 ~~((ten))~~ 10 business 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 or dismissal, 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 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-335 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; and
- (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))~~ 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 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).

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.

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

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-340 Student conduct committee process.** (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 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 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, 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 their choice. A respondent 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.))~~ (8) 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.

(9) 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.

(10) 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.

(11) 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 (12)(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.

(12) 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.

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-345 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 Procedure at hearing. 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 Agency record, 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 Adjudicative proceedings—Cameras—Recording devices.

(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 Rules of evidence—Cross-examination.

~~(7) In cases involving allegations of ((sexual misconduct, neither the complainant nor the respondent shall directly question or cross-examine one another. Attorneys or advisors 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 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-350 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~~) 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 (~~twenty business~~) 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 Entry of orders, and WAC 10-08-210 Adjudicative proceedings—Initial or final order. 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~~) decision 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))~~ its decision to be served on the parties and their ~~((legal counsel of record))~~ attorney, if any. The notice will inform all 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 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 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-355 Appeal from student conduct committee's initial decision.** (1) A party ~~((who is aggrieved by the findings or conclusions issued by the student conduct committee)),~~ including a complainant in sex-based harassment cases, may appeal the committee's ~~((initial))~~ decision to the president by filing a notice of 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. ~~((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 business 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 judicial review.~~

~~(4) 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) The president may, at their discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~

~~(6))~~ 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 up to 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 21-12-008, filed 5/19/21, effective 6/19/21)

**WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures.** The purpose of these procedures is to provide guidelines, which enable a student to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. This grievance procedure emphasizes an informal resolution, which promotes constructive dialogue and understanding.

**(1) Complaint process.**

(a) A complaint is any expression of dissatisfaction with the performance of a college employee or with the implementation of policy and procedure. The goal is to informally resolve the complaint with the employee most closely responsible for the policy, procedure or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis. (If the complaint is about a grade, follow the grade appeal process below.) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution.

(b) The college recognizes that in some cases a student will be unwilling or unable to speak directly with the employee. In such cases, the student may proceed to step one of the grievance process. In general, a student wishing to express a complaint should do so no lat-

er than three weeks from the time the student became aware of the concern.

(c) For assistance in identifying the appropriate person a student should contact, the office of the vice president for student services is available to assist in that determination.

(d) The following are guidelines for determining who a student should contact with a complaint regarding:

- (i) **Academic/instruction:** Faculty/dean/vice president instruction;
  - (ii) **Accommodations:** Coordinator of disability support services/dean of student access and support;
  - (iii) **Bookstore:** Bookstore manager/vice president administrative services;
  - (iv) **Problem student conduct:** Student conduct officer;
  - (v) **Discrimination/harassment:** Title IX coordinator/human resources;
  - (vi) **Facilities:** Chief of campus operations/vice president for administrative services;
  - (vii) **Financial aid:** (~~(Assistant dean of financial aid/dean of student access and support)~~) Vice president for student services;
  - (viii) **Other:** Vice president for student services office for most appropriate contact.
- (2) **Grievance process.**

(a) A grievance is a formal procedure instituted when a complaint is not resolved through the informal complaint process. It involves taking the concern to a person other than the employee involved such as a supervisor, dean or vice president. For assistance in identifying the specific person, a student should contact the vice president for student services office. The following procedures shall be used when a student initiates the grievance process.

(b) A discussion with the dean/vice president or supervisor who shall attempt to resolve the matter promptly and fairly. The student may be asked to express the grievance in writing. Written grievances should include an explanation of what has happened, the nature of the student's concern, what the student and/or others have done about it to date and what resolution the student seeks.

(c) The supervisor will investigate and may:

- (i) Render an immediate decision;
  - (ii) Ask the staff members for a written response;
  - (iii) Request a meeting of one or both parties individually or together; and/or
  - (iv) Request supporting materials prior to rendering a decision.
- In the case of a written grievance, the supervisor will provide a written decision within (~~(fifteen)~~) 15 instructional days of receipt of the written grievance. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(A) If the student feels a satisfactory resolution was not achieved in step two, they may appeal to the president of the college within five instructional days of receipt of the written decision. The president may amend, modify, reverse or accept the recommendation of the vice president. The decision of the president shall be final.

(B) In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern. In any event, with the exception of discrimination and harassment, informal complaints and formal grievances must be filed within one academic quarter of the inciting event. Timely initiation of a complaint rests with the student.

(C) The appropriate vice president may suspend this rule under exceptional circumstances such as extended illness or leave of a party to the complaint. When either party to the complaint is no longer present at the college and does not expect to return, the vice president will give the absent party reasonable opportunity to reply to the complaint before making a decision.

**(3) Grade appeal process.**

(a) Before a student can file a formal or written grade appeal, they should try to resolve the issue directly with the instructor. Grade appeals should occur within one quarter of issuance of the grade. In any event, appeals will not be considered beyond one year of the grade report.

(b) If direct discussion with the faculty does not resolve the grade dispute to the student's satisfaction the student, within ~~((ten))~~ 10 instructional days after meeting with the faculty, shall take the matter to the vice president for instruction. The student shall express the appeal in writing. The written appeal should include the course and instructor involved, an explanation of why the student believes the grade received is unfair or unwarranted, what steps the student has taken with the faculty member to resolve the issue, and what resolution the student seeks.

(c) The vice president for instruction will attempt to investigate the appeal and will:

(i) Review the course syllabus;

(ii) Meet with the course instructor; and

(iii) May request and review other supporting documentation prior to rendering a decision. Within ~~((ten))~~ 10 instructional days of receiving the written appeal, the vice president of instruction will provide a written decision. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(d) If the student feels satisfactory resolution was not achieved in step three, they may, within five instructional days of receipt of the written decision, notify the vice president for instruction to request a hearing before the academic review committee. The vice president for student services or designee will chair the committee.

(i) If anyone on the academic review committee perceives a conflict of interest, they will recuse themselves from the committee for the duration of the appeal. Students are to be given an opportunity to talk with the committee chairperson regarding any concerns about committee membership.

(ii) As soon as possible, the academic review committee (with a minimum attendance of six individuals) will meet with the student, instructor, the vice president of instruction and relevant parties to hear the points at issue in the appeal. The committee will provide its written decision to all parties within five instructional days following the hearing. The decision is final and may not be reviewed further.

**(4) Grievances excluded.**

(a) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual harassment. The college has separate specific procedures for such complaints. See the vice president for student services for information on those specific procedures.

(b) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student

rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(c) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Community College District No. 2 shall not be grievable matters.

(5) **Records.** The appropriate supervisor shall keep all written statements or transcripts as follows:

(a) Complaints for one year from the initial complaint;

(b) Grievances for six years from the initial complaint;

(c) Grade appeals for five years following the last quarter attended by the student. At that time, the files shall be destroyed.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132B-125-400	Order of precedence.
WAC 132B-125-405	Prohibited conduct under Title IX.
WAC 132B-125-410	Title IX jurisdiction.
WAC 132B-125-415	Initiation of discipline.
WAC 132B-125-420	Prehearing procedure.
WAC 132B-125-425	Rights of parties.
WAC 132B-125-430	Evidence.
WAC 132B-125-435	Initial order.
WAC 132B-125-440	Title IX appeals.

## WSR 25-01-166

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed December 18, 2024, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-028.

Title of Rule and Other Identifying Information: Adding new WAC 192-900-040 Out-of-state participant, 192-900-045 Qualified individual, and 192-900-050 Year; and chapter 192-940 WAC, Qualified individuals: WAC 192-940-005 Earning years to become a qualified individual and 192-940-010 How will the department determine if someone is a qualified individual? Amending WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.

Hearing Location(s): On January 22, 2025, at 9:00 a.m., via Microsoft Teams, [paidleave.wa.gov/rulemaking](https://paidleave.wa.gov/rulemaking); or join by phone 564-999-2000, PIN 309 494 035#.

Date of Intended Adoption: On or after January 29, 2025.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), by January 22, 2025.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov), by January 15, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) is proposing new rules and amendments regarding the long-term services and supports trust program (WA Cares fund) to implement a portion of SHB 2467, which passed into law during the 2024 legislative session. The proposed rules implement a portion of the bill that was codified in RCW 50B.04.180 by defining "out-of-state participant." The proposed rules also add additional program definitions, outline qualified individual requirements and determinations, and further align the WA Cares fund and paid family and medical leave (PFML) appeals processes.

Reasons Supporting Proposal: The proposed new rules add definitions to clarify program operations, clarify how individuals qualify for program coverage, and outline how the department will make determinations regarding qualified individuals. The amended rule ensures the WA Cares fund appeals procedures are aligned with those in place for PFML, as required under RCW 50B.04.120.

Statutory Authority for Adoption: RCW 50B.04.020.

Statute Being Implemented: RCW 50B.04.050, 50B.04.120, 50B.04.180.

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

Name of Proponent: Employment security department, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Olympia, Washington, 360-485-2816.

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. WAC 192-900-040 Out-of-state participant. This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Inter-



pretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-900-045 Qualified individual. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). Portions of the rule are also exempt under RCW 34.05.328 (5) (b) (5) because the content is explicitly and specifically dictated by RCW 50B.04.050.

WAC 192-900-050 Year. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. This rule is exempt under RCW 34.05.328 (5) (c) (i) (A) and (C) because it is a procedural rule that adopts policies related to internal operations of the department and defines requirements related to department hearings. Procedural rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). The rule is also exempt under RCW 34.05.328 (5) (b) (v) because the content is explicitly and specifically dictated by RCW 50B.04.120 requiring the department to align appeal standards and procedures between programs.

WAC 192-940-005 Earning years to become a qualified individual. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-940-010 How will the department determine if someone is a qualified individual? This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). Portions of the rule are also exempt under RCW 34.05.328 (5) (b) (v) because the content is explicitly and specifically dictated by RCW 50B.04.050.

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; 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).

Scope of exemption for rule proposal:

Is fully exempt.

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is exempt. Provide RCW to support this exemption.</b>
1.	WAC 192-900-040 Out-of-state participant	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals choosing to participate in the program.

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is exempt. Provide RCW to support this exemption.</b>
2.	WAC 192-900-045 Qualified individual.	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 34.05.310 (4)(e) - Portions of the rule are dictated by RCW 50B.04.050. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits.
3.	WAC 192-900-050 Year	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits.
4.	WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.	RCW 34.05.310 (4)(g) - The rule outlines a procedure, practice, or requirement relating to agency hearings. RCW 34.05.310(4)(e) - The rule is dictated by RCW 50B.04.120 regarding alignment of appeals processes.
5.	WAC 192-940-005 Earning years to become a qualified individual.	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits.
6.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits. RCW 34.05.310 (4)(e) - Portions of the rule are dictated by RCW 50B.04.050.

December 18, 2024

April Amundson

Policy and Rules Manager, ESPI  
Leave and Care Programs**OTS-6043.1**NEW SECTION

**WAC 192-900-040 Out-of-state participant.** An individual who has elected coverage under RCW 50B.04.180 is considered an "out-of-state participant."

NEW SECTION

**WAC 192-900-045 Qualified individual.** A "qualified individual" is an individual who has met the requirements outlined in RCW 50B.04.050 and chapter 192-940 WAC.

NEW SECTION

**WAC 192-900-050 Year.** A "year" for the purpose of qualified individual determinations made by the department under RCW 50B.04.050

means a calendar year, beginning on January 1 and ending on December 31.

## OTS-6044.1

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

**WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.** Per RCW 50B.04.120, appeal procedures under Title 50B RCW must align with the appeal procedures under Title 50A RCW. The following general procedural rules for appeal under the paid family and medical leave program apply to the long-term services and supports trust program:

- (1) WAC 192-800-040 What are the timeliness requirements for submitting an appeal or a petition for review?
- (2) WAC 192-800-045 Can an appeal be withdrawn?
- (3) WAC 192-800-050 What happens after an appeal is submitted?
- (4) WAC 192-800-055 Who will be notified if an appeal is filed and what will it include?
- (5) WAC 192-800-060 What happens if an appeal or a petition has been filed and one of the parties has a change of contact information?
- (6) WAC 192-800-065 How does the time computation work for perfecting an appeal or petition for review?
- (7) WAC 192-800-070 Who can give testimony and examine witnesses during an appeal hearing?
- (8) WAC 192-800-075 Who can request a postponement of a hearing?
- (9) WAC 192-800-080 Will depositions and written discovery be permitted?
- (10) WAC 192-800-085 When will administrative law judges hear consolidated cases?
- (11) WAC 192-800-090 What is included in decisions issued by the office of administrative hearings?
- (12) WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review?
- (13) WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?
- (14) WAC 192-800-105 When and how can an administrative law judge dispose of an appeal?
- (15) WAC 192-800-110 What options are available for an aggrieved party who received an order of default?
- (16) WAC 192-800-115 What is the process for filing a petition for reconsideration to the commissioner's review office?
- (17) WAC 192-800-120 When would the commissioner not issue declaratory orders?
- (18) WAC 192-800-125 When is a petition for review considered delivered to the department?
- (19) WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?

OTS-6045.1

**Chapter 192-940 WAC  
QUALIFIED INDIVIDUALS**

NEW SECTION

**WAC 192-940-005 Earning years to become a qualified individual.**

(1) The department will determine years earned toward qualified individual status under RCW 50B.04.050 based on wages earned and hours worked in employment as reported under chapter 192-910 WAC or in covered self-employment under chapter 192-915 WAC.

(2) Only hours worked in reportable employment or covered self-employment will be considered when determining whether an individual has worked at least 500 hours each year.

(3) A year toward qualified individual status may be earned once an individual has accrued 500 hours in employment as reported under chapter 192-910 WAC or in covered self-employment as reported under chapter 192-915 WAC.

(4) Wages and hours reported when an individual had an approved exemption do not count toward qualifying for the benefit.

NEW SECTION

**WAC 192-940-010 How will the department determine if someone is a qualified individual?** (1) Qualified individual status under RCW 50B.04.050 is determined as follows:

(a) An individual who has earned 10 years toward becoming a qualified individual without a break of five or more consecutive years in that 10 years will be eligible for the full benefit amount. Years with less than 500 hours reported will count toward the break of five or more consecutive years;

(b) An individual who, from the date of application for benefits, has earned three of the last six years toward becoming a qualified individual will qualify for the full benefit amount; or

(c) An individual born before January 1, 1968, who does not qualify under (a) or (b) of this subsection will qualify for one-tenth of the benefit amount for each earned year toward becoming a qualified individual.

(2) An individual who continues to work in employment or in covered self-employment after qualifying for subsection (1) (b) or (c) of this section, or both, may be eligible to earn additional years toward becoming a qualified individual.

(3) An individual may not exceed the maximum lifetime benefit amount under RCW 50B.04.060.

(4) An individual who has an approved exemption cannot become a qualified individual.