

**WSR 25-03-003**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Physical Therapy)  
[Filed January 2, 2025, 1:29 p.m.]

Continuance of WSR 24-21-147.

Preproposal statement of inquiry was filed as WSR 23-24-101.

Title of Rule and Other Identifying Information: Physical therapists and physical therapist assistants—Reducing licensure barriers. The board of physical therapy (board) is proposing amendments to WAC 246-915-030, 246-915-040, 246-915-085, and 246-915-120 in order to comply with section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077 and to make general and housekeeping updates to these sections. Additionally, the board is proposing amendments to WAC 246-915-040 to further expand upon the endorsement pathway required under 2SHB 1724 and amendments to WAC 246-915-120 to streamline the foreign educated applicant application process.

Hearing Location(s): On February 24, 2025, at 10:00 a.m., at the Washington State Department of Health, 111 Israel Road S.E., Town Center 2, Room 153, Tumwater, WA 98501; or virtual Microsoft Teams meeting [https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetupjoin%2F19%253ameeting\\_NGFjYzQ1MmUtZWM4Zi00ZDMxLWEzY2EtODc3MWMxZDg2ODY1%2540thread.v2%2F0%3FContext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522fba7987b-ba18-412c-b191-c46121cda5c4%2522%257d&data=05%7C02%7CAllyson.McIver%40doh.wa.gov%7C09e987cb33b24de3151308dcdce71c47%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638628132367612604%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&data=FI%2FCqUMAuy%2B4wHfc2SOAn9bm%2BIwgLP%2BtFyAlmWaGsaM%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetupjoin%2F19%253ameeting_NGFjYzQ1MmUtZWM4Zi00ZDMxLWEzY2EtODc3MWMxZDg2ODY1%2540thread.v2%2F0%3FContext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522fba7987b-ba18-412c-b191-c46121cda5c4%2522%257d&data=05%7C02%7CAllyson.McIver%40doh.wa.gov%7C09e987cb33b24de3151308dcdce71c47%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638628132367612604%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&data=FI%2FCqUMAuy%2B4wHfc2SOAn9bm%2BIwgLP%2BtFyAlmWaGsaM%3D&reserved=0), Meeting ID 265 225 377 723, Passcode 8Wsupq; or dial in by phone +1 564-999-2000,,54577111# United States, Olympia, (833) 322-1218,,54577111# United States (Toll-free), Phone conference ID 545 771 11#. You may attend virtually or in person. You may also submit comments in writing.

Date of Intended Adoption: February 27, 2025.

Submit Written Comments to: Allyson McIver, Department of Health, P.O. Box 47852, Olympia, WA 98504-7582 [7852], email [physical.therapy@doh.wa.gov](mailto:physical.therapy@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, beginning October 22, 2024, at 2:50 p.m., by February 17, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Allyson McIver, phone 360-236-2878, TTY 711, email [physical.therapy@doh.wa.gov](mailto:physical.therapy@doh.wa.gov), by February 10, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At the February 24, 2025, hearing, the board will continue the public hearing that was originated on December 9, 2024. The board will continue taking public comment and intends to discuss the proposed rule and comments received as part of the public hearing process for the following proposal.

The board is proposing revisions to existing rules to waive education, training, experience, and examination requirements for applicants that qualify for licensure by endorsement to implement RCW 18.130.077. Specifically, the board is proposing to:

- Remove unnecessary language in WAC 246-915-030.

- Amend WAC 246-915-040 to create a faster pathway to licensure for out-of-state physical therapists and physical therapy assistants that have been credentialed in another state or states with substantially equivalent standards for two years or more, with no interruption in licensure for longer than 90 days, provided that they also meet the requirements in RCW 18.130.077(3).
- Remove the jurisprudence examination requirement in WAC 246-915-120.
- Amend the continuing education (CE) requirements in WAC 246-915-085 to add the jurisprudence examination as a free CE hour that must be completed within their first full CE cycle after initial licensure.

Additional proposed amendments to WAC 246-915-040 add a new a licensure by endorsement pathway for applicants who have been actively licensed for less than two years in a state or states with substantially equivalent standards to Washington. The board is also proposing further amendments to the foreign educated applicants section to clarify the requirements in WAC 246-915-120.

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

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

December 30, 2024  
Kathryn Dale, PT, DSc  
Chair

## WSR 25-03-024

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed January 7, 2025, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-047.

Title of Rule and Other Identifying Information: WAC 192-150-110  
Mandatory military transfers—RCW 50.20.050 (2)(b)(iii), amendment.

Hearing Location(s): On March 6, 2025, at 9:00 a.m., via Zoom  
[https://esd-wa-gov.zoom.us/j/81251639176?](https://esd-wa-gov.zoom.us/j/81251639176?pwd=ayTvHYrFgZFrZogmtf2da3mJq1PX8b.1)  
[pwd=ayTvHYrFgZFrZogmtf2da3mJq1PX8b.1](https://esd-wa-gov.zoom.us/j/81251639176?pwd=ayTvHYrFgZFrZogmtf2da3mJq1PX8b.1), Meeting ID 812 5163 9176, Pass-  
code 859955; or One-tap mobile +13092053325,,81251639176#,,,,\*859955#  
US, +13126266799,,81251639176#,,,,\*859955# US (Chicago).

Date of Intended Adoption: March 27, 2025.

Submit Written Comments to: Lawrence Larson, P.O. Box 9046, Olympia, WA 98507-9046, email [esdgpuirules@esd.wa.gov](mailto:esdgpuirules@esd.wa.gov), fax 844-652-7096, by March 6, 2025.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email [Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov), by February 27, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 192-150-110 provides guidance on the requirements for establishing good cause to quit work if an individual quits work to relocate for their spouse or domestic partner's employment that is due to a mandatory military transfer. Currently, WAC 192-150-110(3) defines military as including the following: United States (U.S.) Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service. This list of military branches in the rule does not include the U.S. Space Force. The employment security department (department) is amending WAC 192-150-110 to expand the definition of military so that it explicitly includes all branches of the U.S. Armed Forces.

Reasons Supporting Proposal: Space Force was founded in 2019 and now has over 14,000 military and civilian personnel. Although it is organized under the Department of the Air Force, it is a separate and distinct branch of the armed services. The proposed amendment to WAC 192-150-110 will clarify, by making explicit, that the definition of military includes all branches of the U.S. Armed Forces.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.042, and 50.12.040 provide general rule-making authority to the department. RCW 50.20.050 defines disqualification for leaving work voluntarily without good cause. Specifically, under RCW 50.20.050 (2)(b)(iii), a claimant has good cause to quit when they (A) left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move.

Statute Being Implemented: RCW 50.20.050.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Lawrence Larson, Olympia, Washington, 360-890-3460; Implementation and Enforcement: JR Richards, Olympia, Washington, 360-463-1079.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making does not change the effect of the rule, it only clarifies that all branches of the U.S. Armed Forces will be included in the definition.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: This rule making does not change the effect of the rule, it only clarifies that all members of the U.S. Armed Forces will be included in the definition.

Scope of exemption for rule proposal:

Is fully exempt.

January 7, 2025

Joy Adams

Employment Security Policy Director

## OTS-5981.1

AMENDATORY SECTION (Amending WSR 17-17-129, filed 8/22/17, effective 9/22/17)

### **WAC 192-150-110 Mandatory military transfers—RCW 50.20.050**

**(2) (b) (iii).** (1) Any military transfer is considered mandatory if your spouse or domestic partner receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may show good cause to quit work if you relocate for your spouse or domestic partner's employment that was due to a mandatory military transfer if:

(a) Your spouse or domestic partner's new duty station is outside your existing labor market; and

(b) You continued to work for your previous employer for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: (~~U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard~~) Member of the United States Armed Forces as defined by 10 U.S.C. 101 (a) (4), activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse or domestic partner to a new duty location; or

(b) Your spouse or domestic partner leaves military service and you elect to relocate to your home of record or elsewhere.

## WSR 25-03-031

## PROPOSED RULES

## MILITARY DEPARTMENT

(Emergency Management Division)

[Filed January 7, 2025, 2:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-050.

Title of Rule and Other Identifying Information: Local emergency management/services organizations, plans and programs.

Hearing Location(s): On February 26, 2025, at 2:00 - 3:00 p.m., virtual meeting, Meeting ID 294 777 104 66, Passcode 7vM2w6um.

Date of Intended Adoption: February 27, 2025.

Submit Written Comments to: Alexa Bach, 20 Aviation Drive, #20, Camp Murray, WA 98430, email alexa.bach@mil.wa.gov.

Assistance for Persons with Disabilities: Contact Alexa Bach, phone 253-512-7133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rules are outdated and based on federal structure that have been revised. Emergency management agencies within the state agree that a revision is needed. The proposed changes will simplify applicable rules and make them more applicable to varied emergency management organizational structures.

Reasons Supporting Proposal: The rules of chapter 118-30 WAC are severely outdated. The code needed to be updated to align with current federal and state practice more accurately. The code also needed to be modified to be more supportive of diverse local emergency management organizations.

Statutory Authority for Adoption: RCW 38.52.070.

Statute Being Implemented: RCW 38.52.070.

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

Name of Proponent: Washington state military department, governmental.

Name of Agency Personnel Responsible for Drafting: Alexa Bach, Washington Military Department, Emergency Management Division, Camp Murray, Washington, 253-512-7133; Implementation and Enforcement: Robert Ezelle, Washington Military Department, Emergency Management Division, Camp Murray, Washington, 253-324-8020.

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 Washington state military department is not subject to RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

January 7, 2025

Alexa Bach

Planning Program Supervisor

OTS-6080.1

**Chapter 118-30 WAC**  
**LOCAL EMERGENCY MANAGEMENT (~~/SERVICES~~) ORGANIZATIONS, PLANS, AND PROGRAMS**

AMENDATORY SECTION (Amending WSR 86-15-068, filed 7/22/86)

**WAC 118-30-020 Purpose.** The purpose of this chapter is to establish criteria for ~~((evaluating))~~ existing local emergency management ~~((/services))~~ organizations, plans, and programs, and to evaluate new local emergency management organizations, plans, and programs to ensure consistency with the state comprehensive emergency management plan and program.

AMENDATORY SECTION (Amending WSR 86-15-068, filed 7/22/86)

**WAC 118-30-030 Definitions.** As used in this chapter:

(1) Emergency management will hereinafter refer to ~~((both))~~ emergency management ~~((and emergency services))~~ organizations.

(2) Director means the ~~((director))~~ adjutant general of the Washington ~~((state department of community development))~~ military department. The adjutant general delegates this authority to the Washington emergency management division director.

(3) Council means the Washington state emergency management council as established by RCW 38.52.040.

(4) Political subdivision means a county or incorporated city or town.

(5) Executive head(s) means:

(a) In the case of an incorporated city or town, the mayor or city manager.

(b) In the case of a county, either the county executive or the chair of the board of county commissioners or county council.

(c) In the case of a joint emergency management organization, the chair of the joint emergency management council.

(6) Emergency management organizations means the local government organization established by either a political subdivision or two or more political subdivisions for the purpose of carrying out local emergency management functions ~~((as described in RCW 38.52.010))~~.

(7) Ordinance means a law established by the legislative body of a city, town, or county.

(8) Resolution means an expression of policy established by the legislative body of a city, town, or county.

(9) Governing document means an interlocal agreement (ILA) or other legal agreement entered into by the members of a joint emergency management organization governing its affairs.

(10) Comprehensive emergency management plan, hereinafter referred to as the plan, means a written ~~((basic))~~ base plan with elements ~~((which address))~~ addressing all reasonably foreseeable natural ~~((and man-made))~~, human-caused, and technological emergencies and disasters to which a political subdivision is vulnerable. The ~~((comprehensive emergency management))~~ plan specifies the purpose, organization, responsibilities, and facilities of agencies and officials of the polit-

ical subdivision in the mitigation of, preparation for, response to, and recovery from emergencies and disasters.

~~((10))~~ (11) Hazard analysis means a written assessment and listing of the reasonably foreseeable natural ((and man-made)), human-caused, and technological emergencies and disasters to which a political subdivision is vulnerable.

~~((11) Program paper means a statement of emergency management program objectives for a period of twelve consecutive months beginning January 1 and ending December 31 of the calendar year. The program paper shall represent the local program for the purposes of RCW 38.52.070 and shall be used as a program management tool by both state and local government.)~~ (12) Director of a local emergency management organization, hereinafter referred to as local director, means the head of the emergency management organization appointed by and directly responsible to the executive head of the political subdivision or joint emergency management organization and/or local officials with emergency management authority.

(13) Emergency management program means a system that provides for management and coordination of prevention, protection, mitigation, response, and recovery activities for all hazards. The system encompasses all organizations, agencies, departments, and individuals having responsibilities for these activities.

AMENDATORY SECTION (Amending WSR 86-15-068, filed 7/22/86)

**WAC 118-30-040 ((Responsibilities of political subdivisions.))**

**Establishing an emergency management organization.** (1) Each political subdivision must establish an emergency management organization by ordinance or resolution passed by the legislative body of the political subdivision. ~~((Two or more political subdivisions may join in the establishment of an emergency management organization.))~~

(2) Each political subdivision shall develop, promulgate, and submit a comprehensive emergency management plan to the director or their designee.

~~(3) ((Each political subdivision shall submit an emergency management program paper annually to the director not less than sixty days prior to the beginning of the calendar year.~~

~~(4))~~ Two or more political subdivisions may establish a joint emergency management organization by ordinance or resolution approving a governing document for the joint emergency management organization. Political subdivisions that have joined together to form a joint emergency management organization ((may)) must submit a single plan ((and program paper)) to the director or their designee.

(4) Each new political subdivision or joint organization shall submit a copy of the ordinance(s) or resolution(s) establishing its emergency management organization or joint emergency management organization, and governing document if applicable, to the director for review and recommendations.

(5) Such ordinance or resolution, and governing document if applicable, shall create and constitute an approved emergency management organization for the purposes of RCW 38.52.195(2) and 38.52.260(2). Use of emergency workers is governed by chapter 118-04 WAC.



AMENDATORY SECTION (Amending WSR 86-15-068, filed 7/22/86)

**WAC 118-30-050 Contents of emergency management (~~ordinance/~~ resolution) ordinances, resolutions, and governing documents.** ((Each political subdivision must establish an emergency management organization by ordinance or resolution passed by the legislative body of the political subdivision. Two or more political subdivisions may join in the establishment of an emergency management organization.

~~(1) Each political subdivision must establish said organization by ordinance or resolution.~~

~~(2) Each political subdivision shall specify in)) (1) The ordinance or resolution establishing an emergency management organization, and the governing document establishing ((the)) a joint emergency management organization if applicable, shall contain the following elements:~~

~~(a) How ((the)) costs of supporting the emergency management organization ((shall)) will be shared between or among the constituent political subdivisions.~~

~~((3) If two or more political subdivisions cannot agree on the sharing of costs to support the emergency management organization established by the constituent political subdivisions, the director shall refer the matter to the council. The council shall consider the matter at either a regular or special meeting. The council may request additional information from the constituent political subdivisions, the director, or other interested party(s). The council shall arbitrate the matter, and its decision shall be final.~~

~~(4) When two or more political subdivisions submit ordinances or resolutions establishing a single emergency management organization which meets the criteria set forth, the director shall inform the executive heads of the constituent political subdivisions that the emergency management organization is acceptable and authorized. Nothing in this code shall prevent one or more political subdivisions from contracting with another subdivision for emergency management activities under the provisions of chapter 39.34 RCW, the Interlocal Cooperation Act.~~

~~(5) Each political subdivision must specify in the ordinance or resolution establishing the emergency management organization, that the agency shall be headed by a director of emergency management who shall be appointed by and directly responsible to the executive head of the political subdivision.~~

~~(6) In the case of an emergency management organization established by two or more political subdivisions, such political subdivisions shall specify in the ordinance or resolution establishing the organization, that the local government agency shall be headed by a local director of emergency management who)) (b) A requirement that the emergency management organization or joint emergency management organization be headed by a local director of emergency management appointed by the political subdivision(s) or as set forth in the governing document.~~

~~(c) The local director of emergency management shall be appointed by the joint action of the executive heads of the constituent political subdivisions or in a manner stipulated in the governing document of the joint emergency management organization. ((The political subdivisions shall specify by ordinance or resolution that)) The local director of emergency management ((director)) shall be directly responsible to the executive ((authority)) head of the constituent political subdivision(s) or to the governing body of the joint emergency manage-~~

ment organization as established by the executive heads of the constituent political subdivisions.

~~((7) Each political subdivision shall specify by ordinance or resolution that the local director of emergency management shall be directly responsible))~~ (d) Specification of responsibility for the organization, administration, and operation of the emergency management organization(s) or joint emergency management organization.

~~((8) Each political subdivision shall submit a copy of the ordinance or resolution establishing its emergency management organization to the director for evaluation and approval of the organizational plan or structure.~~

~~(9) Such ordinance or resolution shall constitute an approved organization for the purposes of RCW 38.52.195 and 38.52.260(2). Use of emergency workers is governed by chapter 118-04 WAC.))~~ (2) Nothing in this code shall prevent one or more political subdivisions from contracting with another subdivision for emergency management activities under the provisions of chapter 39.34 RCW, the Interlocal Cooperation Act.

AMENDATORY SECTION (Amending WSR 86-15-068, filed 7/22/86)

**WAC 118-30-060 ((Emergency plan.)) Comprehensive emergency management plan.** (1) Each ~~((political subdivision))~~ emergency management organization or joint emergency management organization shall create, promulgate, and maintain a current plan ((of operations)) which shall be based on a hazard analysis or equivalent and, ~~((as))~~ at a minimum, include a basic document with the following elements:

(a) Mission or purpose - ~~((Each plan shall contain a section which provides an explanation))~~ Provides a description of why the plan is established, ~~((the))~~ citation of the authorizing or enabling federal, state, and local statute(s) or ordinance(s), and an explanation of the situations and assumptions ~~((from))~~ on which the plan is based.

(b) Organization and responsibilities - ~~((The plan shall contain a section which defines))~~ Provides a definition of the emergency responsibilities ~~((for))~~ of each primary agency and local officials with emergency management authority involved in the plan, and ~~((provide))~~ a brief explanation of the chain of command and organizational relationship among such agencies.

(c) Concept of operations - ~~((Each plan shall contain a section which))~~ Provides a general explanation of how the plan is to be implemented and how the plan's general functions are to be performed.

(d) Administration, finance, and logistics - ~~((Each plan shall contain a section which outlines the measures for the administration and))~~ Provides an outline of the utilization of resources in response and recovery actions, including records retention and documentation, and ~~((which))~~ defines how such actions will be financed.

(e) Direction and control - ~~((Each plan shall contain a section which describes))~~ Provides a description of the location (physical or virtual) of emergency ~~((operating))~~ operations and/or coordination centers, and the mechanisms for maintaining continuity of civil government within the political subdivision.

(2) The plan ~~((shall))~~ should also include, either in the plan itself or in an annex or appendix, a functional description of how each of the following operational components will be addressed~~((. It~~

is recommended these components be in annex form in the order listed herein):

- (a) Direction, control, and coordination;
- (b) Continuity of government;
- (c) Emergency resource management (requests, procurement, and tracking);
- (d) ~~((Warning))~~ Alerts and warnings;
- (e) ~~((Emergency))~~ External affairs and/or public information;
- (f) Response and recovery operations ~~((reports));~~
- (g) ~~((Movement (evacuation))~~) Evacuation and shelter-in-place;
- (h) ~~((Shelter))~~ Sheltering and temporary housing;
- (i) Human resources ~~((manpower));~~
- (j) Mass care and ~~((individual))~~ emergency assistance;
- (k) ~~((Medical, health and mortuary))~~ Public health, medical, and mortuary services;
- (l) Communications;
- (m) ~~((Food))~~ Agricultural resources;
- (n) Transportation;
- (o) ~~((Radiological and technological protection))~~ Oil and hazardous materials response (including radiological);
- (p) Public safety, law enforcement, and security;
- (q) ~~((Fire protection))~~ Firefighting;
- (r) ~~((Emergency engineering services))~~ Public works and engineering;
- (s) Search and rescue;
- (t) ~~((Military support~~
- ~~(u) Religious and volunteer agency affairs~~
- ~~(v) Emergency administrative procedures~~
- ~~(w))~~ Nongovernmental organizations, including faith-based and nonprofit agencies;
- (u) Development and maintenance;
- (v) Emergency fiscal procedures ((and records));
- ~~((x))~~ (w) Training and ((education)) exercise;
- ~~((y))~~ (x) Energy and utilities;
- ~~((z) Special subjects (political subdivisions may develop special contingency procedures for specific hazards or events)).~~

(3) It is recommended the annexes be written using the following format:

- (a) Purpose
- (b) Operational concepts
- (c) Responsibilities
  - (i) Local agencies
  - (ii) Volunteer or private agencies or organizations
- (d) Agency functions by time phase
  - (i) Mitigation and preparedness
  - (ii) Response
  - (iii) Recovery
- (e) Appendices
  - (i) Organization chart
  - (ii) Standard operation procedures as necessary
  - (iii) Attachments.

(4) The plan may vary from the annex format, such as using chapters or sections, provided that each of the operational components listed in subsection (2) of this section is addressed. In such case, the plan must include a cross-reference index which specifies exactly where the operational components are located in the plan) (y) Debris management.

~~((5))~~ (3) The plan shall ~~((address))~~ reference or include the following items:

(a) A list of local ordinances or resolutions ~~((establishing))~~ granting authority to establish: The emergency management organization, mutual aid agreements, memoranda of understanding, and other documents important to the adoption or implementation of the plan ~~((shall))~~. These may be referenced in the plan or included in the plan's appendices.

(b) The month and year of the most recent revision shall be identified on each page of the plan and its associated procedures and checklists.

(c) Each page of the plan shall be numbered.

~~((6))~~ (4) The plan shall be promulgated by letter signed by the current executive head and included in or attached to the plan.

~~((7))~~ (5) The plan shall be ~~((reviewed and))~~ updated at least once every ~~((two))~~ five calendar years, and reviewed and amended as needed following exercises and activations.

~~((8))~~ (6) No less than once ~~((each))~~ every five calendar years, the operational capabilities of the emergency management organization and plan shall be tested by an emergency operations exercise or by an actual ~~((local emergency declaration))~~ emergency operations and/or coordination center activation.

~~((9))~~ Revised or updated portions of the plan shall be submitted ~~to the director within ninety calendar days of revision.~~)

AMENDATORY SECTION (Amending WSR 86-15-068, filed 7/22/86)

**WAC 118-30-080 Review periods and procedures for organizations**~~((7))~~ and plans ~~((and program papers))~~. (1) The director or ~~((his))~~ their designee shall review and evaluate plans and other documents submitted by a local emergency management organization ~~((as follows))~~ within the following time periods:

~~((Ordinances/resolutions — thirty work days~~

~~— Program papers — thirty work days~~

~~— Program paper progress and final reports — thirty work days~~

~~— Plans and updates or changes — forty-five work days))~~ (a) Ordinances/resolutions shall be reviewed within 30 working days of submittal to verify that a political subdivision has adopted a resolution creating or identifying an emergency management program as required for the emergency management performance grant, and a resolution adopting the national incident management system.

(b) All other submittals of plans and updates shall be reviewed and appropriate feedback or response shall be provided within 45 working days of submittal.

(2) The director or ~~((his))~~ their designee(s) shall review and evaluate documents for consistency with criteria established in this chapter and ~~((per))~~ by state and federal guidance for local plans, annexes, revisions~~((7))~~, and ordinances or resolutions creating emergency management organizations~~((7 and local program papers))~~.

(3) If the director determines that any document is in nonconformance, ~~((he))~~ they shall notify the local director of the emergency management organization or joint organization submitting the document. The director shall state in writing the reasons for determining that the document does not conform.

(4) The ~~((local))~~ emergency management organization or joint organization and the political subdivision(s) it represents shall have ~~((twenty work))~~ 90 working days following the date of issuance of the director's notice of nonconformance to:

(a) Change the document to meet state criteria and resubmit it to the state for reconsideration ~~((prior to the expiration of the twenty work-day period))~~; or

(b) Schedule a meeting with the director to be held within the ~~((twenty work-day))~~ 90 working day period to resolve differences between the emergency management organization and the director.

(5) If, following such a meeting, the director's determinations regarding the document are still ~~((adverse))~~ averse to the emergency management organization or the political subdivision(s) it represents, the local director of the ~~((local))~~ submitting emergency management organization may file a written appeal with the chairperson of the state emergency management council within ~~((fifteen work))~~ 15 working days ~~((following the expiration of the twenty work-day period following the issuance))~~ of receipt of the director's written notification or expiration of the 90 working day period following the issuance of the director's initial notice of nonconformance. Such an appeal shall state in writing emergency management the organization's reasons for appealing the director's determination and shall have appended to the appeal statement a copy of each of the following:

- The ~~((proposed))~~ document(s) in question.
- The director's initial and any subsequent notice of nonconformance.
- Any other letters, documents, meetings minutes, etc., that may ~~((impinge upon))~~ impact the matter being appealed.

(6) The emergency management council shall have ~~((thirty work))~~ 30 working days from ~~((the))~~ receipt of the local director's appeal to schedule a hearing to and issue notices of the hearing to all parties. The hearing shall be set for as soon as practical for all the parties, but not later than 90 working days after the emergency management council receives the notice of appeal.

(a) In hearing the appeal, the council may consider any information supplied by the director, the emergency management organization, or the political subdivisions it represents, or any other party it wishes to allow to make a presentation. The hearing shall be an administrative law hearing.

(b) Within 10 working days following the conclusion of the hearing, the council ~~((may sustain))~~ shall issue a written decision sustaining the director's determination, ((overturn)) overturning the director's determination, or ((amend)) amending the director's determination. ~~((The council shall issue a written decision statement within ten work days following the adjournment of the hearing.~~

~~((b) In hearing the appeal, the council may consider any information supplied by the director, the organization or the political subdivisions it represents, or any other party it wishes to allow to make a presentation.))~~

(7) The ~~((local agency))~~ emergency management organization shall not be held in nonconformance until the appeal process is complete.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 118-30-070            Program papers.

## WSR 25-03-040

## PROPOSED RULES

## WENATCHEE VALLEY COLLEGE

[Filed January 8, 2025, 12:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-159.

Title of Rule and Other Identifying Information: Amend chapter 132-115W WAC.

Hearing Location(s): On February 26, 2025, at 11:00 a.m. - 12:00 an [p.m.], at Wenatchee Valley College, Van Tassell, 5006, 1300 5th Street, Wenatchee, WA 98801.

Date of Intended Adoption: March 19, 2025.

Submit Written Comments to: Lisa Turner, 1300 5th Street, Wenatchee, WA 98801, email lturner@wvc.edu, beginning February 25, 2025, by March 8, 2025, at 12:00 p.m.

Assistance for Persons with Disabilities: Contact Jenna Floyd, phone 509-682-6854, email jfloyd@wvc.edu, by March 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of chapter 132W-115 WAC, Student code of conduct, to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment, to comply with rules recently adopted by the United States Department of Education.

Reasons Supporting Proposal: Revision of chapter 132W-115 WAC to meet new federal regulations for Title IX of the Education Amendments of 1972. On April 9, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment.

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: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

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

Name of Proponent: Wenatchee Valley College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dr. Diana Garza, 1300 5th Street, 509-682-6805.

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. Under RCW 34.05.328 (5)(b), the proposed rule changes are exempt from the cost-benefit analysis requirement. The updates to the Title IX regulations are mandated by federal law and do not impose significant costs on state agencies or other entities.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Title IX, 20 U.S.C. § 1681 et seq.; failure to comply with Title IX regulations could re-

sult in corrective action by the United States Department of Education.

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.

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

January 8, 2025  
Faimous Harrison  
President

## OTS-6064.1

### NEW SECTION

**WAC 132W-115-300 Authority.** The board, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the chief student services officer or designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

### NEW SECTION

**WAC 132W-115-310 Definitions.** The following definitions shall apply for the purposes of this code of student conduct:

(1) **"Assembly"** means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

(2) **"Board"** means the board of trustees of Wenatchee Valley College.

(3) **"Calendar day"** means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the last day will be the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays are not included in the count.

(4) **"College"** means Wenatchee Valley College and all of its areas, elements, programs and college related activities.

(5) **"College community"** means students, employees, trustees and volunteers.



(6) "**College facilities and college facility**" means and includes any and all real and personal property owned, rented, leased, or operated by the board of Wenatchee Valley College, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.

(7) "**College official**" includes any person employed by the college performing assigned duties.

(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; and

(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) "**Controlled substance**" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(a) "**Liquor**" means the definition of liquor as contained within RCW 66.04.010.

(b) "**Drugs**" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.

(12) "**Day**" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

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

(14) "**Disciplinary appeal**" is the process by which an aggrieved student party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal 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.

(15) "**Faculty member and instructor**" are any employee of Wenatchee Valley College who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(16) "**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 email address and official's office address.

Paper required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(17) "**Group**" means persons who are associated with each other but who have not complied with college requirements for registration or organization.

(18) "**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.

(19) "**President**" means the chief executive officer of the college appointed by the board of trustees and is authorized to delegate any and all responsibilities as set forth in the chapter as may be reasonably necessary.

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

(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) "**RCW**" means Revised Code of Washington which can be accessed at <https://apps.leg.wa.gov/rcw/>.

(23) "**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.

(24) "**Respondent**" is the student who is alleged to have violated the student conduct code.

(25) "**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) Sending the document by both email and by either certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(26) "**Sexual misconduct**" has the meaning ascribed to this term in APPENDIX A - Supplemental Title IX Student Conduct Procedures.

(27) "**Student**" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term, but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

(28) "**Student conduct committee**" refers to a committee that hears appeals related to sanctions imposed on a student, including a suspension or expulsion, due to inappropriate behavioral conduct or actions. The academic regulations committee hears appeals related to academic/instructional issues such as plagiarism, cheating, or other nonbehavioral classroom conduct. The student conduct committee does not typi-

cally review these cases unless a sanction of suspension or expulsion is imposed (i.e., repeat academic dishonesty behavior or other egregious cases).

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

(30) "**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.

(31) "**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.

(32) "**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.

(33) "**Student organization**" means any number of students who have met the college's formal requirements of clubs or organizations.

(34) "**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.

(35) "**Visitors**" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(36) "**WAC**" means Washington Administrative Code which can be accessed at <https://apps.leg.wa.gov/wac/>.

#### NEW SECTION

**WAC 132W-115-315 Jurisdiction.** (1) The code of student conduct shall apply to student conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored 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 notification of acceptance at the college 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.

(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 132W-115-320 Students abroad.** Students who participate in any college-sponsored or sanctioned international program shall observe the following:

(1) The laws of the host country;

(2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is placed;

(3) Any other agreements related to the student's program in another country; and

(4) Wenatchee Valley College's code of student conduct.

#### NEW SECTION

**WAC 132W-115-325 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 services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this procedure.

(d) Any student undergoing a conduct hearing process is entitled to receive a written summary of the results and findings of the hearing.

NEW SECTION

**WAC 132W-115-330 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, 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 using or any attempt to use, 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, or artificial intelligence, in completing an academic assignment. Plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(e) The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic sanctions, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic regulations committee procedures, the course syllabus, and any applicable program handbook.

(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.

(c) Any activity which inhibits or interferes with the orderly operation of the college or the ability of students and/or college personnel to perform their functions in an orderly environment or assisting or encouraging another person to engage in such conduct.

(4) **Assault, intimidation, harassment.** Unwanted touching, 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. See college policy 500.450 violence in the workplace.

(5) **Bullying is severe or pervasive physical or verbal (written or oral) abuse.** 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.

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

(7) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedes-

trian 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.

(8) **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; honorably discharged 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.

(9) **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.

(10) **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, visitors, or organization;

(d) Possession of such property or money after it has been stolen; or

(e) Property, which includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(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 duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **Weapons.** The possession, carrying or discharge of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon capable of producing bodily harm is prohibited on the college campus and during college programming and activities, (including, but not limited to, shot guns, pistols, air guns, pellet guns, and paint-ball guns), whether loaded or unloaded, is prohibited on Wenatchee Valley College owned or controlled property, unless otherwise authorized in this provision and subject to the following exceptions (see college 000.270 weapons on campus policy and 1000.270 weapons on campus procedure):

A simulated firearm, or weapon may be authorized and permitted for educational purposes in connection with Wenatchee Valley College related research, teaching or theatrical production, (e.g., stage play

or film production, or rehearsals). Any person seeking to bring a firearm or other weapon onto campus for purposes directly related to a class or other educational activity must obtain prior written authorization from the president or designee. The president or designee shall review any such request and may establish conditions to the authorization. Any permission shall be in writing and subject to such terms or conditions incorporated into the written permission. Any person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Wenatchee Valley College.

(13) **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.

(14) **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. Hazing includes, but is not limited to, any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student or other person attending Wenatchee Valley College. Consent is no defense to hazing. The term does not include customary athletic events or other similar contests or competitions. Hazing is also a misdemeanor, punishable under state law.

(15) **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 or procedures.

(b) **Cannabis.** The use, possession, delivery, sale, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of cannabis, feder-



al law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human 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.** 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. The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products. See college policy 000.240 tobacco free campus policy.

(16) **Lewd conduct.** Conduct which is lewd, obscene, or indecent.

(17) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community and/or visitors because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See college policy 000.330 discrimination and discriminatory harassment.

(18) **Sexual misconduct.** The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See APPENDIX A - Supplemental Title IX Student Conduct Procedures.

(a) **Sexual harassment.** The term sexual harassment means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational 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.

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

(i) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any

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

(ii) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any 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.** Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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

(B) Suffer substantial emotional distress.

(d) For 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.

(19) **Protected status** includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." See also college's discrimination and discriminatory harassment policy 000.330 and sexual harassment/Title IX policy 000.340.

(20) **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.

Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal 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, code of student conduct provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying or ostracism.

(21) **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, 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, or 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.

(22) **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.

(23) **Theft or 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 technology acceptable use policy (700.150 acceptable use, authorized user policy).

(24) **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.

(25) **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 college community and/or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(26) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college traffic and parking rules.

(27) **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. These ethics codes must be distributed to students as part of an educational program, course or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.

In addition to initiating discipline proceedings for violation of the code of student conduct, 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.

#### NEW SECTION

**WAC 132W-115-335 Corrective action, disciplinary sanctions, terms and conditions.** (1) The following disciplinary sanctions may be

imposed upon students found to have violated the code of student conduct. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of 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 the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from all college campuses 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 in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(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.

(c) **Not in good standing.** A student may be deemed not in good standing with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **Restitution or monetary fine.** 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, monetary fine or other compensation.

(e) **Hold on transcript or registration.** This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(f) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(g) **Withholding degree.** The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this section, including the completion of all sanctions imposed.

(h) **No trespass order.** A student may be restricted from college property and/or college-sponsored activities based on the violation.

(i) **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.

(j) **No contact directive.** An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

#### NEW SECTION

**WAC 132W-115-340 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 132W-115-345 Hearing procedures—Initiation of disciplinary action.** (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(2) The student conduct officer, or designee, shall initiate disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the code of student conduct the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

**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.

(3) The student conduct officer, prior to taking disciplinary action in a case involving sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within 10 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 the decision, the specific code of student conduct provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s) as described in WAC 132W-115-335; or



(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, 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) The complainant and respondent will have three business days to notify the Title IX coordinator, in writing, of any objection to the continuation, modification, or termination of any supportive measures. Any objection will be reviewed within three business days by a

neutral impartial employee, who will review the investigation report, student conduct officer's recommendation, confer with the Title IX coordinator or their designee, complainant and respondent, as appropriate, and determine whether to continue, modify, or terminate the supportive measures.

(j) If the respondent is found responsible for engaging in sex discrimination, it is determined that a violation of the student conduct code occurred, 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 132W-115-350 Appeal—Appeal from disciplinary action. (1)**

Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132W-115-345(6), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review 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 conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the code of student conduct 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 10 days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of 10 days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this section, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

#### NEW SECTION

**WAC 132W-115-355 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 involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the respondent and the student conduct officer within 10 calendar days of the completion of the informal hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights. See APPENDIX A - Supplemental Title IX Student Conduct Procedures.

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 days, or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

**WAC 132W-115-360 Brief adjudicative proceedings—Review of 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 involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken 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 reason 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 days, 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.

NEW SECTION

**WAC 132W-115-365 Student conduct committee.** (1) The student conduct committee shall consist of five members appointed by the president or designee:

- (a) Two full-time students appointed by ASWVC/ASWVCO;
- (b) One full-time classified staff member;
- (c) One faculty member; and
- (d) One administrator (other than an administrator serving as a student conduct officer or conduct review officer).

(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.

(3) Hearings may be heard by a hearing panel consisting of a quorum of three members of the committee, so long as one member is the chair. Committee action may be taken upon a majority vote of all committee members presiding over 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.

(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 relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person 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 132W-115-370 Student conduct committee—Appeal.** (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.

(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 days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of the imposition of discipline, or referral to the committee; and

(b) The notice of appeal, or any response to referral, by the respondent. If doing so; however, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, wheth-

er 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 the party's choice. A respondent, or complainant in a case involving allegations of sexual misconduct, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132W-115-375 Student conduct committee hearings—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 he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of 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.

(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 132W-115-380 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to

propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 30 calendar days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code of student conduct were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial 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 condition(s), if any, as authorized in the code of student conduct. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) and/or condition(s) imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president, subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132W-115-385 Student conduct committee—Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within 10 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 written notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. 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. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal.



(3) The president shall provide a written decision to the respondent and the student conduct officer within 30 calendar days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or 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) Per RCW 34.05.455, the president shall not engage in any improper ex parte communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132W-115-390 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 procedure is 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 student conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; 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 code of student conduct 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 college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass shall be included that warns the respondent that his or her privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college premises other than for a scheduled meeting 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.

#### NEW SECTION

**WAC 132W-115-395 Classroom misconduct and authority to suspend for no more than one day.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

NEW SECTION**WAC 132W-115-400 Brief adjudicative proceedings—College record.**

The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review consistent with RCW 34.05.476. These records shall be maintained as the official record of the proceedings.

**APPENDIX A—SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES**NEW SECTION

**WAC 132W-115-410 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106. To the extent these supplemental hearing procedures conflict with the Wenatchee Valley College's standard disciplinary procedures, WAC 132W-115-335 and 132W-115-345, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

**WAC 132W-115-415 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140 (13) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

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

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any

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

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

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

#### NEW SECTION

**WAC 132W-115-420 TITLE IX jurisdiction.** (1) This supplemental procedure applies 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 as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an educational program or activity is defined as locations, events, or circumstances over which the college exercised substantial control over both the re-

spondent 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.

(4) 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 code of student conduct.

(5) 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.

#### NEW SECTION

**WAC 132W-115-425 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 parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) The 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.

#### NEW SECTION

**WAC 132W-115-430 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 1400.110 code of student conduct procedure, WAC 132W-115-345. In no event will the

hearing date be set less than 10 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.

#### NEW SECTION

**WAC 132W-115-435 Rights of parties.** (1) The college's code of student conduct procedure and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132W-115-440 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. Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(2) **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.

(3) **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.

(4) **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.

#### NEW SECTION

**WAC 132W-115-445 Initial order.** (1) In addition to complying with WAC 132W-115-355, 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.

#### NEW SECTION

**WAC 132W-115-450 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 132W-115-385 from student conduct committee initial decision.

(2) The president or designee 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) The president's office shall serve the final decision on the parties simultaneously.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132W-115-010	Purpose of the disciplinary system.
WAC 132W-115-020	Jurisdiction and authority for student discipline.
WAC 132W-115-030	Violations of law and college regulations.
WAC 132W-115-040	Student participation.
WAC 132W-115-050	Demand for identification.
WAC 132W-115-060	Free movement on campus.
WAC 132W-115-070	Standards of classroom behavior.
WAC 132W-115-080	Code of conduct.
WAC 132W-115-090	Civil disturbances.
WAC 132W-115-100	Disciplinary process.
WAC 132W-115-110	Procedures for resolving disciplinary violations.
WAC 132W-115-120	The academic regulations committee (ARC) and serious disciplinary violations.
WAC 132W-115-130	Procedural guidelines for hearings involving serious disciplinary violations.
WAC 132W-115-140	Disciplinary terms.
WAC 132W-115-150	Loss of eligibility in college activities and athletics.
WAC 132W-115-160	Student groups and organizations.
WAC 132W-115-170	Appeals.
WAC 132W-115-180	Transcript notations.
WAC 132W-115-190	Refunds and access.
WAC 132W-115-200	Readmission after suspension or dismissal.
WAC 132W-115-210	Reestablishment of academic standing.
WAC 132W-115-220	Reporting, recording and maintaining records.



**WSR 25-03-044**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed January 8, 2025, 4:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-138.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-400-0030 Who is eligible for refugee cash assistance?, 388-424-0001 Citizenship and immigration status—Definitions, 388-424-0006 Citizenship and alien status—Date of entry, 388-424-0007 Citizenship and alien status—Armed services or veteran status, 388-424-0015 Immigration eligibility restrictions for the SFA, ABD cash, and PWA programs, 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits?, 388-424-0030 How does my immigration status impact my eligibility for state-funded benefits under the food assistance program?, 388-436-0002 If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities?, 388-466-0005 Immigration status requirements for refugee cash assistance, 388-466-0120 Refugee cash assistance (RCA), and 388-466-0150 Refugee employment and training services.

Hearing Location(s): On March 11, 2025, at 10:00 a.m., virtually via Teams or call in. See the DSHS website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than March 12, 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 January 22, 2025, at noon, by March 11, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, 711 relay service, email [Tenczsa@dshs.wa.gov](mailto:Tenczsa@dshs.wa.gov), by February 25, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments update definitions related to federal benefits for certain immigration statuses, and clarify eligibility information for various cash and food benefit programs, refugee employment, and training services. The amendments also make changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Related emergency rules for WAC 388-424-0001, 388-424-0006, 388-424-0020, and 388-466-0005 are currently in place under WSR 24-24-031.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.770, 74.04.805, 74.04.820, 74.08.090, 74.08A.100, 74.08A.120, 74.09.035, 74.09.530, 74.62.030.

Rule is necessary because of federal law, P.L. 118-42, the Consolidated Appropriations Act of 2024, Division G, Title II, Section 209(f); 8 U.S.C. §§ 1612, 1613 (b) (3) and 1641 (b) (8); H.R. 815, Division B pg. 11 - Ukrainian; and final rule for classification for victims of severe forms of trafficking in persons.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rocio Loera, P.O. Box 45470, Olympia, WA 98504-5470, 360-480-5477.

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: P.L. 118-42, the Consolidated Appropriations Act of 2024, Division G, Title II, Section 209(f); 8 U.S.C. §§ 1612, 1613 (b)(3) and 1641 (b)(8). Consequence would be out of compliance with federal statute.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules 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; 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).

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.

January 6, 2025  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-04 issue of the Register.

**WSR 25-03-051**  
**PROPOSED RULES**  
**WASHINGTON STATE**  
**SCHOOL FOR THE BLIND**  
[Filed January 10, 2025, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-115.

Title of Rule and Other Identifying Information: Practice and procedure; brief adjudicative procedure, WAC 72-108-100.

Hearing Location(s): On February 26, 2025, at 1:00 p.m., at the Administration Building, Board Room, 2214 E. 13th Street, Vancouver, WA 98661; or Zoom <https://wssb.zoom.us/j/89945201133>.

Date of Intended Adoption: February 26, 2025.

Submit Written Comments to: Janet Kurz, 2214 E. 13th Street, Vancouver, WA 98661, email [Janet.Kurz@wssb.wa.gov](mailto:Janet.Kurz@wssb.wa.gov), fax 360-737-2120, 360-947-3302, beginning January 22, 2025, at 8:00 a.m., by February 25, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Janet Kurz, phone 360-947-3302, fax 360-737-2120, email [Janet.Kurz@wssb.wa.gov](mailto:Janet.Kurz@wssb.wa.gov), by February 25, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state school for the blind (agency) is updating the rules regarding practice and procedure, chapter 72-108 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) and 72.40.022(15).

Statute Being Implemented: RCW 72.40.022(15).

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

Name of Proponent: Washington state school for the blind, 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: Jennifer Langley, 2214 E. 13th Street, Vancouver, WA 98661, 360-947-3353; and Enforcement: Sean McCormick, 2214 E. 13th Street, Vancouver, WA 98661, 360-947-3308.

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 state school for the blind, and therefore do not effect business or commerce in any way.

Scope of exemption for rule proposal:  
Is fully exempt.

January 10, 2025  
Scott McCallum  
Superintendent

### OTS-6053.1

AMENDATORY SECTION (Amending WSR 90-16-004, filed 7/19/90, effective 8/19/90)

**WAC 72-108-100 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 to)), unless provided otherwise by another rule or determined otherwise in a particular case by the superintendent, in regard to:

(1) Student conduct ~~((~~or~~))~~ disciplinary proceedings ~~((pursuant to WAC 72-120-225))~~ 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 72-280-030;  
and

(3) Residency determinations made pursuant to WAC 72-130-040.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

**WSR 25-03-052**  
**PROPOSED RULES**  
**WASHINGTON STATE**  
**SCHOOL FOR THE BLIND**  
[Filed January 10, 2025, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-117.

Title of Rule and Other Identifying Information: Student conduct code, chapter 72-120 WAC.

Hearing Location(s): On February 26, 2025, at 1:00 p.m., at the Administration Building, Board Room, 2214 E. 13th Street, Vancouver, WA 98661; or Zoom <https://wssb.zoom.us/j/89945201133>.

Date of Intended Adoption: February 26, 2025.

Submit Written Comments to: Janet Kurz, 2214 E. 13th Street, Vancouver, WA 98661, email [Janet.Kurz@wssb.wa.gov](mailto:Janet.Kurz@wssb.wa.gov), fax 360-737-2120, 360-947-3302, beginning January 22, 2025, at 8:00 a.m., by February 25, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Janet Kurz, phone 360-947-3302, fax 360-737-2120, email [Janet.Kurz@wssb.wa.gov](mailto:Janet.Kurz@wssb.wa.gov), by February 25, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the Washington state school for the blind's (agency) student conduct code, chapter 72-120 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 Amendments of 1972 (Title IX) 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 agency's community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: The agency must review its student conduct code, chapter 72-120 WAC, to meet new federal regulations for 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 agency's community and procedural rights of students are adequately protected.

Statutory Authority for Adoption: RCW 34.05.010(16) and 72.40.022(15); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: RCW 72.40.022(15) and 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: Washington state school for the blind, governmental.

Name of Agency Personnel Responsible for Drafting: Shelley Williams, Assistant Attorney General, 1220 Main Street, Suite 510, Van-

couver, WA 98660, 360-619-4412; Implementation: Jennifer Langley, 2214 E. 13th Street, Vancouver, WA 98661, 360-947-3353; and Enforcement: Sean McCormick, 2214 E. 13th Street, Vancouver, WA 98661, 360-947-3308.

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 19.85.061 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 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 agency'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.

January 10, 2025  
Scott McCallum  
Superintendent

## OTS-6054.2

AMENDATORY SECTION (Amending WSR 16-13-069, filed 6/13/16, effective 7/14/16)

**WAC 72-120-001 Purpose ((and application)).** ((The purpose of this chapter is to establish standards of conduct for students and prescribe the substantive and procedural due process rights of students at the school. 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 district 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 72-120-002 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.

#### NEW SECTION

**WAC 72-120-005 Definitions.** For the purposes of this student conduct code, the following definitions apply:

- (1) "Assistant principal" means the associate director of on-campus education, associate director of transition and residential, or designees.
- (2) "Behavioral violation" means a student's behavior that violates the school's student conduct code or discipline policies.
- (3) "Classroom exclusion" means the exclusion of a student from a classroom or 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 72-120-330 through 72-120-335.

(4) "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.

(5) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

(6) "Discretionary discipline" means a disciplinary action taken by the school for student behavior that violates rules of student conduct adopted by the school 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.

(7) "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.

(8) "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 72-120-510 through 72-120-530.

(9) "Expulsion" means a denial of admission to the Washington state school for the blind in response to a behavioral violation, subject to the requirements in WAC 72-120-430 through 72-120-475.

(10) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school.

(11) "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.

(12) "Parent" has the same meaning as in WAC 392-172A-01125.

(13) "Principal" means the school's director of on-campus education or designee.

(14) "School" means the Washington state school for the blind.

(15) "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.

(16) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

(17) "Superintendent" means the superintendent of the Washington state school for the blind or designee.

(18) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any 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 72-120-430 through 72-120-470.



(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 72-120-430 through 72-120-470.

(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 72-120-430 through 72-120-470.

AMENDATORY SECTION (Amending WSR 24-16-108, filed 8/5/24, effective 9/5/24)

**WAC 72-120-110** (~~(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 - including classroom exclusion, suspension, and expulsion - 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, 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.

(2) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, 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 they are underage, unable to understand what is happening, or (~~is~~) are disoriented, helpless, asleep or unconscious for any reason, including due to drug or alcohol consumption, (~~is~~) are disabled, or cannot consent because of threat or intimidation.

(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) **Tobacco.** Smoking or use of tobacco, tobacco products, electronic smoking devices, 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, (~~slung~~) sling shots, 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, 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) **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 16-13-069, filed 6/13/16, effective 7/14/16)

**WAC 72-120-205 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.

NEW SECTION

**WAC 72-120-211 Staff authority to impose discipline.** (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 superintendent has general authority to administer discipline, including all exclusionary discipline.

(3) The superintendent designates disciplinary authority to impose:

(a) In-school suspension and short-term suspension to the assistant principals and principal;

(b) Long-term suspension to the assistant principals and principal;

(c) Expulsion to the assistant principals and principal; and

(d) Emergency removal to the assistant principals and principal.

(4) The superintendent authorizes the assistant principals and principal to administer discretionary or nondiscretionary discipline that excludes a student from transportation services or extracurricular activities or impose 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 afterschool 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 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 72-120-215.

#### NEW SECTION

**WAC 72-120-215 Grievance procedures.** (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 72-120-330 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 stu-

dents, 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 72-120-335 Classroom exclusion—Notice and procedure.** Following a classroom exclusion under WAC 72-120-330:

(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 an assistant principal; and

(b) An assistant principal must meet with the student as soon as reasonably possible and administer appropriate discipline.

### SUSPENSIONS AND EXPULSIONS

#### NEW SECTION

**WAC 72-120-430 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 72-120-435 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 72-120-440 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 72-120-445 Expulsions—Additional conditions and limitations.** WAC 392-400-445, the rule for expulsions - additional conditions and limitations, is incorporated by reference.

NEW SECTION

**WAC 72-120-450 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 72-120-455 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 72-120-460 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 72-120-465 Suspensions and expulsions—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school's principal 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 72-400-455.

(3) **Short-term and in-school suspensions.**

(a) **Appeal.** The principal 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 principal 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 72-120-610; and
- (iv) Notice of the student's and parents' right to request review and reconsideration of the initial decision under WAC 72-120-470, 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 principal 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 records under (f) of this subsection;
- (iv) 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 (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 72-120-710 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 72-120-710. 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 principal 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 have been 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 72-108 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 parents 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 provide 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 72-120 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 72-120-470, including where and to whom to make the request; and

(v) Notice of the opportunity to participate in a reengagement meeting under WAC 72-120-710 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 student

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 an 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 72-120-450 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 assignments and tests missed during the suspension or expulsion upon the student's return.

#### NEW SECTION

**WAC 72-120-470 Suspensions and expulsions—Review and reconsideration.** (1) **Requesting review.** For the purposes of this section, "reviewing officer" means the superintendent who reviews and reconsiders the school's appeal decision under WAC 72-120-465. The student or parents may request the review orally or in writing.

(2) **Time limit.** A request for a review of a 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 72-120-465.

(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, any records from the appeal under WAC 72-120-465, 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 decision of the reviewing officer must be made only if the reviewing officer was not involved in the behavioral violation, the decision to suspend or expel the student, or the appeal decision under WAC 72-120-465.

(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 72-120-710; 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 decisions 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 72-120-475 Petition to extend expulsion.** (1) **Petition.** When risk to public health or safety warrants extending a student's expulsion, an assistant principal may petition the school's principal for authorization to exceed the academic term limitation on an expulsion. The petition must inform the principal 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.** An assistant principal may petition to extend an expulsion only after the development of a reengagement plan under WAC 72-120-710 and before the end of the expulsion. For violations of WAC 72-120-820, an assistant 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 principal 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 principal 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 principal 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 principal must deliver a written decision to the petitioning assistant 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 a reviewing officer review and reconsider the decision to extend the student's expulsion. The student or parents may request the review orally or in writing. For the purposes of this section, the reviewing officer is the superintendent.

(b) **Time limit.** A request for a review should be submitted within 21 calendar days from the date the school provides the written decision under subsection (4) of this section.

**(c) Review procedure.**

(i) The reviewing officer may request to meet with the student or parents or the principal to hear further arguments and gather additional information.

(ii) The reviewing officer may not have been involved in the behavioral violation, the decision to expel the student, or the appeal decision under WAC 72-120-465.

(d) **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:

(i) Whether the reviewing officer 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 reviewing officer 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 language assistance for student 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 superintendent of public instruction.

**EMERGENCY REMOVAL**NEW SECTION**WAC 72-120-510 Emergency removal—Conditions and limitations.**

WAC 392-400-510, the rule for emergency removal - conditions and limitations, is incorporated by reference.

NEW SECTION**WAC 72-120-515 Emergency removal—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 72-120-520 Emergency removal—Optional conference with principal.** WAC 392-400-520, the rule for emergency removals - optional conference with principal, is incorporated by reference.

NEW SECTION

**WAC 72-120-525 Emergency removal—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal an emergency removal to the principal 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 principal 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 principal received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s)**. The superintendent designates the principal to decide appeals under this section. The principal 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 72-120-430 through 72-120-470; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 72-120-530, 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 72-120-530 Emergency removal—Review and reconsideration.**

(1) **Requesting review.** The student or parents may request that the superintendent review and reconsider the school's appeal decision under WAC 72-120-525. 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 72-120-525.

(3) **Review procedure.**

(a) In reviewing the school's decision, the superintendent must consider all documentary and physical evidence related to the events that led to the emergency removal, any records from the appeal under WAC 72-120-525, relevant state law, and the school's discipline policy and procedures.

(b) The superintendent may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather information.

(c) The superintendent 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 72-120-525.

(4) **Decision.** The superintendent 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 superintendent 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 72-120-430 through 72-120-470; 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 72-120-610 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 72-120-710 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 72-120-810 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 72-120-815 Behavior agreements.** (1) **Authorization.** The school authorizes the assistant principals or principal 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 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 72-120-710, or receive educational services as provided under WAC 72-120-610.

(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 72-120-820 Firearm exceptions.** WAC 392-400-820, the rule for firearm exceptions, is incorporated by reference.

#### NEW SECTION

**WAC 72-120-825 Corporal punishment, restraint, and isolation.** WAC 392-400-825, the rule for corporal punishment, restraint, and isolation, is incorporated by reference.

### **SUPPLEMENTAL STUDENT CONDUCT PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX**

NEW SECTION

**WAC 72-120-900 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 state school for the blind's standard disciplinary procedures, WAC 72-120-001 through 72-120-825, or any provisions set forth in student handbooks, and other school or school policies and procedures, these supplemental procedures will take precedence.

NEW SECTION

**WAC 72-120-905 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 state school for the blind 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 72-120-910 Definitions.** For the purposes of this supplemental procedure, the following definitions apply:

(1) "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 school's education program or activity at the time of the alleged discrimination under Title IX or its regulations.

(2) "Complaint" means a written or oral request that can be objectively understood as a request for the school to investigate and make a determination about alleged sex discrimination.

(3) "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.

(4) "Decision maker" means the school's principal or designee.

(5) "Disciplinary sanctions" means consequences imposed on a respondent following a determination that the respondent violated the school's policy prohibiting sex discrimination or the school's conduct code.

(6) "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 questions 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.

(7) "Investigation procedure" is the process the school uses to initiate, informally resolve, and/or investigate allegations that a student has violated school policies prohibiting sex discrimination or sex-based harassment.

(8) "Party" means a complainant or respondent.

(9) "Peer retaliation" means retaliation by a student against another student.

(10) "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.

(11) "Principal" means the school's director of on-campus education or designee.

(12) "Program" or "programs and activities" means all operations of the school.

(13) "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.

(14) "Remedies" means appropriate measures provided after the school determines that sex discrimination occurred to restore or preserve a complainant or any other person's equal access to the school's education program or activity.

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

(16) "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.

(17) "School" means the Washington state school for the blind.

(18) "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.

(19) "Sex-based harassment." For purposes of this supplemental procedure, sex-based harassment is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. An employee, agent, or other person authorized by the school to provide an aid, benefit, or service under the school'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 school'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.

(20) "Superintendent" means the superintendent of the Washington state school for the blind or designee.

(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 school's education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment; or

(b) Provide support during the school'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 school policy.

#### NEW SECTION

**WAC 72-120-915 Jurisdiction.** This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 72-120-910 and occurs:

- (1) On school premises;
- (2) At or in connection with school programs or activities; or
- (3) Off school premises, if in the judgment of the school, the conduct has an adverse impact on the school's community, the pursuit of its objectives, or the ability of a student or school personnel to participate in the school's education programs and activities.

#### NEW SECTION

**WAC 72-120-920 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 72-120-925 Emergency removal for alleged sex-based harassment under Title IX.** The school may remove a respondent on an emergency basis consistent with WAC 72-120-510 through 72-120-530 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 72-120-930 Initiation of discipline.** (1) The school's Title IX coordinator 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 72-120-925, 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 72-120-935 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 72-120-940 Determination.** (1) Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the decision maker:

(a) May question parties and witnesses to adequately assess a party's or witness's credibility 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;
  - (ii) During the interview, the decision maker may ask questions that do not seek irrelevant or impermissible evidence;
  - (b) 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;
  - (c) 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;
  - (d) 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;
  - (e) Will comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
  - (f) 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.
- (2) 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 school identifies as having had equal access to the school'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 school's education program or activity.

#### NEW SECTION

- WAC 72-120-945 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 basis:

(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 72-120-950 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 72-120-940 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 72-120-201 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 meas-

ures 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 72-120-955 Appeals—Dismissal.** (1) Any party may appeal a dismissal under WAC 72-120-945 by submitting a notice of appeal to the superintendent 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 provided 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 filing notice of appeal.

#### NEW SECTION

**WAC 72-120-960 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 superintendent 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 superintendent 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 superintendent 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 72-120-965 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 72-120-465, 72-120-470, or 72-120-475, 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 72-120-970 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 superintendent, may 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 section of the Washington Administrative Code is repealed:

WAC 72-120-315 Emergency actions.

## WSR 25-03-065

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed January 14, 2025, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-032.

Title of Rule and Other Identifying Information: WAC 182-550-1050 Hospital services definitions, 182-550-1800 Hospital specialty services not requiring prior authorization, 182-550-6400 Outpatient hospital diabetes education, and new 182-564-0100 Outpatient diabetes education.

Hearing Location(s): On February 25, 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 at [https://us02web.zoom.us/webinar/register/WN\\_ByO8L-A2RPSmmeE8wF2TecQ](https://us02web.zoom.us/webinar/register/WN_ByO8L-A2RPSmmeE8wF2TecQ).

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 February 26, 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 January 15, 2025, 8:00 a.m., by February 25, 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 February 7, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending existing rules related to diabetes education. HCA is proposing to move the current diabetes education rule out of chapter 182-550 WAC and into a new chapter 182-564 WAC because the diabetes education program is not restricted to outpatient hospitals. HCA is updating curriculum requirements to align them with Washington state department of health requirements for this program. HCA is also removing outdated billing requirements.

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: Korrina Dalke, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-2005.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules expand the locations that can provide medicaid-funded diabetes education. The proposed rules do not impose compliance costs on businesses.

Scope of exemption for rule proposal:  
Is fully exempt.

January 14, 2025  
Wendy Barcus  
Rules Coordinator

## RDS-6116.1

AMENDATORY SECTION (Amending WSR 21-15-128, filed 7/21/21, effective 8/21/21)

**WAC 182-550-1050 Hospital services definitions.** The following definitions and abbreviations, those found in chapter 182-500 WAC, Medical definitions, and definitions and abbreviations found in other sections of this chapter apply to this chapter. When a term is not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the medical definitions found in *Taber's Cyclopedic Medical Dictionary* apply.

**"Accommodation costs"** - The expenses incurred by a hospital to provide its patients services for which a separate charge is not customarily made. These expenses include, but are not limited to, room and board, medical social services, psychiatric social services, and the use of certain hospital equipment and facilities.

**"Accredited"** or **"accreditation"** - A term used by nationally recognized health organizations, such as the commission on accreditation of rehabilitation facilities (CARF), to indicate a facility meets both professional and community standards of medical care.

**"Acute"** - A medical condition of severe intensity with sudden onset. For the purposes of the acute physical medicine and rehabilitation (Acute PM&R) program, acute means an intense medical episode, not longer than three months.

**"Acute care"** - Care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional to maintain their health status.

**"Acute physical medicine and rehabilitation (acute PM&R)"** - A comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at an agency-approved rehabilitation facility. The program provides (~~(twenty-four)~~) 24-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement. Acute PM&R is a (~~(twenty-four)~~) 24 hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation.

**"Administrative day"** or **"administrative days"** - One or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate.

**"Administrative day rate"** - The agency's statewide medicaid average daily nursing facility rate.

**"Aggregate cost"** - The total cost or the sum of all constituent costs.

**"Aggregate operating cost"** - The total cost or the sum of all operating costs.

**"All-patient DRG grouper (AP-DRG)"** - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions between August 1, 2007, and June 30, 2014.

**"All-patient refined DRG grouper (APR-DRG)"** - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions on and after July 1, 2014.

**"Allowable"** - The calculated amount for payment, after exclusion of any "nonallowed service or charge," based on the applicable payment method before final adjustments, deductions, and add-ons.

**"Allowed amount"** - The initial calculated amount for any procedure or service, after exclusion of any "nonallowed service or charge," that the agency allows as the basis for payment computation before final adjustments, deductions, and add-ons.

**"Allowed charges"** - The total billed charges for allowable services.

**"Allowed covered charges"** - The total billed charges for services minus the billed charges for noncovered services, denied services, or both.

**"Ambulatory payment classification (APC)"** - A grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

**"Ambulatory surgery"** - A surgical procedure that is not expected to require an inpatient hospital admission.

**"Ancillary services"** - Additional or supporting services provided by a hospital to a client during the client's hospital stay. These services include, but are not limited to: Laboratory, radiology, drugs, delivery room, operating room, postoperative recovery rooms, and other special items and services.

**"Appropriate level of care"** - The level of care required to best manage a client's illness or injury based on:

- (1) The severity of illness and the intensity of services required to treat the illness or injury; or
- (2) A condition-specific episode of care.

**"Audit"** - An assessment, evaluation, examination, or investigation of a health care provider's accounts, books, and records, including:

- (1) Health, financial, and billing records pertaining to billed services paid by the agency through Washington apple health, by a person not employed or affiliated with the provider, to verify the service was provided as billed and was allowable under program regulations; and

- (2) Financial, statistical, and health records, including mathematical computations and special studies conducted supporting the medicare cost report (Form 2552-96 and 2552-10 or successor form), submitted to the agency to establish program rates for payment to hospital providers.

**"Authorization"** - See **"prior authorization"** and **"expedited prior authorization (EPA)."**

**"Bad debt"** - An operating expense or loss incurred by a hospital because of uncollectible accounts receivables.

**"Bedside nursing services"** - Services included under the room and board services paid to the facility and provided by nursing service

personnel. These services include, but are not limited to: Medication administration, IV hydration and IV medication administration, vaccine administration, dressing applications, therapies, glucometry testing and other point of care testing, catheterizations, tube feedings and irrigations, and equipment monitoring services.

**"Billed charge"** - The charge submitted to the agency by the provider.

**"Bordering city hospital"** - A hospital located in one of the cities listed in WAC 182-501-0175.

**"Budget neutral"** - A condition in which a claims model produces aggregate payments to hospitals that are the same under two separate payment systems. See also **"budget neutrality factor."**

**"Budget neutrality factor"** - A multiplier used by the agency to ensure that modifications to the payment method and rates are budget neutral. See also **"budget neutral."**

**"Budget target"** - Funds appropriated by the legislature or through the agency's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

**"Budget target adjuster"** - A multiplier applied to the outpatient prospective payment system (OPPS) payment to ensure aggregate payments do not exceed the established budget target.

**"Bundled services"** - Interventions integral to or related to the major procedure. The agency does not pay separately for these services.

**"Case mix"** - A relative value assigned to a DRG or classification of patients in a medical care environment representing the resource intensity demands placed on an institution.

**"Case mix index (CMI)"** - The average relative weight of all cases treated in a hospital during a defined period.

**"Centers for Medicare and Medicaid Services (CMS)"** - See WAC 182-500-0020.

**"Charity care"** - See chapter 70.170 RCW.

**"Children's health insurance program (CHIP)"** - The federal Title XXI program under which medical care is provided to uninsured children younger than age ((nineteen)) 19. Part of Washington apple health.

**"Children's hospital"** - A hospital primarily serving children.

**"Client"** - A person who receives or is eligible to receive services through agency programs.

**"CMS PPS input price index"** - A measure, expressed as a percentage, of the annual inflationary costs for hospital services.

**"Commission on accreditation of rehabilitation facilities (CARF)"** - See <http://www.carf.org/home/>.

~~(("CMS PPS input price index" - A measure, expressed as a percentage, of the annual inflationary costs for hospital services.))~~

**"Comprehensive hospital abstract reporting system (CHARS)"** - The department of health's (DOH's) inpatient hospital data collection, tracking, and reporting system.

**"Condition-specific episode of care"** - Care provided to a client based on the client's primary condition, complications, comorbidities, standard treatments, and response to treatments.

**"Contract hospital"** - A hospital contracted by the agency to provide specific services.

**"Conversion factor"** - A hospital-specific dollar amount that is used in calculating inpatient payments.

**"Core provider agreement (CPA)"** - The basic contract the agency holds with providers serving Washington apple health clients.



**"Cost report"** - See **"medicare cost report."**

**"Costs"** - Agency-approved operating, medical education, and capital-related costs (capital costs) as reported and identified on the "cost report."

**"Covered charges"** - Billed charges submitted to the agency on a claim by the provider, less the noncovered charges indicated on the claim.

**"Covered services"** - See **"hospital covered service"** and WAC 182-501-0050.

**"Critical border hospital"** - An acute care hospital located in a bordering city (see WAC 182-501-0175 for list) that the agency has, through analysis of admissions and hospital days, designated as critical to provide health care for Washington apple health clients.

**"Current procedural terminology (CPT)"** - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians. CPT is copyrighted and published annually by the American Medical Association (AMA).

**"Deductible"** - The dollar amount a client is responsible for before an insurer, such as medicare, starts paying or the initial specific dollar amount for which the client is responsible.

**"Department of social and health services (DSHS)"** - The Washington state agency that provides food assistance, financial aid, medical and behavioral health care, and other services to eligible children, families, and vulnerable adults and seniors of Washington state.

~~(**"Diabetes education program"** - A comprehensive, multidisciplinary program of instruction offered by a DOH-approved diabetes education provider to diabetic clients for managing diabetes. This includes instruction on nutrition, foot care, medication and insulin administration, skin care, glucose monitoring, and recognition of signs/symptoms of diabetes with appropriate treatment of problems or complications.)~~

**"Diagnosis code"** - A set of numeric or alphanumeric characters assigned by the current published ICD-CM coding guidelines used by the agency as a shorthand symbol to represent the nature of a disease or condition.

**"Diagnosis-related group (DRG)"** - A classification system that categorizes hospital patients into clinically coherent and homogenous groups with respect to resource use. Classification of patients is based on the current published ICD-CM coding guidelines used by the agency, the presence of a surgical procedure, patient age, presence or absence of significant comorbidities or complications, and other relevant criteria.

**"Direct medical education costs"** - The direct costs of providing an approved medical residency program as recognized by medicare.

**"Discharging hospital"** - The institution releasing a client from the acute care hospital setting.

**"Discount factor"** - The percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

**"Disproportionate share hospital (DSH) payment"** - A supplemental payment made by the agency to a hospital that qualifies for one or more of the disproportionate share hospital programs identified in the state plan. See WAC 182-550-4900.

**"Disproportionate share hospital (DSH) program"** - A program through which the agency makes payment adjustments to eligible hospi-

tals that serve a disproportionate number of low-income clients in accordance with legislative direction and established payment methods. See 1902 (a) (13) (A) (iv) of the Social Security Act. See also WAC 182-550-4900 through 182-550-5400.

**"Dispute conference"** - See **"hospital dispute conference."**

**"Distinct unit"** - A distinct area for psychiatric, rehabilitation, or withdrawal management services which has been certified by medicare within an acute care hospital or approved by the agency within a children's hospital.

**"Division of behavioral health and recovery services (DBHR)"** -

The division within HCA that administers mental health, problem gambling, and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96A RCW.

**"DRG"** - See **"diagnosis-related group."**

**"DRG allowed amount"** - The DRG relative weight multiplied by the conversion factor.

**"DRG average length-of-stay"** - The agency's average length-of-stay for a DRG classification established during an agency DRG rebasing and recalibration project.

**"DRG-exempt services"** - Services paid through methods other than DRG, such as per diem rate, per case rate, or ratio of costs-to-charges (RCC).

**"DRG payment"** - The total payment made by the agency for a client's inpatient hospital stay. The DRG payment is the DRG allowed amount plus the high outlier minus any third-party liability, client participation, medicare payment, and any other adjustments applied by the agency.

**"DRG relative weight"** - A factor used in the calculation of DRG payments. As of July 1, 2014, the medicaid agency uses the 3M™ Corporation's national weights developed for the all-patient refined-diagnosis-related group (APR-DRG) software.

~~(**"Enhanced ambulatory patient groupings (EAPG)"** - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services on and after July 1, 2014. This system uses 3M's EAPGs as the primary basis for payment.)~~

**"Emergency medical condition"** - See WAC 182-500-0030.

**"Emergency room" or "emergency facility" or "emergency department"** - A distinct hospital-based facility which provides unscheduled services to clients who require immediate medical attention. An emergency department must be capable of providing emergency medical, surgical, and trauma care services ((~~twenty-four~~) 24 hours a day, seven days a week. A physically separate extension of an existing hospital emergency department may be considered a freestanding emergency department as long as the extension provides comprehensive emergency medical, surgical, and trauma care services ((~~twenty-four~~) 24 hours a day, seven days a week.

**"Emergency services"** - Health care services required by and provided to a client after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the client's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. Inpatient maternity services are considered emergency services by the agency.

**"Enhanced ambulatory patient groupings (EAPG)"** - The payment system used by the agency to calculate reimbursement to hospitals for the

facility component of outpatient services on and after July 1, 2014. This system uses 3M's EAPGs as the primary basis for payment.

**"Equivalency factor (EF)"** - A factor that may be used by the agency in conjunction with other factors to determine the level of a state-administered program payment. See WAC 182-550-4800.

**"Exempt hospital - DRG payment method"** - A hospital that for a certain client category is reimbursed for services to Washington apple health clients through methodologies other than those using DRG conversion factors.

**"Expedited prior authorization (EPA)"** - See WAC 182-500-0030.

**"Experimental service"** - A procedure, course of treatment, drug, or piece of medical equipment, which lacks scientific evidence of safety and effectiveness. See WAC 182-531-0050. A service is not "experimental" if the service:

- (1) Is generally accepted by the medical profession as effective and appropriate; and
- (2) Has been approved by the federal Food and Drug Administration (FDA) or other requisite government body if approval is required.

**"Fee-for-service"** - See WAC 182-500-0035.

**"Fiscal intermediary"** - Medicare's designated fiscal intermediary for a region or category of service, or both.

**"Fixed per diem rate"** - A daily amount used to determine payment for specific services provided in long-term acute care (LTAC) hospitals.

**"Formal release"** - When a client:

- (1) Discharges from a hospital or distinct unit;
- (2) Dies in a hospital or distinct unit;
- (3) Transfers from a hospital or distinct unit as an acute care transfer; or
- (4) Transfers from the hospital or distinct unit to a designated psychiatric unit or facility, or a designated acute rehabilitation unit or facility.

**"Global surgery days"** - The number of preoperative and follow-up days that are included in the payment to the physician for the major surgical procedure.

**"Graduate medical education costs"** - The direct and indirect costs of providing medical education in teaching hospitals. See "direct medical education costs" and "indirect medical education costs."

**"Grouper"** - See "**all-patient DRG grouper (AP-DRG)**" and "**all-patient refined DRG grouper (APR-DRG)**."

**"Health care authority (medicaid agency)"** - The Washington state agency that administers Washington apple health.

**"High outlier"** - A DRG claim classified by the agency as being allowed a high outlier payment that is paid under the DRG payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the agency. See WAC 182-550-3700.

**"Hospice"** - A medically directed, interdisciplinary program of palliative services for terminally ill clients and the clients' families. Hospice is provided under arrangement with a Washington state-licensed and Title XVIII-certified Washington state hospice.

**"Hospital"** - An entity that is licensed as an acute care hospital in accordance with applicable state laws and regulations, or the applicable state laws and regulations of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit, a

"psychiatric hospital" as defined in this section, or any other distinct unit of the hospital.

**"Hospital cost report"** - See **"cost report."**

**"Hospital covered service"** - Any service, treatment, equipment, procedure, or supply provided by a hospital, covered under a Washington apple health program, and within the scope of an eligible client's Washington apple health program.

~~(**"Hospital cost report"** - See **"cost report."**)~~

**"Hospital readmission"** - A situation in which a client who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital.

**"Indirect medical education costs"** - The indirect costs of providing an approved medical residency program as recognized by medicare.

**"Inflation adjustment"** - For cost inflation, this is the hospital inflation adjustment. This adjustment is determined by using the inflation factor method approved by the legislature. For charge inflation, this is the inflation factor determined by comparing average discharge charges for the industry from one year to the next, as found in the comprehensive hospital abstract reporting system (CHARS) Hospital Census and Charges by Payer report.

**"Inpatient hospital admission"** - A formal admission to a hospital based on an evaluation of the client using objective clinical indicators to provide medically necessary, acute inpatient care. These indicators include assessment, monitoring, and therapeutic services as required to best manage the client's illness or injury. All applicable indicators must be documented in the client's health record. The decision to admit a client to inpatient status should be based on the condition-specific episode of care, severity of illness presented, and the intensity of services rendered. The agency does not deem inpatient hospital admissions as covered or noncovered solely on the basis of the length of time the client actually spends in the hospital. Generally, a client remains overnight and occupies a bed. Inpatient status can apply even if the client is discharged or transferred to another acute hospital and does not actually use a hospital bed overnight. For the agency to recognize a stay as inpatient there must be a physician admission order in the client's medical record indicating the status as inpatient.

**"Inpatient medicaid DRG conversion factor"** - A dollar amount that represents selected hospitals' average costs of treating medicaid and CHIP clients. The conversion factor is a rate that is multiplied by a DRG relative weight to pay medicaid and CHIP claims under the DRG payment method. See WAC 182-550-3800 for how this conversion factor is calculated.

**"Inpatient services"** - Health care services provided to a client during hospitalization whose condition warrants formal admission and treatment in a hospital.

**"Inpatient state-administered program conversion factor"** - A DRG conversion factor reduced from the inpatient medicaid DRG conversion factor to pay a hospital for inpatient services provided to a client eligible under a state-administered program. The conversion factor is multiplied by a DRG relative weight to pay claims under the DRG payment method.

**"Intermediary"** - See **"fiscal intermediary."**

**"International Classification of Diseases (ICD-9-CM and ICD-10-CM)"** - The systematic listing of diseases, injuries, conditions, and procedures as numerical or alpha numerical designations (coding).

**"Length of stay (LOS)"** - The number of days of inpatient hospitalization, calculated by adding the total number of days from the admission date to the discharge date, and subtracting one day.

**"Long-term acute care (LTAC) services"** - Inpatient intensive long-term care services provided in agency-approved LTAC hospitals to eligible Washington apple health clients who meet criteria for level 1 or level 2 services. See WAC 182-550-2565 through 182-550-2596.

**"LTAC level 1 services"** - LTAC services provided to a client who requires eight or more hours of direct skilled nursing care per day and the client's medical needs cannot be met at a lower level of care due to clinical complexity. Level 1 services include one of the following:

- (1) Ventilator weaning care; or
- (2) Care for a client who has:
  - (a) Chronic open wounds that require on-site wound care specialty services and daily assessments and/or interventions; and
  - (b) At least one comorbid condition (such as chronic renal failure requiring hemodialysis).

**"LTAC level 2 services"** - LTAC services provided to a client who requires four or more hours of direct skilled nursing care per day, and the clients' medical needs cannot be met at a lower level of care due to clinical complexity. Level 2 services include at least one of the following:

- (1) Ventilator care for a client who is ventilator-dependent and is not weanable and has complex medical needs; or
- (2) Care for a client who:
  - (a) Has a tracheostomy;
  - (b) Requires frequent respiratory therapy services for complex airway management and has the potential for decannulation; and
  - (c) Has at least one comorbid condition (such as quadriplegia).

**"Major diagnostic category (MDC)"** - One of the mutually exclusive groupings of principal diagnosis areas in the AP-DRG and APR-DRG classification systems.

**"Medical care services (MCS)"** - See WAC 182-500-0070.

**"Medical education costs"** - The expenses incurred by a hospital to operate and maintain a formally organized graduate medical education program.

**"Medical visit"** - Diagnostic, therapeutic, or consultative services provided to a client by a health care professional in an outpatient setting.

**"Medicare cost report"** - The medicare cost report (Form 2552-96 or Form 2552-10), or successor document, completed and submitted annually by a hospital provider.

**"Medicare crossover"** - A claim involving a client who is eligible for both medicare benefits and medicaid.

**"Medicare physician fee schedule (MPFS)"** - The official CMS publication of relative value units and medicare payment policy indicators for the resource-based relative value scale (RBRVS) payment program.

**"Medicare Part A"** - See WAC 182-500-0070.

**"Medicare Part B"** - See WAC 182-500-0070.

**"Medicare payment principles"** - The rules published in the federal register regarding payment for services provided to medicare clients.

**"Military hospital"** - A hospital reserved for the use of military personnel, their dependents, and other authorized users.

**"Modifier"** - A two-digit alphabetic and/or numeric identifier added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

**"National Correct Coding Initiative (NCCI)"** - A national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the *American Medical Associations' Current Procedural Terminology (CPT®)* manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

**"National Drug Code (NDC)"** - The ~~((eleven))~~ 11-digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The ~~((eleven))~~ 11-digit NDC is composed of a five-four-two grouping. The first five digits comprise the labeler code assigned to the manufacturer by the FDA. The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

**"National payment rate (NPR)"** - A rate for a given procedure code, published by CMS, that does not include a state- or location-specific adjustment.

**"National Provider Identifier (NPI)"** - A standard, unique identifier for health care providers assigned by CMS. The agency's Provider-One system pays for inpatient and outpatient services using only one NPI per provider. The agency may make an exception for inpatient claims billed with medicare-certified, distinct unit NPIs.

**"Nationwide rate"** - See **"national payment rate (NPR)."**

**"NCCI edit"** - A software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency fee schedules, billing instructions, and other publications. The agency has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards, or agency policy.

**"Newborn"** or **"neonate"** or **"neonatal"** - A person younger than ~~((twenty-nine))~~ 29 days old.

**"Nonallowed service or charge"** - A service or charge billed by the provider as noncovered or denied by the agency. This service or charge cannot be billed to the client except under the conditions identified in WAC 182-502-0160.

**"Noncovered charges"** - Billed charges a provider submits to the agency on a claim and indicates them on the claim as noncovered.

**"Noncovered service or charge"** - A service or charge the agency does not consider or pay for as a "hospital covered service." This service or charge may not be billed to the client, except under the conditions identified in WAC 182-502-0160.

**"Nursing service personnel"** - A group of health care professionals that includes, but is not limited to: Registered nurse (RN), licensed practical nurse (LPN), certified nursing assistant/nursing assistant certified (CNA/NAC).

**"Observation services"** - A well-defined set of clinically appropriate services furnished while determining whether a client will require formal inpatient admission or be discharged from the hospital. Services include ongoing short-term treatment, monitoring, assessment, and reassessment. Rarely do reasonable and necessary observation services exceed (~~forty-eight~~) 48 hours. The agency or the agency's designee may determine through the retrospective utilization review process that an inpatient hospital service should have been billed as an observation service.

**"Operating costs"** - All expenses incurred providing accommodation and ancillary services, excluding capital and medical education costs.

**"Orthotic device"** or **"orthotic"** - A corrective or supportive device that:

- (1) Prevents or corrects physical deformity or malfunction; or
- (2) Supports a weak or deformed portion of the body.

**"Outliers"** - Cases with extraordinarily high costs when compared to other cases in the same DRG.

**"Out-of-state hospital"** - Any hospital located outside the state of Washington and the bordering cities designated in WAC 182-501-0175. For Washington apple health clients requiring psychiatric services, an "out-of-state hospital" is any hospital located outside the state of Washington.

~~(**"Outliers"** - Cases with extraordinarily high costs when compared to other cases in the same DRG.)~~

**"Outpatient"** - A client who is receiving health care services, other than inpatient services, in a hospital setting.

**"Outpatient care"** - See **"outpatient hospital services."**

**"Outpatient enhanced ambulatory payment grouper (EAPG)"** - A software program the agency uses for classifying and editing in enhanced ambulatory payment grouping-based OPSS.

**"Outpatient hospital"** - A hospital authorized by DOH to provide outpatient services.

**"Outpatient hospital services"** - Those health care services that are within a hospital's licensure and provided to a client who is designated as an outpatient.

**"Outpatient observation"** - See **"observation services."**

**"Outpatient prospective payment system (OPPS)"** - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services.

**"Outpatient prospective payment system (OPPS) conversion factor"** - See **"outpatient prospective payment system (OPPS) rate."**

**"Outpatient prospective payment system (OPPS) rate"** - A hospital-specific multiplier assigned by the agency that is one of the components of the APC payment calculation.

**"Outpatient surgery"** - A surgical procedure that is not expected to require an inpatient hospital admission.

**"Pass-throughs"** - Certain drugs, devices, and biologicals, as identified by CMS, for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own APC.

**"Per diem"** - A method which uses a daily rate to calculate payment for services provided as a "hospital covered service."

**"PM&R"** - See **"Acute PM&R."**

**"Point of care testing (POCT)"** - A test designed to be used at or near the site where the patient is located, that does not require permanent dedicated space, and that is performed outside the physical facilities of the clinical laboratory.

**"Primary care case management (PCCM)"** - The coordination of health care services under the agency's Indian health center or tribal clinic managed care program. See WAC 182-538-068.

**"Principal diagnosis"** - The condition chiefly responsible for the admission of the patient to the hospital.

**"Prior authorization"** - See WAC 182-500-0085.

**"Private room rate"** - The rate customarily charged by a hospital for a one-bed room.

**"Prospective payment system (PPS)"** - A payment system in which what is needed to calculate payments (methods, types of variables, and other factors) is set in advance and is knowable by all parties before care is provided. In a retrospective payment system, what is needed (actual costs or charges) is not available until after care is provided.

**"Prosthetic device"** or **"prosthetic"** - A replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner, within the scope of his or her practice as defined by state law, to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

**"Psychiatric hospital"** - A medicare-certified distinct psychiatric unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital. Eastern state hospital and western state hospital are excluded from this definition.

**"Public hospital district"** - A hospital district established under chapter 70.44 RCW.

**"Ratable"** - A factor used to calculate inpatient payments for state-administered programs.

**"Ratio of costs-to-charges (RCC)"** - A method used to pay hospitals for some services exempt from the DRG payment method. It also refers to the percentage applied to a hospital's allowed covered charges for medically necessary services to determine estimated costs, as determined by the agency, and payment to the hospital for some DRG-exempt services.

**"Rebasing"** - The process used by the agency to update hospital payment policies, related variables (rates, factors, thresholds, multipliers, and caps), and system processes (edits, adjudication, grouping, etc.).

**"Recalibration"** - The process of recalculating DRG relative weights using historical data.

**"Rehabilitation units"** - Specifically identified rehabilitation hospitals and designated rehabilitation units of hospitals that meet agency and medicare criteria for distinct rehabilitation units.

**"Relative weights"** - See **"DRG relative weights."**

**"Reserve days"** - The days beyond the ninetieth day of hospitalization of a medicare patient for a benefit period or incidence of illness. See also **"lifetime hospitalization reserve."**

**"Revenue code"** - A nationally assigned coding system for billing inpatient and outpatient hospital services, home health services, and hospice services.

**"Room and board"** - Routine supplies and services provided to a client during the client's hospital stay. This includes, but is not limited to, a regular or special care hospital room and related furnishings, room supplies, dietary and bedside nursing services, and the use of certain hospital equipment and facilities.



**"Rural health clinic"** - See WAC 182-549-1100.

**"Rural hospital"** - An acute care health care facility capable of providing or assuring availability of inpatient and outpatient hospital health services in a rural area.

**"Semi-private room rate"** - A rate customarily charged for a hospital room with two to four beds; this charge is generally lower than a private room rate and higher than a ward room. See also **"multiple occupancy rate."**

**"Significant procedure"** - A procedure, therapy, or service provided to a client that constitutes one of the primary reasons for the visit to the health care professional, and represents a substantial portion of the resources associated with the visit.

**"Specialty hospitals"** - Children's hospitals, psychiatric hospitals, cancer research centers or other hospitals which specialize in treating a particular group of patients or diseases.

**"Spendedown"** - See chapter 182-519 WAC.

**"State plan"** - The plan filed by the agency with CMS, Department of Health and Human Services (DHHS), outlining how the state will administer medicaid and CHIP services, including the hospital program.

**"Status indicator (SI)"** - A code assigned to each medical procedure or service by the agency that contributes to the selection of a payment method.

**"Subacute care"** - Care provided to a client which is less intensive than that given at an acute care hospital. Skilled nursing, nursing care facilities and other facilities provide subacute care services.

**"Substance use disorder (SUD)"** - See RCW 71.05.020.

**"Survey"** - An inspection or review conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with program requirements.

**"Swing bed"** - An inpatient hospital bed certified by CMS for either acute inpatient hospital or skilled nursing services.

**"Swing-bed day"** - A day in which a client is receiving skilled nursing services in a hospital-designated swing bed at the hospital's census hour.

**"Total patient days"** - All patient days in a hospital for a given reporting period, excluding days for skilled nursing, nursing care, and observation days.

**"Transfer"** - To move a client from one acute care setting to a higher level acute care setting for emergency care or to a post-acute, lower level care setting for ongoing care.

**"Transferring hospital"** - The hospital or distinct unit that transfers a client to another acute care or subacute facility or distinct unit, or to a nonhospital setting.

**"UB-04"** - The uniform billing document required for use nationally by hospitals, nursing facilities, hospital-based skilled nursing facilities, home health agencies, and hospice agencies in billing for services provided to patients. This document includes the current national uniform billing data element specifications developed by the National Uniform Billing Committee and approved and modified by the Washington state payer group or the agency.

**"Vendor rate increase"** - An adjustment determined by the legislature, that may be used to periodically increase rates for payment to vendors, including health care providers, that do business with the state.

**"Washington apple health program"** - Any health care program administered through the medicaid agency.

AMENDATORY SECTION (Amending WSR 13-07-029, filed 3/13/13, effective 4/13/13)

**WAC 182-550-1800 Hospital specialty services not requiring prior authorization.** The medicaid agency pays for certain specialty services without requiring prior authorization when such services are provided consistent with agency medical necessity and utilization review standards. These services include, but are not limited to, the following:

- (1) All transplant procedures specified in WAC 182-550-1900(2) under the conditions established in WAC 182-550-1900;
- (2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC 182-550-2400;
- (3) Polysomnograms and multiple sleep latency tests, as described under WAC 182-531-1500; and
- (4) ~~((Diabetes education (allowed only in outpatient hospital setting), as described under WAC 182-550-6400; and~~
- ~~(5))~~ Weight loss program (allowed only in outpatient hospital setting), as described under WAC 182-550-6450.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-6400 Outpatient hospital diabetes education.

**RDS-6118.1**

**Chapter 182-564 WAC  
DIABETES EDUCATION**

NEW SECTION

**WAC 182-564-0100 Outpatient diabetes education.** (1) The medicaid agency pays for outpatient diabetes education for an eligible client when:

- (a) The department of health (DOH) has approved the billing facility to provide diabetes education services; and
  - (b) The client is referred by a licensed health care provider.
- (2) The agency requires the diabetes education teaching curriculum to have measurable, behaviorally stated educational objectives. The diabetes education teaching curriculum must include all the following core modules:
- (a) An overview of diabetes management and prevention of complications;
  - (b) Healthy coping, including identification of participants' challenges and barriers related to living with diabetes and utilization

tion of problem solving and motivational skills to increase success in managing diabetes;

(c) Healthy eating, including individualized meal planning;

(d) Being active, including a structured approach to physical activity;

(e) Reducing risk of acute complications, such as hypoglycemia and hyperglycemia, and sick day management;

(f) Prevention of other chronic complications, such as retinopathy, nephropathy, neuropathy, cardiovascular disease, and foot and skin problems;

(g) Monitoring, including immediate and long-term diabetes control through monitoring of glucose, ketones, and glycosylated hemoglobin, and the use of continuous glucose monitoring when applicable;

(h) Medication administration, including oral and/or injected diabetes medication and use of insulin pumps; and

(i) Problem solving skills to set up specific, measurable, achievable, relevant, and time-bound (SMART) goals and support diabetes self-care behaviors.

**WSR 25-03-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Division of Child Support)  
[Filed January 14, 2025, 2:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-063.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is amending 22 sections in chapter 388-14A WAC related to the Uniform Parentage Act (UPA) to implement ESSB 6037 (chapter 6, Laws of 2018), and SSB 5333 (chapter 46, Laws of 2019), as codified in chapters 26.26A and 26.26B RCW. They are: WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1030 What kinds of services can the division of child support provide?, 388-14A-1040 What must a request for locate services contain?, 388-14A-1050 The division of child support cooperates with tribes and other states and countries for support enforcement purposes, 388-14A-1060 The division of child support cooperates with courts and law enforcement, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services?, 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, 388-14A-2065 Does the division of child support provide support enforcement services if the CSO decides I have "good cause level A" or "good cause level B"?, 388-14A-2070 Does the division of child support provide support enforcement services if the CSO decides I have "good cause level B"?, 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS?, 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order?, 388-14A-3102 When the parents have signed a paternity acknowledgment, which support establishment notice does the division of child support serve on the noncustodial parent?, 388-14A-3105 How does the division of child support serve support establishment notices?, 388-14A-3110 When can a support establishment notice become a final order?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not at issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3125 DCS may establish a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services, 388-14A-3127 How does DCS ask to add a monthly financial obligation to an existing administrative order for medical support only?, 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?, 388-14A-7610 The division of child support complies with federal requirements regarding intergovernmental cases, and 388-14A-7820 What is the division of child support (DCS) required to do when DCS acts as the responding jurisdiction in an intergovernmental case?

Hearing Location(s): On March 25, 2025, at 10:00 a.m., virtually via 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 sooner than March 26, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on January 22, 2025, by 5:00 p.m. on March 25, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on March 11, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of child support (DCS) proposes to amend 22 sections in chapter 388-14A WAC as we complete implementation of two bills related to the 2017 version of the UPA and make other technical corrections.

In the 2018 session, the Washington state legislature passed ESSB 6037 (chapter 6, Laws of 2018), making Washington the first state to adopt the 2017 version of the UPA. The UPA recognizes a broader range of parentage by implementing acknowledgment of parentage, assertion of parentage, protections for gender-divergent parenting, rules for surrogate arrangements, legal processes for creating family structures, and protections for children. The bill, which took effect on January 1, 2019: (1) Created chapter 26.26A RCW; (2) repealed most of chapter 26.26 RCW; and (3) moved the nonrepealed sections of chapter 26.26 RCW to new chapter 26.26B RCW.

In the 2019 session, the Washington state legislature passed SSB 5333 (chapter 46, Laws of 2019), making many technical corrections and adding provisions to the UPA addressing records, notification, and consequences of sexual assault. SSB 5333 also amended RCW 74.20A.056, rendering the notice and finding of parental responsibility (NFPR) obsolete.

The UPA recognizes a broader range of parentage by implementing acknowledgment of parentage, assertion of parentage, protections for gender-diverse parenting, rules for surrogate arrangements, legal processes for creating family structures, and protections for children. Adopting the UPA is a continuation of state and federal trends towards broadening the definition of "family" and recognizing the variety in "parent-child" relationships.

In this rule-making action:

1. We add or amend definitions in WAC 388-14A-1020 to align with chapter 26.26A RCW.

- Birth mother - added.
- Birth record - added.
- Parentage or parent-child relationship - added.
- Paternity - added.
- Presumed parent - amended.
- Reasonable efforts to locate - amended.

2. We amend other definitions in WAC 388-14A-1020 based on the office of the code reviser's drafting guidelines, plain talk, and inclusive language principles.

3. We make the following changes throughout the WAC sections noted above:

- We substitute the term parentage for paternity wherever appropriate, in line with chapters 26.26A and 26.26B RCW. In some sections, we retain the term paternity for historical context. This

includes replacing paternity with parentage in the titles of some of the sections.

- We add references to the acknowledgment of parentage form currently used by the department of health.
- We update citations to specific sections in the UPA as currently codified in chapters 26.26A and 26.26B RCW. Unless required for historical context, references to sections in chapter 26.26 RCW are obsolete and have been stricken.
- We make other technical edits in line with the office of the code reviser's drafting guidelines.

4. In WAC 388-14A-2000, we state that a man may request child support services to establish parentage alleging they are the child's biological or genetic parent.

5. We seek to amend WAC 388-14A-2065 in consideration of RCW 26.26A.465, to clarify how DCS provides child support services if the community services division (CSD) grants good cause level A to a custodial parent. In particular, we add provisions around what happens if someone asks that a case previously closed for good cause level A be reopened. We also address what happens if the person whose actions are the basis for the good cause finding becomes the custodian of the child and either goes on temporary assistance for needy families or submits a nonassistance application for services. We also seek to amend the title of this section to reflect the name of the division issuing the good cause decision as CSD.

6. We propose to add a subsection to WAC 388-14A-2070 addressing the actions taken by the prosecutor or attorney general's office when CSD advises good cause level B has been granted in a case, for consistency with WAC 388-14A-2065. We will also amend the title of this section to reflect CSD as the name of the division that issues good cause decisions.

7. In WAC 388-14A-3100, 388-14A-3102, 388-14A-3105, 388-14A-3110, 388-14A-3115, 388-14A-3120, 388-14A-3125, and 388-14A-3127, DCS removes references to the notice and finding of parental responsibility (NFPR) or makes those references historical. This includes the titles of some of the sections. Historically, an NFPR was used to set child support when the father's duty of support was based upon an affidavit of paternity that was not a conclusive presumption of paternity. The NFPR differs from a notice and finding of financial responsibility (NFFR) because the parties could timely request genetic testing contesting paternity. Since January 1, 2019, DCS has not served the NFPR due to amendments to RCW 74.20A.056. DCS does, however, still enforce debt accrued under an NFPR. A person who was served an NFPR before the form became obsolete may still request a late hearing on the monetary amounts stated in the notice, but DCS would no longer facilitate genetic testing in the matter. All children for whom it was possible to serve an NFPR have long since reached majority.

8. In WAC 388-14A-3100, we strike subsection (4) because DCS no longer serves the NFPR or the notice and finding of medical responsibility. We also revise other subsections regarding legal instruments creating a presumption of paternity including a paternity affidavit, paternity acknowledgment, or acknowledgment of parentage. These legal instruments form the basis for service of a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115 or a "Medical support only" NFFR under WAC 388-14A-3125 if the case is open only to enforce medical support.

9. In WAC 388-14A-3102, we describe how the acknowledgment or affidavit has become a conclusive presumption of paternity or parentage under RCW 26.26A.220 even if one or both of the parents were under 18 years old when signing it. We clarify that DCS gives full faith and credit under RCW 26.26A.250 to an acknowledgment or affidavit of parentage or paternity filed with the vital records agency of another state and serve[s] an NFFR. Finally, we propose to add the term parentage to the title of the section.

10. In WAC 388-14A-3110, we strike subsections (9)(b) and (d) as obsolete. The office of administrative hearings issues a final order as a result of a support establishment hearing, rather than an initial decision. Initial decisions can be appealed to the DSHS board of appeals, but final orders cannot.

11. In WAC 388-14A-3115, we describe the process of establishing child support when parentage is not at issue. We add a subsection about recognizing other jurisdictions' instruments that conclusively establish parentage, unless rescinded or successfully changed in that jurisdiction.

Reasons Supporting Proposal: This rule making ensures chapter 388-14A WAC aligns with the UPA and other changes that resulted from ESSB 6037 and SSB 5333. It is in DSHS's best interest to provide correct and current information.

Statutory Authority for Adoption: RCW 26.23.050, 26.23.110, 43.20A.550, 74.04.055, 74.04.057, 74.08.090, 74.20.040, 74.20A.055, 74.20A.056, and 74.20A.310.

Statute Being Implemented: RCW 26.09.105, 26.18.170, 26.21A.230, 26.23.050, 26.26A.005 through 26.26A.903, 26.26B.010 through 26.26B.130, 74.20.330, 74.20A.055, 74.20A.056, and 74.20A.030.

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

Name of Proponent: DSHS, economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Monica Turnbaugh, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5339.

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. Although this rule meets the definition of a significant legislative rule under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because DSHS rules concerning liability for care of dependents are exempt under RCW 34.05.328 (5)(b)(vii).

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).

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

Explanation of exemptions: This proposal does not affect small businesses. This rule is exempt under RCW 34.05.328 (5)(b)(vii), Rules of the department of social and health services ... concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

January 9, 2025  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-05 issue of the Register.



## WSR 25-03-074

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed January 14, 2025, 2:42 p.m.]

Supplemental Notice to WSR 24-20-079.

Expedited Rule Making—Proposed notice [Emergency rule making] was filed as WSR 24-24-062.

[Preproposal statement of inquiry was filed as WSR 21-04-028].

Title of Rule and Other Identifying Information: Bellevue College (BC) Policy 6120 and chapter 132H-142 WAC, Use of college property for expressive activities.

Hearing Location(s): On February 26, 2025, at 9:00 - 10:00 a.m. PST. Zoom meeting <https://bellevuecollege.zoom.us/j/83554569283>, Meeting ID 835 5456 9283.

Date of Intended Adoption: April 23, 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), 425-564-6155, beginning January 8, 2025, by February 24, 2025.

Assistance for Persons with Disabilities: Contact BC disabilities resource center, TTY 425-564-6189, email [drc@bellevuecollege.edu](mailto:drc@bellevuecollege.edu), by February 24, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Supplemental edits:** BC plans to update the current first amendment activities rules with the intention to remove and/or update outdated information. Included are clarifications of limited public spaces and noncollege groups.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: BC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Loreen McRea Keller, 3000 Landerholm Circle S.E., Bellevue, WA 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. BC is a community college/state agency.

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.

January 14, 2025  
Loreen M. Keller  
Associate Director  
Policy and Government Relations

OTS-5491.4

**Chapter 132H-142 WAC**  
**((FIRST AMENDMENT ACTIVITIES FOR COMMUNITY COLLEGE DISTRICT VIII)) USE**  
**OF COLLEGE PROPERTY FOR EXPRESSIVE ACTIVITY**

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

**WAC 132H-142-010 Title.** WAC 132H-142-010 through 132H-142-060 shall be known as use of ((Community College District VIII facilities by college groups and noncollege groups for first amendment activities)) college property for expressive activity.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

**WAC 132H-142-015 Definitions.** ((For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Bellevue Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

College facilities include all buildings, structures, grounds, office space and parking lots.

The college is a limited public forum for noncollege groups. The limited public forum does not include college buildings or athletic fields.)) (1) "College groups" means individuals or groups who are currently enrolled students or current employees of Bellevue College, or guests of Bellevue College who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(2) "College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled, owned, rented, leased, occupied, or used land, buildings, structures, property, vehicles, equipment, office space, parking lots, and any other property and/or college hosted online platforms utilized by the college for any education programs and activities.

(3) "Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective, or viewpoints.

(4) "Limited public forum" means public and common areas of the campus where college groups may assemble for expressive activity, subject to time, place, and manner regulations. College buildings, rooms,

and athletic fields also may be rented in accordance with the college's ~~((facilities))~~ property use policy.

(5) "Noncollege groups" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue College and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

(6) "Public use areas" means outdoor areas of campus that the college has chosen to open as places where noncollege groups may assemble for expressive activity protected by the first amendment, subject to reasonable time, place, or manner restrictions. College buildings, rooms, and athletic fields also may be rented in accordance with the college's property use policy. While state property constitutes traditional open public space, group restrictions are intended for safety, security, the operation of campus, and educational program and activities.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

**WAC 132H-142-020 Statement of purpose.** Bellevue ~~((Community))~~ College ~~((District VIII))~~ is an ~~((educational))~~ institution of higher education provided and maintained by the people of the state of Washington. The college reserves its property for activities that are related to its broad educational mission. ~~College ((facilities are))~~ property is reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, substantially interferes with, or otherwise disrupts the normal activities ~~((for and))~~ to which the college's ~~((buildings, facilities and grounds are))~~ property is dedicated ~~((and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Bellevue Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein)).~~ Accordingly, the college designates common areas (e.g., building courtyards, building lobbies) of the college as a limited public forum dedicated to the use of college groups, subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college property. It is intended to balance the college's responsibility to fulfill its mission as a state educational institu-

tion of Washington with the interests of college groups seeking to assemble in outdoor common areas of the campus for expressive activity. Bellevue College recognizes that college groups should be accorded the opportunity to utilize the property of the college to the fullest extent possible.

The college designates the following public use area(s) for use by noncollege groups for expressive activities on campus:

- Building C courtyard between building C and D extending east out from the fountain for groups less than 30; and
- South courtyard, just north of Carlson Theater if over 30 participants are expected.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

**WAC 132H-142-030 ((Request for use of facilities.)) Time, place, and manner restrictions.** ((Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") are encouraged to provide notice to the student programs office no later than twenty-four hours prior to the event along with the following information:

- (1) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and
- (2) The name, address and telephone number of a contact person for the sponsoring organization; and
- (3) The date, time and requested location of the event; and
- (4) The nature and purpose of the event; and
- (5) The type of sound amplification devices to be used in connection with the event, if any; and
- (6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet (3' x 5') and no individual may carry more than one sign.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the student programs office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.

~~There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures for the purposes of personal habitation.~~

~~Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designed for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.~~

~~Speech that does no more than propose a commercial transaction shall not occur in connection with the event.~~

~~College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:~~

- ~~• Such activities serve educational purposes of the college; and~~
- ~~• Such activities are under the sponsorship of a college department or office or officially chartered student club.~~

~~The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.~~

~~All fire, safety, sanitation or special regulations specified for the event are to be obeyed.~~

~~The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.~~

~~The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.~~

~~The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.~~

~~The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.~~

~~The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.~~

~~The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Bellevue Community College, local ordinances and/or state or federal laws.)~~

(1) Subject to the regulations and requirements of this policy, groups may use limited public forums and public use areas for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Use of audio amplifying equipment is permitted only in locations and at times that will not disrupt, or disturb, or interfere with the normal conduct of college affairs including, but not limited

to, the use of classrooms, offices, libraries, and laboratories; and previously scheduled college events or activities.

(3) Groups are encouraged to notify the campus public safety department no later than 24 hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

(4) All sites used for expressive activity should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean up or for the repair of damaged property.

(5) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of expressive activity conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or property, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees to the college.

(7) The event must not substantially and materially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

(8) There shall be no camping on college property. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College property may not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college;  
and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

**WAC 132H-142-040 Additional requirements for noncollege groups.**

~~((The limited public forum))~~ Public use areas may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) ~~((where))~~ when it is reasonably anticipated that more than ~~((five hundred))~~ 500 people will attend the college event or activity.

~~((College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.~~

~~The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:~~

- ~~• Building C courtyard area for groups less than thirty; and~~
- ~~• Southern courtyard, just north of Carlson Theater if over thirty participants are expected.)~~ Noncollege groups may use public use areas identified in WAC 132H-142-020 for expressive activity between the hours of 7:00 a.m. and 10:00 p.m.

Noncollege groups that seek to engage in expressive activity on the designated public use area(s) are encouraged to provide notice to the campus public safety office no later than 24 hours prior to the event, along with the following information solely to ensure:

- (1) The area is not otherwise scheduled; and
- (2) To give the college an opportunity to assess any security needs:
  - (a) The name, address, and telephone number of a contact person for the individual, group, entity, or organization sponsoring the event; and
  - (b) The date, time, and requested location of the event; and
  - (c) The nature and purpose of the event; and
  - (d) The estimated number of people expected to participate in the event.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

**WAC 132H-142-050 ((The role of the president in first amendment decisions.)) Distribution of materials.** ~~((The president of the college may authorize first amendment activities which are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.~~

~~The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.)~~ College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. Compliance with relevant procedure(s) around posting of materials on campus is expected.

Noncollege groups may distribute materials only at the site(s) designated for noncollege groups.

All materials shall be dated and posted in accordance with Bellevue College policies and procedures for posting materials on campus.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

**WAC 132H-142-060 ((Criminal)) Trespass.** ~~((Any person determined to be violating these regulations is subject to an order from the col-~~

~~lege public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.) Noncollege groups who violate these rules, or whose conduct jeopardizes the health or safety of others, or whose conduct unreasonably impedes the college in pursuit of its educational mission will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the college president or designee to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave. Such person(s) shall be subject to arrest under the criminal trespass provisions of chapter 9A.52 RCW or Bellevue city code.~~

~~When the college revokes the license or privilege of any person(s) to be on college property, temporarily or for a stated period of time, that person(s) may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the person(s) should not be barred from college property. The college president or designee shall respond in writing within 15 calendar days with a final decision of the college. Absent exceptional circumstances as determined by the college president or designee, person(s) shall continue to be barred from college property while an appeal is pending.~~

~~Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with this chapter or with other applicable rules, regulations, or policies.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-142-025	First amendment activities and protection of the college mission.
WAC 132H-142-070	Posting of a bond and hold harmless statement.
WAC 132H-142-075	Trespass.



**WSR 25-03-080**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed January 15, 2025, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-158.

Title of Rule and Other Identifying Information: WAC 314-55-097 Cannabis waste disposal—Liquids and solids. The liquor and cannabis board (LCB) is proposing rule amendments to WAC 314-55-097 to implement SSB 5376 (chapter 243, Laws of 2024), regarding allowing sale of cannabis waste. These proposed rule amendments would allow licensed cannabis producer licensees and cannabis processor licensees to sell nonhazardous cannabis waste containing a THC concentration of 0.3 percent or less to persons who are not cannabis licensees under certain conditions.

Hearing Location(s): On February 26, 2025, at 10:00 a.m. All public LCB activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance. The public may also log in using a computer or device or call in using a phone to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and LCB participants may continue to appear virtually. For more information about LCB meetings, please visit [https://lcb.wa.gov/Boardmeetings/Board\\_meetings](https://lcb.wa.gov/Boardmeetings/Board_meetings).

Date of Intended Adoption: Not earlier than March 12, 2025.

Submit Written Comments to: Jeff Kildahl, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, beginning January 15, 2025, 12:00 p.m., by February 26, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by February 19, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to make amendments to WAC 314-55-097 to implement SSB 5376 (chapter 243, Laws of 2024), regarding allowing sale of cannabis waste by licensed cannabis producers and processors to persons who are not cannabis licensees. The proposed amendments to the existing rule do the following in WAC 315-55-097:

- Update the title of the section to include cannabis waste sales.
- Define the term "sellable cannabis waste" for the purposes of WAC 314-55-097.
- Designate that "sellable cannabis waste" does not include "hemp" or "industrial hemp," as defined in RCW 15.140.020.
- Reiterate that cannabis plant material that has a THC concentration greater than 0.3 percent is considered cannabis under RCW 69.50.101 and is therefore not eligible for designation as "sellable cannabis waste."
- Require cannabis licensees and certified laboratories to evaluate cannabis waste consistent with both chapters 70A.300 RCW and

173-303 WAC to determine if cannabis waste is designated as dangerous or hazardous as defined in those chapters. If the waste is designated as dangerous or hazardous as defined in chapters 70A.300 RCW or 173-303 WAC, it must be stored, managed, and disposed of consistent with those chapters.

- Designate the required conditions under which a cannabis producer or processor licensee may sell the "sellable cannabis waste" to a person who is not a cannabis licensee, including the following reporting:
  - Presale notice to the Washington state department of agriculture (WSDA) and LCB of "sellable cannabis waste";
  - Reporting the quantity of sellable cannabis waste;
  - Reporting the sale price of the cannabis waste; and
  - The name and contact information of the buyer.
- Designate that the sale of sellable cannabis waste must be conducted in a manner that is open and accessible to all members of the public without discrimination.
- Designate that cannabis waste will not leave the state of Washington as part of the sale or delivery.
- Designate the required conditions under which a cannabis licensee may sell "sellable cannabis waste" to another cannabis licensee, including the following:
  - Both the selling and purchasing licensees must notify LCB of the intended sale;
  - The notice must identify:
    - The quantity of sellable cannabis waste;
    - The sale price; and
    - The intended use of the sellable cannabis waste.
  - Both licensees must maintain accurate records of all sales of sellable cannabis waste;
  - Such records shall be provided to LCB upon request.
- Reorganizes rule language concerning disposal guidelines and record keeping requirements for cannabis licensees.
- States that LCB can conduct inspections and audits to ensure compliance with the rule and provides that there may be penalties for noncompliance.
- Other minor edits for organization and rule clarity.

Reasons Supporting Proposal: Rules on this subject are needed to implement SSB 5376 (chapter 243, Laws of 2024), which passed the legislature on March 4, 2024.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.3255.

Statute Being Implemented: SSB 5376 (chapter 243, Laws of 2024); RCW 69.50.3255.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Kildahl, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, 360-480-7960; Implementation and Enforcement: Paul Magerl, Interim Chief of Enforcement and Education, P.O. Box 43080, Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a significant legislative rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit

analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule amendments do not impose any significant regulatory burden on licensees, nor does it change, modify, add cost, or otherwise alter the disposal requirements for other categories of cannabis waste. The new option for licensed cannabis producers and processors to sell qualifying cannabis waste is voluntary, and sales of cannabis waste are not required by the proposed rules. If the qualifying cannabis waste is not sold as allowed, the waste then must be mixed with other material and disposed of according to existing rules in WAC 314-55-097(4).

Although proposed rule amendments do not disproportionately affect small businesses, for transparency to determine if the proposed rules impose any significant regulatory burden on licensees, LCB applied an ample default cost of compliance estimate of \$200 to consider whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This amount represents the following:

- One hundred dollars for two hours of labor to prereport sales of cannabis waste to WSDA prior to sale.
- One hundred dollars for two hours of labor to prereport sales of cannabis waste to LCB prior to sale.

Below are calculations for minor cost thresholds for the appropriate North American Industry Classification System (NAICS) industry codes. It is extremely unlikely that the cost of compliance would exceed 0.3 percent of average annual gross business income. The estimated minor cost is not anticipated to exceed the threshold levels for cannabis grown under cover or in an open field. Since sales of qualifying cannabis waste is optional for the licensee, these costs are not mandated. For these reasons, the proposed rules are not anticipated to impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Average Annual Payroll	0.3% of Average Annual Gross Business Income
111419	\$200	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$2,387.54	Unavailable	\$2,387.54 2023 Dataset pulled from DOR
111998	\$200	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$2,284.65	Unavailable	\$2,284.65 2023 Dataset pulled from DOR

Department of revenue (DOR) data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Report.aspx>.

January 15, 2025  
Jim Vollendroff

## OTS-5839.4

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

**WAC 314-55-097 Cannabis waste disposal and sales—Liquids and solids.** (1) Solid and liquid wastes generated during cannabis production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

For purposes of this section, "sellable cannabis waste" means solid waste generated during cannabis production or processing that has a THC concentration of 0.3 percent or less and not designated dangerous or hazardous. Sellable cannabis waste does not include "hemp" or "industrial hemp," as defined in RCW 15.140.020. A portion of a cannabis plant that has a THC concentration greater than 0.3 percent is considered cannabis under RCW 69.50.101.

(2) Wastewater generated during cannabis production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) ~~((Wastes from the production and processing of cannabis plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC))~~ Cannabis licensees and certified laboratories must evaluate cannabis waste consistent with chapters 70A.300 RCW and 173-303 WAC to determine if ((those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it is designated as a dangerous waste)) the cannabis waste is designated as dangerous or hazardous as defined in those chapters.

(a) If a ((generator's)) licensee or certified laboratory generates waste ((does designate as a)) that is not designated as dangerous or hazardous waste, then that waste((+s)) is subject to the ((applicable)) cannabis waste management standards ((found in chapter 173-303 WAC)) set forth in this section.

~~((+a))~~ (i) Waste((s)) that must be evaluated ((against the dangerous waste regulations)) to determine if it is dangerous or hazardous includes, but ((are)) is not limited to, the following:

~~((+i))~~ (A) Waste from cannabis flowers, trim and solid plant material used to create an extract (per WAC 314-55-104).

~~((+ii))~~ (B) Waste solvents used in the cannabis process (per WAC 314-55-104).

~~((+iii))~~ (C) Discarded plant waste, spent solvents and laboratory wastes from any cannabis processing or quality assurance testing.

~~((+iv))~~ (D) Cannabis extract that fails to meet quality testing.

~~((b) Cannabis wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.~~

~~(+e))~~ (ii) A cannabis plant, useable cannabis, cannabis plant roots, trim, and other plant material ((in itself)) is not considered dangerous or hazardous waste as defined under chapter 70A.300 RCW or 173-303 WAC unless it has been treated or contaminated with a solvent.

~~((4))~~ (b) Cannabis waste that is designated as dangerous or hazardous as defined in chapter 70A.300 RCW or 173-303 WAC must be stored, managed, and disposed of consistent with chapters 70A.300 RCW and 173-303 WAC.

(4) Cannabis waste that is not designated as dangerous or hazardous waste as defined in chapter 70A.300 RCW or 173-303 WAC and is not sold as provided in this section must be rendered unusable before leaving the licensed premises or certified laboratory.

(a) The process for rendering cannabis waste unusable must involve grinding the waste and mixing it with other ground materials so that the resulting mixture is at least 50 percent noncannabis waste by volume. Other methods to render cannabis waste unusable may be proposed but must receive prior approval from the LCB before implementation. Acceptable materials for mixing with cannabis waste include, but are not limited to, the following:

(i) Compostable mixed waste, such as food waste, yard waste, vegetable greases or oils, or other compostable materials approved by the LCB;

(ii) Noncompostable mixed waste, with materials such as paper waste, plastic waste, cardboard waste, or other noncompostable materials approved by the LCB.

(b) Once rendered unusable, cannabis waste may, subject to approval by the local authority, be disposed of at a permitted solid waste facility, including composting facilities, anaerobic digesters, landfills, or incinerators. Compliance with (b) of this subsection may be accomplished by managing cannabis waste rendered unusable on-site by the licensee or certified laboratory in accordance with the standards of chapter 173-350 WAC.

(c) Licensees must maintain records documenting the final destination and method of all cannabis waste rendered unusable in the required format.

~~(5) Sellable cannabis waste ((that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, or laboratory. Disposal of the cannabis waste rendered unuseable must follow the methods under subsection (6) of this section.~~

~~Wastes that must be rendered unuseable prior to disposal include, but are not limited to, the following)) may be sold by the producer or processor to a person who is not a licensed cannabis business under the following conditions:~~

~~(a) ((Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."~~

~~(b) Cannabis plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.~~

~~(c) Solid cannabis sample plant waste possessed by third-party laboratories accredited by the WSLCB to test for quality assurance that must be disposed of.~~

~~(d) Other wastes as determined by the WSLCB.~~

~~(5) The allowable method to render cannabis plant waste unuseable is by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least 50 percent non-cannabis waste by volume. Other methods to render cannabis waste unuseable must be approved by the WSLCB before implementation.~~

~~Material used to grind with the cannabis falls into two categories: Compostable waste and noncompostable waste.~~

~~(a) Compostable mixed waste: Cannabis waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:~~

- ~~(i) Food waste;~~
- ~~(ii) Yard waste;~~
- ~~(iii) Vegetable based grease or oils; or~~
- ~~(iv) Other wastes as approved by the WSLCB.~~

~~(b) Noncompostable mixed waste: Cannabis waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:~~

- ~~(i) Paper waste;~~
- ~~(ii) Cardboard waste;~~
- ~~(iii) Plastic waste;~~
- ~~(iv) Soil; or~~
- ~~(v) Other wastes as approved by the WSLCB.~~

~~(6) Cannabis wastes rendered unuseable following the method described in subsection (4) of this section can be disposed.~~

~~(a) Disposal of the cannabis waste rendered unuseable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:~~

- ~~(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.~~
- ~~(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.~~

~~(b) Disposal of the cannabis waste rendered unuseable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.~~

~~(c) A record of the final destination of cannabis waste rendered unuseable.) The cannabis licensee must report the intended sale to the WSDA prior to completion of the sale;~~

(b) The cannabis licensee must notify the LCB of the intended sale prior to completion of the sale in the format specified by the board;

(c) The report includes at least the following information:

- (i) The quantity of sellable cannabis waste;
- (ii) The sale price; and
- (iii) The name and contact information of the buyer;

(d) The sale of sellable cannabis waste must be conducted in a manner that is open and accessible to all members of the public without discrimination; and

(e) The cannabis waste will not leave the state of Washington as part of the sale or delivery.

(6) Sellable cannabis waste may be sold by the producer or processor to another producer or processor under the following conditions:

(a) Both the purchasing and selling cannabis licensees must notify the LCB of the intended sale in the format specified by the board;

(b) The notice to the board must include the following:

- (i) The quantity of sellable cannabis waste;
- (ii) The sale price; and
- (iii) The intended use of the sellable cannabis waste.

(c) The sale must be conducted consistent with chapters 69.50 RCW and 314-55 WAC.

(7) (a) The LCB may conduct inspections and audits to ensure compliance with this section.

(b) Licensees found in violation of these rules may be subject to penalties.

(c) Licensees are responsible for keeping accurate and complete records of all sellable cannabis waste sales. Licensees and certified laboratories are responsible for keeping accurate and complete records of all evaluations, rendering, and disposal activities.

(d) All required records must be made available to the LCB upon request.

(e) All required records must be kept consistent with the requirements in WAC 314-55-087.

(8) Cannabis waste rendered unusable following the method described in this rule can be disposed of.

(a) Disposal of the cannabis waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the cannabis waste rendered unusable may be managed on-site by the licensee or certified laboratory in accordance with the standards of chapter 173-350 WAC.

**WSR 25-03-081**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed January 15, 2025, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-026.

Title of Rule and Other Identifying Information: WAC 314-55-015

General information about cannabis licenses. The proposed rule language amends WAC 314-55-015 to allow persons under 21 years of age (minors) on the licensed premises of cannabis producers and processors provided certain conditions are met. The proposed rule language allows two groups of minors on the licensed premises: (1) Children and grandchildren of licensees who are under 16 years of age, and (2) employees of licensed or registered contractors who are between the ages of 18 and 20 years. This rule making is the result of rule-making petitions accepted by the Washington state liquor and cannabis board (LCB) in 2022. One of these petitions sought to make permanent an LCB temporary COVID[-19] allowance put in place to accommodate licensees during school and child care closures. Statute does not prohibit persons under 21 years of age on licensed premises of cannabis producers and processors, as it does under RCW 69.50.357 for licensed cannabis retailers.

Hearing Location(s): On February 26, 2025, at 10:00 a.m. All public LCB activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom headquarters building, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance and the public may also log in using a computer or a device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and LCB participants may continue to appear virtually. For more information about board meetings, please visit [https://lcb.wa.gov/Boardmeetings/Board\\_meetings](https://lcb.wa.gov/Boardmeetings/Board_meetings).

Date of Intended Adoption: March 12, 2025.

Submit Written Comments to: Denise Laflamme, P.O. Box 48030, Olympia, WA 98504-3080, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, beginning January 15, 2025, 12:00 p.m., by February 26, 2025, 12:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by February 19, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is in response to two petitions LCB accepted in August 2022 requesting to amend WAC 314-55-015 to allow persons under 21 years of age on the licensed premises of cannabis producers and processors under certain conditions. One petition requested to make permanent a temporary COVID-19 allowance adopted by LCB that allowed children and grandchildren of licensees under 16 years of age on the licensed premises. A second petition requested to allow employees under 21 years of age working for contractors who are on the premises conducting trade-related work such as electrical, plumbing, and construction.



Under state statute, minors under 21 years of age are not explicitly prohibited from being on the premises of licensed cannabis producers and processors. RCW 69.50.357 prohibits persons under the age of 21 on licensed cannabis retailers only, except for qualifying patients. WAC 314-55-015 requires that applicants, licensees, and employees working in licensed cannabis establishments be at least 21 years of age, except as provided in RCW 69.50.357. As minors are not explicitly excluded from licensed premises of producers and processors in state statute, the petitions requested that WAC 314-55-015 be amended to allow two groups of persons under 21 years of age on the premises: Children and grandchildren of licensees who are under 16 years of age, and employees of contractors conducting trade-related work while on the premises.

Rule changes incorporate conditions that were included as part of the temporary COVID[-19] allowance, including that children and grandchildren of licensees be under 16 years of age and that they must not possess any products associated with the production, processing, or sales of cannabis.

For children and grandchildren of licensees, additional conditions include that they do not enter or remain in areas where cannabis is present, they are under direct supervision of the licensee while on the premises, and licensee must notify the enforcement and education division of LCB prior to child(ren) being present, including times when child(ren) may be present. Language requiring supervision of children and grandchildren by licensees is similar to language that exists in RCW 66.24.145 related to age restrictions for craft distilleries.

For employees of contractors, conditions include that the person is at least 18 years of age; they are employed by a licensed plumbing contractor under chapter 18.106 RCW, a licensed electrical contractor under chapter 19.28 RCW, or a contractor registered with the Washington state department of labor and industries (L&I) as required under chapters 18.27 RCW and 296-200A WAC; they are only on premises during the course of their official employment; they wear an identification badge as required under WAC 314-55-083; and they are accompanied by a supervisor at all times who is (1) employed by the same licensed or registered contractor, and (2) at least 21 years of age. Licensees must record in their visitor log whether a contractor employee is under 21 years of age and the name of the contractor business.

Reasons Supporting Proposal: The reasons supporting these proposed rules, in addition to that described above, are identified in the table below, describing the proposed changes to WAC 314-55-015.

Section	Current Rule Language	Proposed New Language	Rule Necessity
(2)	No one under 21 years of age may enter or remain on a cannabis licensed premises except as provided in RCW 69.50.357.	Persons, as defined in RCW 69.50.101, who are under 21 years of age must not:	Replacing "may" with "must not" to clarify. Replacing "no one" with existing definition of person for consistency.
		(a) Enter or remain on the licensed premises of a cannabis licensee except as provided in RCW 69.50.357 or as provided in subsections (3) and (4) of this section.	This is added to indicate that two new subsections with exceptions are being added.
	N/A	(b) Possess any products associated with the production, processing, or sales of cannabis.	Adds language consistent with temporary COVID[-19] allowance.
		(b) Violations of this subsection are subject to the same penalties established for allowing persons under 21 years of age to frequent a retail licensed premises under WAC 314-55-525.	This is added to indicate what penalties apply for violations.
(3)	New: Conditions and requirements for allowing children and grandchildren of licensees on licensed premises.	Persons under the age of 16 who are children and grandchildren of licensees may enter or remain on the licensed premises of a cannabis producer, as provided in this subsection.	This is the same language included in the temporary COVID[-19] allowance.
		(a) The person does not enter or remain in areas where cannabis is present including, but not limited to, those areas where cannabis is grown, dried, cured, trimmed, processed in any manner, stored, or being prepared for shipment.	This is added to define restricted areas for children.
		(a) Violations of this subsection are subject to the same penalties established for failure to maintain required surveillance system under WAC 314-55-522.	This is added to indicate what penalties apply for violations.
		(b) The person is under the direct supervision of the licensee while on the premises.	This language is consistent with language in RCW 66.24.145 for children allowed on craft distilleries.
		(c) Prior to allowing any child or grandchild of the licensee to enter or remain on the licensed premises, the licensee must notify the enforcement and education division of the LCB in writing that children may be on their licensed premises. Written notification to the enforcement and education division must indicate the day(s) of the week, times of the day, and age of the child(ren) that may be present.	This is added to describe new LCB notification requirements to indicate when children may be present.
		(c) Violations of this subsection are subject to the same penalties established for an operating/floor plan violation under WAC 314-55-523.	This is added to indicate what penalties apply for violations.

Section	Current Rule Language	Proposed New Language	Rule Necessity
(4)	New: Conditions and requirements for employees of contractors working on licensed premises.	A licensed producer or processor may allow a person under 21 years of age to enter or remain on the licensed premises under the conditions outlined in this subsection.	This is added to indicate applicable age for this subsection.
		(a) The person under 21 years of age is:	This is added to indicate application of conditions to persons under 21.
		(i) At least 18 years of age.	Consistent with ages included in WAC 314-11-040 for employees under 21 years of age working on licensed liquor premises.
		(ii) Employed by a licensed plumbing contractor under chapter 18.106 RCW, or licensed electrical contractor under chapter 19.28 RCW, or a contractor registered with the Washington state department of labor and industries as required under chapters 18.27 RCW and 296-200A WAC.	These requirements were added to ensure employees worked for bona fide contractor businesses.
		(iii) On the licensed premises only during the course of their official employment providing contracted services to the licensee and does not remain on the premises any longer than is necessary to perform duties associated with their employment.	Consistent with WAC 314-11-040 for employees under 21 years of age working on licensed liquor premises.
		(iv) Accompanied by a supervisor at all times who is employed by the same licensed or registered contractor and who is at least 21 years of age.	This was added per supervision recommendations provided by L&I.
		(b) In addition to requirements under WAC 314-55-083, including wearing an identification badge while on the premises, licensees must record the following information about employees of contractors in the visitor log:	This is being added to clarify the requirement for visitor information.
		(i) If the employee is under 21 years of age; and (ii) The name of contractor business for whom employee is engaged in work while on the licensed premises.	This is being added to aid LCB staff in identifying contractors on premises. This being added to aid LCB staff in identifying contractor businesses on premises.
(5) - (11)	WAC 314-55-015 (3) - (9) have been renumbered as WAC 314-55-015 (5) - (11)		
(12)	N/A	Nothing in this section conflicts with RCW 9.41.300 as the entire premises remain classified as off-limits to persons under 21 years of age from the general public.	Clarifies that the entire premises remain off-limits to weapons pursuant to RCW 9.41.300.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Denise La-flamme, Rules Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-819-0452; Implementation: Rebecca Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Paul Magerl, Interim Chief of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1617.

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. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5) (a) (i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

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 would impose a cost to small businesses if they became out of compliance under WAC 314-55-522, 314-55-523, or 314-55-525. Otherwise, no other costs to businesses are expected.

Using the North American Industry Classification System (NAICS) code 111419 for cannabis grown under cover, the United States (US) Census NAICS describes this code for "This U.S. industry comprises establishments primarily engaged in growing food crops (except mushrooms) under glass or protective cover." The US Census NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=111419> identifies cannabis grown under cover as an example of a business that uses this code.

Using NAICS code 111918 for cannabis grown in an open field, the US Census NAICS describes this code for "This U.S. industry comprises establishments primarily engaged in one of the following: (1) growing crops (except oilseeds and/or grains; vegetables and/or melons; fruits and/or tree nuts; greenhouse, nursery, and/or floriculture products; tobacco; cotton; sugarcane; hay; sugar beets; or peanuts); (2) growing a combination of crops (except a combination of oilseed(s) and grain(s); and a combination of fruit(s) and tree nut(s)) with no one crop or family of crops accounting for one-half of the establishment's agricultural production (i.e., value of crops for market); or (3) gathering tea or maple sap." The US Census NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=111998> identifies cannabis grown in an open field as an example of a business that uses this code.

Using NAICS code 424590 for cannabis merchant wholesalers, the US Census NAICS describes this code for "This industry comprises establishments primarily engaged in the merchant wholesale distribution of farm products (except grain and field beans, livestock, raw milk, live poultry, and fresh fruits and vegetables)." The US Census NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=424590> identifies cannabis merchant wholesalers, as an example of a business that uses this code.

LCB estimates there would be no cost associated with implementing this rule except if a business is found to be out of compliance. Under RCW 34.05.110 (4) (a), an agency is not required to waive a fine or penalty to correct a violation if the violation presents a direct danger to the public health. Because violations under WAC 314-55-522 pertain to potential threats to public health, we applied an estimated compliance cost of \$1250 for a first violation when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3).

The data below are provided by reference to the minor cost threshold calculator provided by the office of regulatory innovation

and assistance available at [https://www.oria.wa.gov/Portals/\\_oria/VersionedDocuments/RFA/Regulatory\\_Fairness\\_Act/Minor-Cost-Threshold-Calculator.xlsx](https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/Minor-Cost-Threshold-Calculator.xlsx).

2022 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Average Annual Payroll (Threshold)	0.3% of Average Annual Gross Business Income (Threshold)
111419	\$1250.00	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$3,259.51	\$3,259.51 2021 Dataset pulled from ESD	\$3,195.50 2021 Dataset pulled from DOR
111998	\$1250.00	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$11,775.64	\$11,775.64 2021 Dataset pulled from ESD	\$2,882.31 2021 Dataset pulled from DOR
424590	\$1250.00	Cannabis merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$8,809.55	\$3,948.77 2021 Dataset pulled from ESD	\$8,809.55 2021 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the minor cost thresholds for any of the potential NAICS codes applicable to cannabis licensees. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

DOR - Washington state department of revenue.

ESD - Employment security department Washington state.

DOR data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Results.aspx?Year=2023Q4,2023Q3,2023Q2,2023Q1,&Code1=450000&Code2=460000&SumbY=n6&SicNaics=2&Format=HTML>.

A copy of the detailed cost calculations may be obtained by contacting Denise Laflamme, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, phone 360-819-0452, fax 360-704-5027, TTY 711 or 1-800-833-6388, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

January 15, 2025  
Jim Vollendroff  
Board Chair

**OTS-5951.5**

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

**WAC 314-55-015 General information about cannabis licenses.** (1)

To be issued and maintain a license to produce, process, or sell cannabis at retail, a person or entity applying for a cannabis license must meet all of the qualifications described in this chapter.

(2) All applicants, licensees, and employees working in each licensed establishment must be at least 21 years of age. (~~(No one)~~) Persons, as defined in RCW 69.50.101, who are under 21 years of age (may) must not:

(a) Enter or remain on ((a-cannabis)) the licensed premises of a cannabis licensee except as provided in RCW 69.50.357 or as provided in subsections (3) and (4) of this section.

(b) Possess any products associated with the production, processing, or sales of cannabis. Violations of this subsection are subject to the same penalties established for allowing persons under 21 years of age to frequent a retail licensed premises under WAC 314-55-525.

(3) Persons under the age of 16 who are children and grandchildren of licensees may enter or remain on the licensed premises of a cannabis producer, as provided in this subsection.

(a) The person does not enter or remain in areas where cannabis is present including, but not limited to, those areas where cannabis is grown, dried, cured, trimmed, processed in any manner, stored, or being prepared for shipment. Violations of this subsection are subject to the same penalties established for failure to maintain required surveillance system under WAC 314-55-522.

(b) The person is under the direct supervision of the licensee while on the premises.

(c) Prior to allowing any child or grandchild of the licensee to enter or remain on the licensed premises, the licensee must notify the enforcement and education division of the LCB in writing that children may be on their licensed premises. Written notification to the enforcement and education division must indicate the day(s) of the week, times of the day, and age of the child(ren) that may be present. Violations of this subsection are subject to the same penalties established for an operating/floor plan violation under WAC 314-55-523.

(4) A licensed producer or processor may allow a person under 21 years of age to enter or remain on the licensed premises under the conditions outlined in this subsection.

(a) The person under 21 years of age is:

(i) At least 18 years of age.

(ii) Employed by a licensed plumbing contractor under chapter 18.106 RCW, or licensed electrical contractor under chapter 19.28 RCW, or a contractor registered with the Washington state department of labor and industries as required under chapters 18.27 RCW and 296-200A WAC.

(iii) On the licensed premises only during the course of their official employment providing contracted services to the licensee and does not remain on the premises any longer than is necessary to perform duties associated with their employment.

(iv) Accompanied by a supervisor at all times who is employed by the same licensed or registered contractor and who is at least 21 years of age.

(b) In addition to requirements under WAC 314-55-083, including wearing an identification badge while on the premises, licensees must record the following information about employees of contractors in the visitor log:

(i) If the employee is under 21 years of age; and

(ii) The name of contractor business for whom employee is engaged in work while on the licensed premises.

((+3)) (5) Mandatory signs must be conspicuously posted at all cannabis licensed premises consistent with the requirements in WAC 314-55-086.

((+4)) (6) The privileges of a board issued cannabis license may be used only after the board issues official written approval.

((+5)) (7) The board will not approve an application for a cannabis license under any of the following circumstances:

- (a) The proposed cannabis location would limit law enforcement access without notice or cause, including a personal residence;
- (b) The proposed cannabis business would be located on federal lands;
- (c) The proposed cannabis business would be located within the exterior boundaries of the reservation of a federally recognized tribe without the express written consent of the tribe consistent with WAC 314-55-020(4).
- (d) The application for a cannabis retail license is located within another business unless that other business is a research license as described in WAC 314-55-073. More than one license may be located in the same building if each licensee has their own area separated by full walls with their own entrance, or if the same business entity holds a producer license and a processor license at the same location under a single license number. Product may not be commingled.
- ~~((+6))~~ (8) The board may impose special conditions to an approval for a cannabis license. Special conditions include, but are not limited to, involvement of any former licensee in the operations of the licensed business, their former employees, or any person not qualifying for a cannabis license.
- ~~((+7))~~ (9) All cannabis licensees must conspicuously post and keep posted its license, or licenses, and any additional correspondence issued by the board describing special conditions.
- ~~((+8))~~ (10) A cannabis licensee must use sanitary practices in the production, processing, storage, and sale of all cannabis products.
- ~~((+9))~~ (11) Cannabis licensees may not allow the consumption of cannabis or cannabis-infused products on or within the licensed premises.
- (12) Nothing in this section conflicts with RCW 9.41.300 as the entire premises remain classified as off-limits to persons under 21 years of age from the general public.

## WSR 25-03-094

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed January 17, 2025, 7:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-23-077.

Title of Rule and Other Identifying Information: WAC  
458-65A-10005 Examinations of records.

Hearing Location(s): On February 26, 2025, at 10:00 a.m., telephonic/internet meeting only. Contact Barbara Imperio, barbarai@dor.wa.gov, for dial-in/login information.

Date of Intended Adoption: March 6, 2025.

Submit Written Comments to: Jason André, P.O. Box 47453, Olympia, WA 98504-7453, email jasona@dor.wa.gov, fax 360-534-1606, by March 4, 2025.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As required under RCW 63.30.590, to establish standards and procedures for conducting an examination (i.e., audit) of records under RCW 63.30.580. Addresses reporting requirements for holders of unclaimed property and the administration of the Revised Uniform Unclaimed Property Act (chapter 63.30 RCW) by the department of revenue and its third-party auditors.

Reasons Supporting Proposal: Required by statute. Intended to provide guidance to stakeholders.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, 63.30.030, and 63.30.590.

Statute Being Implemented: RCW 63.30.590.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Jason André, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1580; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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 is not a significant legislative rule as defined by RCW 34.05.328.

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 more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

January 17, 2025  
Brent Madison  
Rules Coordinator



OTS-5986.1

NEW SECTION**WAC 458-65A-10005 Examinations of records. (1) Introduction.**

(a) A holder of unclaimed property must report and deliver that unclaimed property to the department of revenue as provided in chapter 63.30 RCW, the Revised Uniform Unclaimed Property Act.

(b) The department, as the administrator of unclaimed property under the act, is permitted to conduct examinations of records to determine a holder or putative holder's compliance with the act.

(c) This rule establishes standards and procedures applicable to these examinations, including examinations conducted by third parties on behalf of the department. RCW 63.30.590.

(d) Part I of this rule relates to general examination standards including holder requirements, underlying authorizations, the use of estimation, periods of limitation, records disclosure, and holder remedies.

(e) Part II of this rule outlines the specific examination procedures, which consist of three phases:

(i) Opening conference and gathering of preliminary information;

(ii) Identification of a holder's unclaimed property; and

(iii) Conclusion of the examination.

(f) The following definitions apply to the corresponding terms used throughout this rule:

(i) "Act" means chapter 63.30 RCW, the Washington Revised Uniform Unclaimed Property Act.

(ii) "Examination," for the purposes of this rule, means an audited review of holder records conducted pursuant to the act.

(iii) "Examiner" means the person who conducts examinations of holder records on behalf of the department and may include the department, department employees, and third-party examiners.

(iv) "Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner, property that is subject to the act. For purposes of this rule, the term "holder" may encompass either a "holder" or a "putative holder." "Holder" also includes a holder's agent in possession of property or records, where relevant.

(v) "Putative holder" means a person believed by the department to be a holder, until the person pays or delivers to the department unclaimed property subject to the act, or the department or a court makes a final determination that the person is or is not a holder.

(vi) "Record" means information inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(vii) "Third-party examiner" means a person, other than the department or a department employee, who conducts an examination on behalf of the department pursuant to RCW 63.30.650.

(viii) "Unclaimed property" is property:

(A) Presumed to be abandoned after the time periods set forth in RCW 63.30.040 through 63.30.120; and

(B) In the custody of a holder who has been unable to contact the owner or obtain an owner's indication of interest in the property after making any good faith efforts such as providing notice under RCW 63.30.280 and 63.30.290.

**PART I. GENERAL STANDARDS**

(2) **Holder requirements.** A holder of unclaimed property must submit a report to the department for any unclaimed property to be delivered to the custody of the department. The report must be filed electronically pursuant to instructions from an examiner, the department, or provided on the department's website. The holder must retain related records for a period of six years after the report was filed or was due to be filed. RCW 63.30.220 and 63.30.250. The records must contain:

(a) The information that the holder is required to include in the report under RCW 63.30.230 and the department's rules;

(b) The date, place, and nature of the circumstances that gave rise to the property right;

(c) The amount or value of the property;

(d) The last address of the apparent owner, if known to the holder; and

(e) If the holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue. RCW 63.30.250.

(3) **Examinations authorized.** The department may conduct examinations as follows:

(a) Examine records in possession of either a holder or a holder's agent, if such records are reasonably necessary to determine that person's compliance with the act.

(b) Issue an administrative subpoena requiring the holder or holder's agent to make the requested records available.

(c) Bring an action seeking judicial enforcement of the subpoena. RCW 63.30.580.

(4) **Third-party examinations authorized.**

(a) The department may contract with a third-party examiner to conduct an examination under the act. RCW 63.30.650.

(b) If the third-party examiner is an individual, they may not be related to any department employee.

(c) If the third-party examiner is a business, it may not be owned by the department, a department employee, or by an individual related to a department employee.

(d) Contracts for third-party examiners:

(i) Must be awarded pursuant to chapter 39.26 RCW;

(ii) May provide for compensation on a fixed fee, hourly fee, or contingent fee;

(iii) May not provide for a contingency fee exceeding 10 percent of the value of the property paid or delivered as a result of examination;

(iv) May, upon request, be reviewed by the person subject to examination; and

(v) Are subject to public disclosure under chapter 42.56 RCW.

(5) **Insufficient records.**

(a) If a holder subject to an examination does not retain and provide sufficient records for an examiner to determine the value of the unclaimed property under examination, the department or its third-party examiners may determine the value of such property using a reasonable method of estimation based on all information available. RCW 63.30.620.

(b) A reasonable method may include extrapolation and use of statistical sampling when appropriate and necessary.

(6) **Reasonable method of estimation.** In cases where the department or its third-party examiner use estimation, including extrapolation or statistical sampling to conduct an examination, those methods and procedures will be conducted consistent with generally accepted auditing standards applicable to the conduct of unclaimed property examinations and designed to lead to an estimation based on all available information that reasonably approximates the amount of unclaimed property that should have been reported to the state. The department or its third-party examiner shall permit the holder a reasonable opportunity to comment on or suggest estimation methods and procedures; however, the ultimate decision to employ a particular technique is at the sole discretion of the department.

(7) **Persons who submit required reports.** If a holder has retained records as required by RCW 63.30.250 and submitted reports to the department as required by RCW 63.30.220, the department or third-party examiner:

(a) Must include a review of the holder's records as part of the examination;

(b) May not use an estimate as the basis for the examination, unless the holder expressly consents to the use of estimation, or fails to make sufficient records available for examination; and

(c) Will consider evidence presented in good faith by the holder. RCW 63.30.590.

(8) **Holders who do not submit required reports.** If a holder does not submit reports to the department as required by RCW 63.30.220, or the department believes they may have filed an inaccurate, incomplete, or false report, the department may require the holder to file a verified report prior to or after any examination proceeding. RCW 63.30.570.

(9) **Statute of limitations.**

(a) If a holder files a report meeting the requirements of RCW 63.30.220 and 63.30.230, the department, absent a showing of fraud, may not issue a determination of liability under RCW 63.30.680 more than six years after the holder filed the report. The parties may agree in a record to extend this period.

(b) The department may not issue a determination of liability under RCW 63.30.680 or otherwise commence an action, proceeding, or examination with respect to a reporting obligation or other duty of a holder under the act more than 10 years after the duty arose, including circumstances where the holder:

(i) Fails to file a report with the department;

(ii) Files an incomplete report with the department; or

(iii) Files a fraudulent report with the department.

(10) **Records obtained.**

(a) Pursuant to RCW 63.30.600, records, including work papers, obtained during the course of an examination:

(i) May be used in an action to collect property or otherwise enforce the act;

(ii) May be used to conduct a joint examination with another government entity; and

(iii) Are subject to the confidentiality and disclosure provisions set forth under RCW 63.30.600.

(b) A holder under examination may require that each person having access to its records execute and deliver a confidentiality agreement pursuant to RCW 63.30.840.

(11) **Holder remedies.**

(a) If a holder believes the examiner has made an unreasonable or unauthorized request, or is not proceeding expeditiously to complete the examination, the holder may request that the department intervene and take appropriate remedial action. The request must be made in the form of a written notice to the department's unclaimed property unit. RCW 63.30.640.

(b) Appropriate measures may include:

(i) Canceling or modifying requests made by the examiner;

(ii) Imposing a time limit for completion of the examination; or

(iii) Reassigning the examination to a different examiner.

(c) The person under examination may also request, in a written notice to the department's unclaimed property unit, for a conference to review any intervention request made under this subsection. If a request for conference is made, the department must hold a conference within 30 days after receiving the request. The department will provide a written report of the conference to the person within 30 days from the date the conference ends.

(d) Written notices to the department's unclaimed property unit may be made by submitting either:

(i) A paper request addressed to Department of Revenue, Unclaimed Property, ATTN: Unclaimed Property Audit Manager, P.O. Box 47477, Olympia, WA 98124-1053; or

(ii) An email request sent to WAUCPHolders@dor.wa.gov.

## PART II. EXAMINATION PROCEDURES

### (12) Phase I: Opening conference and preliminary information.

(a) The examiner will begin the examination by arranging for an opening conference to be held between the examiner and the holder. During the opening conference, the examiner will provide the holder with information and materials relevant to the examination process, including the following:

(i) The time period to be covered by the examination;

(ii) The general methods to be employed, including any anticipated sampling and estimation, if applicable; and

(iii) The names and contact information of department employees designated for department communications regarding the examination.

(b) The examiner will provide instructions for the holder to remit any unclaimed property identified during the examination that must be turned over to the department. In cases involving the contents obtained from safe deposit boxes, the holder will deliver such contents directly to the department, as directed by the department.

### (13) Phase II: Identification of holder's unclaimed property.

(a) The examiner may request any holder records the examiner deems relevant to the examination. The holder must provide the requested records within 30 days of the date on the examiner's written request, unless the examiner agrees to a longer period.

(b) If a holder is required to include personal information, as defined under RCW 63.30.810, the information must be provided by a secure means and all confidential information must be maintained in accordance with RCW 63.30.860. "Personal information" means:

(i) Information that identifies or reasonably can be used to identify an individual (or any beneficiary of such individual), such as first and last name in combination with the individual's Social Security number or other government-issued number or identifier; date of birth; home or physical address; email address or other online contact information or internet provider address; financial account number or credit or debit card number; biometric data, health or medical data,

or insurance information; passwords or other credentials that permit access to an online or other account;

(ii) Personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law; and

(iii) Any combination of data that, if accessed, disclosed, modified, or destroyed without authorization of the owner of the data or if lost or misused, would require notice or reporting under chapter 19.255 RCW and federal privacy and data security law, whether or not the department or the department's agent is subject to the law.

(c) Once sufficient records have been obtained from the holder, the examiner will proceed with its analysis and any determination of holder liability. The examiner will prepare an initial audit report summarizing its findings and will provide the report to the holder.

(d) If the holder disagrees with the amount the examiner has determined to be due in the initial report:

(i) The examiner will work in good faith with the holder to review additional information that the holder believes could affect the examiner's findings;

(ii) It is the holder's responsibility to provide supporting evidence relating to any discrepancies;

(iii) The examiner will allow a period of time not to exceed 90 days, unless an extension is granted by the examiner for the holder to submit additional information and supporting evidence; and

(iv) If, after 30 days following an examiner's review of any additional information and evidence, the holder and examiner still fail to agree on an amount due, the examiner will proceed with finalizing its audit report.

**(14) Phase III: Conclusion of examination.**

(a) At the conclusion of the examination, the examiner will prepare a final audit report containing the examiner's findings. The examiner or the department will provide a complete and unredacted copy of the final report to the holder.

(b) The final report will include:

(i) The findings of the examiner conducting the examination, as well as a description of the work that was performed and the property reviewed; and

(ii) Calculations of the value of any unclaimed property due, and a description of the methodology of any estimation, extrapolation, or statistical sampling used to determine such value. RCW 63.30.630.

(c) The examiner's final report will be prepared in a manner prescribed by the department. Any examination records will be subject to the confidentiality and disclosure requirements set forth in RCW 63.30.600.

(d) If the holder has property in its possession that must be reported and remitted, the department will issue a determination identifying the amounts due or property deliverable to the department and include the determination with the report. Amounts due may include any interest and penalties applicable under RCW 63.30.690.

(e) The holder must electronically file the final report pursuant to the instructions from either the examiner or the department, or both, and deliver any amounts or property identified in a department determination within 30 days of the date of the final audit report.

(f) The holder may request an informal conference with the department to review the department's determination pursuant to RCW 63.30.710. The following provisions apply to informal conferences:

(i) The holder's request must be in the form of a written notice to the department's unclaimed property unit (see subsection (11)(d) of this rule) and be made within 30 days after the holder's receipt of the determination;

(ii) If a timely request is made, the department must, within 20 days, arrange for a conference to be held;

(iii) The conference must provide the holder an opportunity to informally discuss the examination with the department and the examiner who conducted the examination;

(iv) No later than 20 days after the conference ends, the department will issue a written decision on the matters discussed at the conference. The decision will identify any changes to the determination and other actions, if any, proposed by the department;

(v) A request for an informal conference under this subsection does not toll the 30-day period in subsection (14)(e) of this rule, and a conference under this subsection is not an administrative remedy or a contested case subject to the Administrative Procedure Act in chapter 34.05 RCW;

(vi) If the department issues a revised determination as a result of the informal conference, the department may, but is not required to, provide a second informal conference if requested by the holder as provided in this rule. A request for a second informal conference will be granted only in exceptional circumstances; and

(vii) Additionally, the department may, in its sole discretion, hold an informal conference without a request from the holder at any time before the holder initiates administrative review under RCW 63.30.730 or files an action under RCW 63.30.740.

(g) A holder may seek administrative review of a determination issued by the department. RCW 63.30.730.

(h) A holder who has paid or delivered property to the department, except one who has failed to keep and preserve records as required by the act, may appeal to the Thurston County superior court the provisions of RCW 63.30.740 govern such appeals.

**WSR 25-03-097**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 17, 2025, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-142.

Title of Rule and Other Identifying Information: WAC 392-190-048

Access to course offerings—Student discipline and corrective action, 392-400-010 Purpose, 392-400-020 Application, 392-400-025 Definitions, 392-400-110 Discipline policies and procedures—Development, review, and distribution, 392-400-330 Classroom exclusions—Conditions and limitations, 392-400-335 Classroom exclusion—Notice and procedure, 392-400-435 Short-term and in-school suspensions—Additional conditions and limitations, 392-400-440 Long-term suspensions—Additional conditions and limitations, 392-400-445 Expulsions—Additional conditions and limitations, 392-400-455 Suspensions and expulsions—Notice to student and parents, 392-400-460 Suspensions and expulsions—Optional conference with principal, 392-400-510 Emergency expulsions—Conditions and limitations, 392-400-515 Emergency expulsions—Notice to student and parents, 392-400-520 Emergency expulsions—Optional conference with principal, 392-400-525 Emergency expulsions—Appeal, 392-400-530 Emergency expulsions—Review and reconsideration, 392-400-610 Educational services during suspension, expulsion, or emergency expulsion, 392-401-020 Excused absences, and 392-401-040 Student absences—General requirements.

Hearing Location(s): On March 4, 2025, at 10:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page [ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity](https://ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email [sirena.wu@k12.wa.us](mailto:sirena.wu@k12.wa.us).

Date of Intended Adoption: March 6, 2025.

Submit Written Comments to: Briana Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email [StudentDiscipline@k12.wa.us](mailto:StudentDiscipline@k12.wa.us), beginning January 20, 2025, 8:00 a.m., by March 4, 2025, no later than 5:00 p.m.

Assistance for Persons with Disabilities: Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email [sirena.wu@k12.wa.us](mailto:sirena.wu@k12.wa.us), by February 25, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making in the area of student discipline to include changes made in the emergency rules and any other sections that need to be clarified or updated to ensure definitions and requirements relevant to student discipline are in alignment with current law. Revisions are intended to ensure required data and reporting requirements are manageable for each level of the system (i.e., classroom, school, district, state, etc.) and discipline guidance is consistent with professional standards for maintaining safe, optimal learning environments for all students that further OSPI's commitment to reducing disproportionate exclusionary practices.

Reasons Supporting Proposal: The proposed revisions to the student discipline rules clarify the standards and procedures that educators must follow in order to ensure that all students have an optimal learning environment. Updated statutory definitions of discipline were

included to be in alignment with current law. Also, in order to comply with legislative mandates under RCW 28A.600.495, OSPI is replacing the prejudicial term "emergency expulsion" with the term "emergency removal" in the context of student discipline. Additionally, requirements for reporting and notification when school exclusions occur were included in the revisions.

Statutory Authority for Adoption: RCW 28A.300.046, 28A.600.010, 28A.600.015, and 28A.600.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Briana Kelly, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

January 17, 2025

Chris P.S. Reykdal

State Superintendent of Public Instruction

## OTS-5253.1

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

**WAC 392-190-048 Access to course offerings—Student discipline and corrective action.** At least annually, each school district and public charter school must review data on corrective and disciplinary actions taken against students within each school disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. This review must include, but is not limited to, short-term suspensions, long-term suspensions, expulsions, and emergency (~~expulsions~~) removals. In reviewing this data, each school district or public charter school must determine whether it has disciplined or applied corrective action to a substantially disproportionate number of students within any of the categories identified in this section. If a school district or public charter school finds that it has disciplined or applied corrective action to a substantially disproportionate number of students who are members of one of the catego-



ries identified in this section, the school district or charter school must take prompt action to ensure that the disproportion is not the result of discrimination.

#### OTS-5777.4

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-010 Purpose.** The purpose of this chapter is to ensure that school districts in Washington:

- (1) Provide a safe and supportive learning environment for all students;
- (2) Provide due process to students;
- ~~((2))~~ (3) Implement culturally responsive discretionary and nondiscretionary discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;
- ~~((3))~~ (4) Engage school personnel, students, parents, families, and the community in decisions related to the development and implementation of discretionary and nondiscretionary discipline policies and procedures;
- ~~((4))~~ (5) Ensure fairness and equity in the administration of discretionary and nondiscretionary discipline;
- ~~((5))~~ (6) Administer discretionary 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;
- ~~((6))~~ (7) Provide educational services that students need to complete their education without disruption; and
- ~~((7))~~ (8) Facilitate collaboration between school personnel, students, and families regarding nondiscretionary discipline to ensure successful reentry into the classroom following a suspension or expulsion; ~~and~~
- ~~((8))~~ ~~Provide a safe and supportive learning environment for all students).~~

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-020 Application.** (1) This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in Washington school districts. A school district may establish additional due process protections for students consistent with federal statutes and regulations, state statutes, common law, and rules prescribed by the office of superintendent of public instruction.

(2) This chapter must be construed in a manner consistent with the following laws and rules:

- (a) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(b) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(c) 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;

(d) 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

~~(e) ((RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and~~

~~(f))~~ RCW 28A.415.410 ~~((and 28A.415.420))~~, regarding training to support school personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-025 Definitions.** As used in this chapter the terms:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-110.

(2) "Classroom exclusion" means the exclusion of a student from a classroom ~~((or))~~ and instructional or activity area for a discretionary behavioral violation ~~((s, subject to the requirements in WAC 392-400-330 and 392-400-335. Classroom exclusion does not include actions that result in missed instruction for a brief duration when:~~

~~(a) A teacher or other school personnel attempts other forms of discipline 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))~~ that creates a disruption of the educational process in violation of the district disciplinary policies subject to the requirements in WAC 392-400-110.

(3) "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. Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action.

(4) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

~~((4) "Discipline" means any action taken by a school district in response to behavioral violations.))~~

(5) "Discretionary discipline" means a disciplinary action taken by a school district for student behavior that violates rules of student conduct adopted by a school district board of directors 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.

~~(6)~~ (6) "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.

~~((6))~~ (7) "Emergency ~~(expulsion)~~ 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 392-400-510 through 392-400-530.

~~((7))~~ (8) "Expulsion" means a denial of admission to the student's current school placement in response to a behavioral violation, subject to the requirements in WAC 392-400-430 through 392-400-480.

~~((8))~~ (9) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school board.

~~((9))~~ "Other forms of discipline" means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.)

(10) "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.

(11) "Parent" has the same meaning as in WAC 392-172A-01125.

~~((11))~~ (12) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the office of the superintendent of a school district is open to the public for business.

~~((12))~~ (13) "School board" means the governing board of directors of a local school district.

~~((13))~~ (14) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

~~((14))~~ (15) "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 ~~(classroom exclusions,)~~ expulsions ~~(r)~~ or emergency ~~(expulsions)~~ 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 ~~(ten)~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than ~~(ten)~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to ~~(ten)~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-110 Discipline policies and procedures—Development, review, and distribution.** (1) ~~School district policies and procedures ((beginning in the 2019-20 school year))~~. ((Before the commencement of the 2019-20 school year)) Pursuant to RCW 28A.600.010, a school district must adopt ((written policies and procedures for supporting students in meeting behavioral expectations and administering discipline in accordance with this chapter)) and make available to each pupil, teacher, and parent in the district reasonable written policies and procedures regarding pupil conduct, discipline, and rights, including, but not limited to, classroom exclusions, short-term suspensions, long-term suspensions, emergency removals, and expulsions. The policies and procedures must:

(a) Clearly state the types of behaviors for which discretionary and nondiscretionary discipline, including classroom exclusion, suspension, emergency removal, and expulsion, may be administered;

(b) Have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process that is conducive to learning;

(c) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;

(d) Provide that school personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which discipline may be administered;

(e) ((Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support students in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035;)) Ensure the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere as outlined in: RCW 28A.410.270, 28A.410.278, 28A.405.100, 28A.410.260, and 28A.415.443;

(f) Recognize that educators create an environment that welcomes all students and families, recognizing that the school belongs to them and the community. School faculty, staff, and administration highlight and center community expertise for learning partnerships. RCW 28A.410.260 and 28A.415.443;

(g) Identify school personnel with the authority to administer classroom exclusions, suspensions, expulsions, and emergency ((expulsions, and other forms of discipline)) removals;

((g)) (h) Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency ((expulsions)) removals, consistent with WAC 392-400-430 through 392-400-530;

((h)) (i) Establish grievance procedures to address parents' or students' grievances related to the administration of ((classroom exclusions and other forms of)) discretionary and nondiscretionary discipline, including discipline that excludes a student from transportation or extra-curricular activity. The procedures must, at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation;

~~((i))~~ (j) Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610;

~~((j))~~ (k) Provide for reengagement meetings and plans, consistent with WAC 392-400-710;

~~((k))~~ (l) Provide a process for students who have been suspended or expelled to petition for readmission; and

~~((l))~~ (m) Be consistent with the model policy developed under RCW 28A.345.090.

(2) **Development and review.** A school district must develop and periodically review discretionary and nondiscretionary discipline policies and procedures with the participation of school personnel, students, parents, families, and the community. During the development and review of discretionary and nondiscretionary discipline policies and procedures, the school district must use disaggregated data collected under RCW 28A.300.042 to:

(a) Monitor the impact of the school district's discipline policies, procedures, and practices; and

(b) Update the school district's discretionary and nondiscretionary discipline policies and procedures to improve fairness and equity in the administration of discipline.

(3) **Distribution of policies and procedures.** A school district must make discretionary and nondiscretionary discipline policies and procedures available to families and the community. The school district must annually provide the district's discretionary and nondiscretionary discipline policies and procedures to all district personnel, students, and parents, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964. The school district must ensure district employees and contractors are knowledgeable of the discretionary and nondiscretionary discipline policies and procedures.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-330 Classroom and instructional or activity area exclusions—Conditions and limitations.** (1) **Authority to administer classroom and instructional or activity area exclusions.** Discretionary discipline leading to a classroom exclusion as determined by the school district's written procedures per RCW 28A.600.010 must give the highest consideration to the judgment of qualified certificated educators regarding the conditions necessary to maintain the optimum learning experience.

~~((a) **Teacher authority.** A teacher may exclude a student from the teacher's classroom or instructional or activity area for behavioral violations that disrupt the educational process while the student is under the teacher's immediate supervision, subject to the requirements in this section and WAC 392-400-335.~~

~~((b) **Other school personnel authority.** A school district may authorize other school personnel to exclude a student from a classroom or instructional or activity area for behavioral violations of the district's discipline policy adopted under WAC 392-400-110 or~~

~~392-400-225, subject to the requirements in this section and WAC 392-400-335.~~

~~(2) **Other forms of discipline.** The teacher or other school personnel must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations, unless 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. In administering other forms of discipline, the teacher or other school personnel may consider using best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(3) **Limitations on classroom exclusion.**~~

~~(a-)) (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 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.~~

~~(3) **Duration of classroom exclusion.**~~

~~(a) A classroom exclusion may be administered for all or any portion of the balance of the school day ((in which the student was excluded from the student's classroom or instructional or activity area. When a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion under this chapter)), or up to the following two days, or until the principal or designee 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 early involvement of parents in attempts to improve the student's behavior.~~

~~(c) **Removal from school.** A student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for a suspension, expulsion, or emergency ((expulsion)) removal under this chapter.~~

~~(4) The procedures shall assure, pursuant to RCW 28A.400.110, that all staff work cooperatively toward consistent enforcement of proper student behavior throughout each school, as well as within each classroom.~~

~~(5) **Assignments and tests.** The school district must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.~~

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-335 Classroom exclusion—Notice and procedure.**

((Following a classroom exclusion under WAC 392-400-330:

~~(1) **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 or designee as soon as reasonably possible.~~

~~(2) **Notice to parents.** The teacher, principal, or designee must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school district 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.~~

~~(3) **Emergency circumstances.** When a teacher or school personnel 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 or designee; and~~

~~(b) The principal or designee must meet with the student as soon as reasonably possible and administer appropriate discipline.)) School boards must ensure they have a policy that determines when a teacher or other school personnel shall report a classroom exclusion to a principal, principal designee, and parent. School district policies under this section must ensure:~~

~~(1) The teacher communicates and collaborates with students, families, and all educational partners in an ethical and professional manner to promote student learning. WAC 392-400-110.~~

~~(2) Regardless of how the notice is provided to the parents, guardians, or families (electronically, face-to-face), the school district must ensure that this notification is in a language that the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.~~

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-435 Short-term and in-school suspensions—Additional conditions and limitations.**

~~(1) **(Other forms of discipline.** Before administering a short-term or in-school suspension, a school district must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(2)) **Length of exclusion.** A school district may not administer a short-term or in-school suspension beyond the school year in which the behavioral violation occurred.~~

~~((3)) (2) **Grade-level limitations.**~~

(a) A school district may not administer a short-term or in-school suspension for a student in kindergarten through fourth grade for more than ~~((ten))~~ 10 cumulative school days during any academic term; and

(b) A school district may not administer a short-term or in-school suspension for a student in grades five through ~~((twelve))~~ 12:

(i) For more than ~~((fifteen))~~ 15 cumulative school days during any single semester; or

(ii) For more than ~~((ten))~~ 10 cumulative school days during any single trimester.

~~((4))~~ (3) **School personnel.** When administering an in-school suspension, a school district must ensure school personnel:

(a) Are physically in the same location as the student to provide direct supervision during the duration of the in-school suspension; and

(b) Are accessible to offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes as required under WAC 392-400-610.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-440 Long-term suspensions and expulsions—Additional conditions and limitations.** ~~(1) ((Other forms of discipline. Before administering a long-term suspension, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(2))~~ **Limitations on long-term suspensions and expulsions.** A school district may only administer a long-term suspension or expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6) (a) through (d); and

(b) After the school district has determined that, if the student returned to school before completing a long-term suspension ~~((~~

~~(i))~~ or expulsion, the student would pose an imminent danger to students or school personnel ~~((; or~~

~~(ii) The student would pose an imminent threat of material and substantial disruption of the educational process)).~~

~~((3))~~ (2) Length of exclusion. Except as provided for under WAC 392-400-480:

(a) A long-term suspension or expulsion may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension or expulsion beyond the school year in which the behavioral violation occurred.

~~((4))~~ (3) Grade-level limitations. Except for a violation of WAC 392-400-820, a school district may not administer a long-term suspension or expulsion for any student in kindergarten through fourth grade.



AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-455 Suspensions and expulsions—Notice to student and parents.** (1) **Initial notice.** Before administering any suspension or expulsion, a school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the behavioral violation.

(2) **Written notice.** No later than one school business day following the initial hearing with the student in WAC 392-400-450, a school district must provide written notice of the suspension or expulsion to the student and parents in person, by mail, or by email. The written notice must include:

(a) A description of the student's behavior and how the behavior violated the school district's policy adopted under WAC 392-400-110;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(c) ~~((The other forms of discipline that the school district considered or attempted, and))~~ An explanation of the district's decision to administer the suspension or expulsion;

(d) The opportunity to receive educational services during the suspension or expulsion under WAC 392-400-610;

(e) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-460;

(f) The student's and parents' right to appeal the suspension or expulsion under WAC 392-400-465, including where and to whom the appeal must be requested; and

(g) For a long-term suspension or expulsion, the opportunity for the student and parents to participate in a reengagement meeting under WAC 392-400-710.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section 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.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-460 Suspensions and expulsions—Optional conference with principal.** (1) **Requesting a conference.** If the student or parents disagree with the school district's decision to suspend or expel the student, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide the student and parents the opportunity to:

(a) Share the student's perspective and explanation regarding the behavioral violation; and

(b) Confer with the principal or designee and school personnel involved in the incident that led to the suspension or expulsion (~~and~~

~~(c) Discuss other forms of discipline that may be administered).~~

(4) **Language assistance.** The school district must ensure the conference is held 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.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the suspension or expulsion under WAC 392-400-465, participate in a reengagement meeting under WAC 392-400-710, or petition for readmission.

### EMERGENCY ((EXPULSIONS)) REMOVALS

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-510 Emergency ((expulsions)) removals—Conditions and limitations.** A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

(1) **Sufficient cause.** The school district must have sufficient cause to believe that the student's presence poses:

(a) An immediate and continuing danger to other students or school personnel; or

(b) An immediate and continuing threat of material and substantial disruption of the educational process.

(2) **Determination of immediate and continuing threat of disruption.** For purposes of this section, an immediate and continuing threat of material and substantial disruption of the educational process means:

~~((a))~~ The student's behavior results in an extreme disruption of the educational process that creates a substantial barrier to learning for other students across the school day (~~and~~

~~(b) School personnel have exhausted reasonable attempts at administering other forms of discipline to support the student in meeting behavioral expectations).~~

(3) **Time limit.** An emergency ((expulsion)) removal may not exceed ~~(ten)~~ 10 consecutive school days. An emergency ((expulsion)) removal must end or be converted to another form of discipline within ~~(ten)~~ 10 school days from the start of the emergency ((expulsion)) removal.

(4) **Conversion.** If a school district converts an emergency ((expulsion)) removal to a suspension or expulsion, the district must:

(a) Apply any days that the student was emergency ((expelled)) removed before the conversion to the total length of the suspension or expulsion; and

(b) Provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480.

(5) **Reporting.** All emergency (~~(expulsions)~~) removals, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be reported to the district superintendent or designee within (~~(twenty-four)~~) 24 hours after the start of the emergency (~~(expulsion)~~) removal.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-515 Emergency (~~(expulsions)~~) removals—Notice to student and parents.** (1) **Initial notice.** After an emergency (~~(expulsion)~~) removal, the school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the reason the district believes 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.

(2) **Written notice.** Within (~~(twenty-four)~~) 24 hours after an emergency (~~(expulsion)~~) removal, a school district must provide written notice of the emergency (~~(expulsion)~~) removal to the student and parents in person, by mail, or by email. The written notice must include:

(a) The reason the student's presence poses an immediate and continuing danger to students or school personnel, or poses an immediate and continuing threat of material and substantial disruption of the educational process;

(b) The duration and conditions of the emergency (~~(expulsion)~~) removal, including the dates on which the emergency (~~(expulsion)~~) removal will begin and end;

(c) The opportunity to receive educational services during the emergency (~~(expulsion)~~) removal under WAC 392-400-610;

(d) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-520; and

(e) The student's and parents' right to appeal the emergency (~~(expulsion)~~) removal under WAC 392-400-525, including where and to whom the appeal must be requested.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section 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.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-520 Emergency (~~(expulsions)~~) removals—Optional conference with principal.** (1) **Requesting a conference.** If a student or the parents disagree with the school district's decision to administer an emergency (~~(expulsion)~~) removal, the student or parents may request an informal conference with the principal or designee to resolve the

disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide students and parents the opportunity to share the student's perspective and explanation regarding the events that led to the emergency (~~(expulsion)~~) removal.

(4) **Language assistance.** The school district must ensure the conference is held 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.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the emergency (~~(expulsion)~~) removal under WAC 392-400-525.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-525 Emergency (~~(expulsions)~~) removals—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal an emergency (~~(expulsion)~~) removal to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency (~~(expulsion)~~) removal. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency (~~(expulsion)~~) removal.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee 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 district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency (~~(expel)~~) remove the student and must be knowledgeable about the rules in this

chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, 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 district 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 district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(i) The district 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 (~~(expulsion)~~) 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 district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district 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 district will end the emergency (~~(expulsion)~~) removal or convert the emergency (~~(expulsion)~~) removal to a suspension or expulsion. If the school district converts the emergency (~~(expulsion)~~) removal to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district 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.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-530 Emergency (~~(expulsions)~~) removals—Review and reconsideration.** (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency (~~(expulsion)~~) removal, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council 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 decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency (~~(expulsion)~~) removal, the decision to emergency (~~(expel)~~) remove the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council 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 identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district'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 (~~(expulsion)~~) removal has not yet ended or been converted, whether the school district will end the emergency (~~(expulsion)~~) removal or convert the emergency (~~(expulsion)~~) removal to a suspension or expulsion. If the school district converts the emergency (~~(expulsion)~~) removal to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480.

(5) **Language assistance.** The school district 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.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

- WAC 392-400-610 Educational services during suspension, expulsion, or emergency (~~expulsion~~) removal.** (1) **Educational services.**
- (a) A school district may not suspend the provision of educational services to a student in response to behavioral violations.
- (b) During the suspension, expulsion, or emergency (~~expulsion~~) removal of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to:
- (i) Continue to participate in the general education curriculum;
- (ii) Meet the educational standards established within the district; and
- (iii) Complete subject, grade-level, and graduation requirements.
- (c) When providing a student the opportunity to receive educational services under this section, the school district must consider:
- (i) Meaningful input from the student, parents, and the student's teachers;
- (ii) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and
- (iii) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services.
- (d) A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.
- (2) **Notice.** As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include:
- (a) A description of the educational services that will be provided; and
- (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.
- (3) **Exclusions for up to five days.** For students subject to suspension or emergency (~~expulsion~~) removal for up to five consecutive school days, a school district must provide at least the following:
- (a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes; and

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency (~~expulsion~~) removal.

(4) **Exclusions for six to (~~ten~~) 10 days.** For students subject to suspension or emergency (~~expulsion~~) removal for six to (~~ten~~) 10 consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency (~~expulsion~~) removal and periodically thereafter until the suspension or emergency (~~expulsion~~) removal ends to:

(i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and

(ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress.

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency (~~expulsion~~) removal.

(5) **Long-term suspensions and expulsions.** For students subject to expulsion or suspension for more than (~~ten~~) 10 consecutive school days, a school district must provide educational services in accordance with WAC 392-121-107.

(6) **Language assistance.** The school district must ensure that notices and communications required under this section 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.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-400-445      Expulsions—Additional conditions and limitations.

**OTS-5254.1**



AMENDATORY SECTION (Amending WSR 22-13-056, filed 6/8/22, effective 8/1/22)

- WAC 392-401-020 Excused absences.** (1) Absences due to the following reasons must be excused:
- (a) Physical health or mental health symptoms, illness, health condition or medical appointment for the student or person for whom the student is legally responsible. Examples of symptoms, illness, health conditions, or medical appointments include, but are not limited to, medical, counseling, mental health wellness, dental, optometry, pregnancy, and behavioral health treatment (which can include in-patient or out-patient treatment for chemical dependency or mental health);
  - (b) Family emergency including, but not limited to, a death or illness in the family;
  - (c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;
  - (d) Court, judicial proceeding, court-ordered activity, or jury service;
  - (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
  - (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;
  - (g) Absence directly related to the student's homeless or foster care/dependency status;
  - (h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;
  - (i) Absences due to suspensions, expulsions or emergency (~~expulsions~~) removals imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;
  - (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;
  - (k) Absences due to a student's migrant status;
  - (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and
  - (m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.
- (2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:
- (a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;
  - (b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;
  - (c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and

(d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.

(3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the criteria in subsections (1) and (2) of this section and school district policy for an excused absence.

AMENDATORY SECTION (Amending WSR 21-17-088, filed 8/13/21, effective 9/13/21)

**WAC 392-401-040 Student absences—General requirements.** (1)

Students shall not be considered absent if:

(a) The student has been suspended, expelled, or emergency (~~ex-pelled~~) removed pursuant to chapter 392-400 WAC;

(b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

(c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

(2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

## WSR 25-03-102

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed January 17, 2025, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-085.

Title of Rule and Other Identifying Information: WAC 182-502-0002  
Eligible provider types.

Hearing Location(s): February 25, 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\\_By08L-A2RPSmmE8wF2TecQ](https://us02web.zoom.us/webinar/register/WN_By08L-A2RPSmmE8wF2TecQ). 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 February 26, 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 January 18, 2025, 8:00 a.m., by February 25, 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 February 7, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-502-0002 to add community health workers to the list of eligible provider types. This aligns with the rule making filed under WSR 25-02-113, establishing a community health worker benefit under new chapter 182-562 WAC.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Statute Being Implemented: RCW 41.05.021 and 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, 360-752-9563; Implementation and Enforcement: Nikki Banks, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1002.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adds "community health workers" as an eligible provider type listed in WAC 182-502-0002. The proposed rule imposes no compliance costs on these or any other provider and thus does not affect small businesses for the purposes of the Regulatory Fairness Act.

Scope of exemption for rule proposal:

Is fully exempt.

January 17, 2025

Wendy Barcus

**RDS-6134.1**

AMENDATORY SECTION (Amending WSR 24-23-096, filed 11/19/24, effective 1/1/25)

**WAC 182-502-0002 Eligible provider types.** The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
  - (a) Advanced registered nurse practitioners;
  - (b) Advanced social workers;
  - (c) Advanced social worker associates;
  - (d) Anesthesiologists;
  - (e) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531A-0800:
    - (i) Licensed behavior analyst;
    - (ii) Licensed assistant behavior analyst; and
    - (iii) Certified behavior technician;
  - (f) Audiologists;
  - (g) Behavioral health support specialists (BHSS);
  - (h) Birth doulas;
  - (i) Chiropractors;
  - (j) Community health workers (CHWs);
  - (k) Dentists;
  - ~~((k))~~ (l) Dental health aide therapists, as provided in chapter 70.350 RCW;
  - ~~((l))~~ (m) Dental hygienists;
  - ~~((m))~~ (n) Denturists;
  - ~~((n))~~ (o) Dietitians or nutritionists;
  - ~~((o))~~ (p) Hearing aid fitters/dispensers;
  - ~~((p))~~ (q) Home health aide credentialed with DOH as nursing assistant certified or nursing assistant registered;
  - ~~((q))~~ (r) Independent clinical social workers;
  - ~~((r))~~ (s) Independent clinical social worker associates;
  - ~~((s))~~ (t) Licensed practical nurse;
  - ~~((t))~~ (u) Marriage and family therapists;
  - ~~((u))~~ (v) Mental health counselors;
  - ~~((v))~~ (w) Mental health counselor associates;
  - ~~((w))~~ (x) Mental health care providers;
  - ~~((x))~~ (y) Midwives;
  - ~~((y))~~ (z) Naturopathic physicians;
  - ~~((z))~~ (aa) Nurse anesthetist;
  - ~~((aa))~~ (bb) Ocularists;
  - ~~((bb))~~ (cc) Occupational therapists;
  - ~~((cc))~~ (dd) Ophthalmologists;
  - ~~((dd))~~ (ee) Opticians;
  - ~~((ee))~~ (ff) Optometrists;
  - ~~((ff))~~ (gg) Orthodontists;

- ~~((gg))~~ (hh) Orthotist;
- ~~((hh))~~ (ii) Osteopathic physicians;
- ~~((ii))~~ (jj) Osteopathic physician assistants;
- ~~((jj))~~ (kk) Peer counselors;
- ~~((kk))~~ (ll) Podiatric physicians;
- ~~((ll))~~ (mm) Pharmacists;
- ~~((mm))~~ (nn) Physicians;
- ~~((nn))~~ (oo) Physician assistants;
- ~~((oo))~~ (pp) Physical therapists;
- ~~((pp))~~ (qq) Prosthetist;
- ~~((qq))~~ (rr) Psychiatrists;
- ~~((rr))~~ (ss) Psychologists;
- ~~((ss))~~ (tt) Radiologists;
- ~~((tt))~~ (uu) Registered nurse;
- ~~((uu))~~ (vv) Registered nurse delegators;
- ~~((vv))~~ (ww) Registered nurse first assistants;
- ~~((ww))~~ (xx) Respiratory therapists;
- ~~((xx))~~ (yy) Speech/language pathologists; and
- ~~((yy))~~ (zz) Substance use disorder professionals:
  - (i) Mental health providers; and
  - (ii) Peer counselors.
- (2) Agencies, centers and facilities:
  - (a) Adult day health centers;
  - (b) Ambulance services (ground and air);
  - (c) Ambulatory surgery centers (medicare-certified);
  - (d) Birthing centers (licensed by the department of health);
  - (e) Cardiac diagnostic centers;
  - (f) Case management agencies;
  - (g) Substance use disorder treatment facilities certified by the department of health (DOH);
  - (h) Withdrawal management treatment facilities certified by DOH;
  - (i) Community AIDS services alternative agencies;
  - (j) Community behavioral health support services provider facilities;
  - (k) Community mental health centers;
  - (l) Diagnostic centers;
  - (m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
  - (n) Family planning clinics;
  - (o) Federally qualified health centers (designated by the federal department of health and human services);
  - (p) Genetic counseling agencies;
  - (q) Health departments;
  - (r) Health maintenance organization (HMO)/managed care organization (MCO);
  - (s) HIV/AIDS case management;
  - (t) Home health agencies;
  - (u) Hospice agencies;
  - (v) Hospitals;
  - (w) Indian health service facilities/tribal 638 facilities;
  - (x) Tribal or urban Indian clinics;
  - (y) Inpatient psychiatric facilities;
  - (z) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
    - (aa) Kidney centers;
    - (bb) Laboratories (CLIA certified);

- (cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
  - (dd) Neuromuscular and neurodevelopmental centers;
  - (ee) Nurse services/delegation;
  - (ff) Nursing facilities (approved by the DSHS aging and long-term support administration);
  - (gg) Pathology laboratories;
  - (hh) Pharmacies;
  - (ii) Private duty nursing agencies;
  - (jj) Radiology - Stand-alone clinics;
  - (kk) Rural health clinics (medicare-certified);
  - (ll) School districts and educational service districts; and
  - (mm) Sleep study centers.
- (3) Suppliers of:
- (a) Blood, blood products, and related services;
  - (b) Durable and nondurable medical equipment and supplies;
  - (c) Complex rehabilitation technologies;
  - (d) Infusion therapy equipment and supplies;
  - (e) Prosthetics/orthotics;
  - (f) Hearing aids; and
  - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
- (a) Transportation brokers;
  - (b) Spoken language interpreter services agencies;
  - (c) Independent sign language interpreters; and
  - (d) Eyeglass and contact lens providers.

**WSR 25-03-115**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed January 21, 2025, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-073.

Title of Rule and Other Identifying Information: Updating attending providers and adding psychologists in the case of claims solely for mental health conditions in the following: Chapter 296-14 WAC, Industrial insurance; chapter 296-19A WAC, Vocational rehabilitation; chapter 296-20 WAC, Medical aid rules; chapter 296-21 WAC, Reimbursement policies: Psychiatric services, biofeedback, physical medicine; and chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc.

Hearing Location(s): On February 26, 2025, at 2:30 p.m., at the Department of Labor and Industries (L&I), Headquarters Building, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501; or join Zoom meeting at <https://lni-wa-gov.zoom.us/j/8895985899?omn=84949494364>, Meeting ID 889 598 5899; or join by phone (audio only) 253-215-8782 US (Tacoma), Meeting ID 889 598 5899. Find your local number at <https://lni-wa-gov.zoom.us/j/8895985899?omn=84949494364>. The hybrid meeting (virtual and in person) will begin at 2:30 p.m. and will continue until all oral comments are received. A post-hearing overview will then begin and last approximately 15 minutes.

Date of Intended Adoption: May 20, 2025.

Submit Written Comments to: Jami Lifka, L&I, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, email [Jami.Lifka@lni.wa.gov](mailto:Jami.Lifka@lni.wa.gov), fax 360-902-6315, beginning January 22, 2025, 8:00 a.m., by February 28, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Victoria Rich, phone 360-902-6298, fax 360-902-6315, TTY 711, email [Victoria.Rich@lni.wa.gov](mailto:Victoria.Rich@lni.wa.gov), by February 17, 2025, at 4:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to implement HB 1197 (chapter 171, Laws of 2023) Defining attending provider and clarifying other provider functions for workers' compensation claims, and adding psychologists as attending providers for mental health only claims. A new section in HB 1197 lists in statute who can be attending providers on Washington's workers' compensation claims. It includes providers who are already in the definition of "attending provider" in WAC 296-20-01002 Definitions. The bill adds "psychologists in the case of claims solely for mental health conditions, and physician assistants" to that list. To reflect that change, L&I is proposing to add those two provider types to the definition of "attending provider" in WAC 296-20-01002 Definitions, and to other applicable WAC in Title 296 WAC.

L&I is also proposing amendments to Title 296 WAC for clarity and for consistency with the bill. One example is that the current rule on the "Attending provider report" requires the condition(s) diagnosed, including the current federally adopted International Classification of Diseases, Clinically Modified (ICD-CM) codes. The proposed rule clarifies that, for a mental health condition(s), the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental*

*Disorders* (DSM) designated by L&I. While this is new to the "attending provider report," it reflects current practice.

In addition, L&I is proposing to amend WAC 296-20-01501 Physician assistant rules, to align language with ESHB 2041 (chapter 62, Laws of 2024) Physician assistant collaborative practice, and the department of health (DOH) Washington medical commission's corresponding rule updates to chapter 246-918 WAC. ESHB 2041 authorizes physician assistants to engage in a collaborative practice where a written agreement describes the manner in which the physician assistant is supervised by or collaborates with at least one physician. Examples of language L&I is proposing include a reference to physician assistants working under a collaboration agreement as defined in DOH statute, RCW 18.71A.010, and other amended language on credentialing.

Reasons Supporting Proposal: The amended statute lists all of the attending providers and the duties of those providers. If the rule is not adopted, then the current list in WAC 296-20-01002 Definitions, will not be correct. It could cause confusion that will result in workers having less access to providers that primarily treat mental health conditions, increase long-term disability, and lead to poor outcomes.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.36.010.

Statute Being Implemented: Title 51 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jami Lifka, Tumwater, Washington, 360-902-4941; Implementation and Enforcement: Brenda Heilman, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jami Lifka, Administrative Regulations Analyst, L&I, Insurance Services, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, phone 360-902-4941, fax 360-902-6315, TTY 711, email [Jami.Lifka@lni.wa.gov](mailto:Jami.Lifka@lni.wa.gov), <https://www.lni.wa.gov/rulemaking-activity>.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The portions of proposed rules listed in the section below are 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. As outlined in the chart below, the rule does not impose additional costs to psychologists or physician assistants and will not increase claim costs.



<p>WAC 296-20-01002 Definitions "Acceptance, accepted condition"</p>	<p>The condition being accepted must be specified by one or more diagnosis codes from the current federally adopted edition of the International Classification of Diseases, Clinically Modified (ICD-CM). For mental health conditions, the condition being accepted must also be specified from the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department.</p> <p><b>Cost implication:</b> The proposed language on the use of the DSM is new to this definition but reflects current practice. Similar language is in WAC 296-21-270 Mental health services and 296-20-330 Impairments of mental health. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01002 Definitions "Attending provider report (1)"</p>	<p>The condition(s) diagnosed including the current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.</p> <p><b>Cost implication:</b> The proposed language on diagnosing mental health conditions using the DSM is new to the "attending provider report" but reflects current practice. Similar language is in WAC 296-21-270 Mental health services and 296-20-330 Impairments of mental health. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01002 Definitions "Attending provider report (6)"</p>	<p>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included with the report. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.</p> <p><b>Cost implication:</b> All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language is new to the "attending provider report" but reflects current practice. There is also similar language that relates to physical conditions in subsection (5) of this definition. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01002 Definitions "Consultation examination report (5)"</p>	<p>A complete diagnosis of all conditions including the current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.</p> <p><b>Cost implication:</b> The proposed language on diagnosing mental health conditions using the DSM is new to the "consultation examination report" but reflects current practice. Similar language is in WAC 296-21-270 Mental health services and 296-20-330 Impairments of mental health. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01002 Definitions "Doctor"</p>	<p>For these rules, means one or more of the following acting within the scope of their professional license: Physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, or psychologist.</p> <p><b>Cost implication:</b> The proposed language adds psychologists to this list. In addition, the proposed language removes the term "attending doctor" from the original title "doctor or attending doctor." As these providers are also listed as an "attending provider" in WAC 296-20-01002 Definitions, it is duplicative and confusing to have the term "attending" in both places. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01002 Definitions "Modified work status"</p>	<p>The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature or, for accepted mental health conditions, the ability to engage in modified work, which may include relevant accommodations.</p> <p><b>Cost implication:</b> All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language on mental health conditions is new to the definition of "modified work status" but reflects current practice. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01002 Definitions "Physician"</p>	<p>For these rules, means any person licensed to perform one of the following professions: Medicine and surgery; or osteopathic medicine and surgery.</p> <p><b>Cost implication:</b> The proposed language removes the term "attending physician" from the original title "physician or attending physician." As these providers are also listed as an "attending provider" in WAC 296-20-01002 Definitions, it is duplicative and confusing to have the term "attending" in both places. There is no change to what "physician" means under these rules. There is no additional cost to providers and no additional costs on the claim.</p>

<p>WAC 296-20-01002 Definitions "Regular work status"</p>	<p>The worker is capable of returning to their regular work from physical, cognitive, emotional, and behavioral standpoints. <b>Cost implication:</b> All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language is new to the definition of "regular work status" but reflects current practice. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01501(1) Physician assistant rules</p>	<p>Physician assistants may be "attending providers" pursuant to WAC 296-20-01002, under the workers' compensation system. <b>Cost implication:</b> Physician assistants have been able to sign all documents required by attending providers since 2007. In that capacity, they have fulfilled the role of attending providers. There will not be any new administrative changes in that regard. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-01501 (3)(a) and (b) Physician assistant rules</p>	<p>To be eligible to treat and be paid for workers' compensation related services, the physician assistant must obtain a provider number by: (a) Providing the department with their license number and effective date of that license; (b) Providing the name, address, specialty, and active provider number issued by the department of the supervising or collaborating physician(s) on the provider application <b>Cost implication:</b> The proposed language aligns with ESSB 2041 (chapter 62, Laws of 2024) Physician assistant collaborative practice. The physician assistant will need to provide their license number and effective date of their license instead of a copy of that license. The credentialing process will have this minor change due to ESHB 2041. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 What reports are health care providers required to submit to the insurer?</p>	<p><b>Proposed new language in the introduction:</b> This list defines the provider types and associated acronyms used in the table: Physician (MD), osteopathic physician (DO), psychologist (PhD/PsyD), chiropractor (DC), naturopath (ND), podiatric physician (DPM), dentist (DDS), advanced registered nurse practitioner (ARNP), physician assistant (PA), and optometrist (OD). <b>Cost implication:</b> The proposed language is new. It clarifies the acronyms used in the table itself. It includes psychologists (PhD/PsyD). There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 What reports are health care providers required to submit to the insurer?</p>	<p>In summary: The proposed language adds psychologists (PhD/PsyD) to the list of providers that may sign and be paid for completion of the Report of Accident (Workplace Injury, Accident or Occupational Disease) form, the Provider's Initial Report form, and the Application to Reopen Claim Due to Worsening of Condition form. <b>Cost implication:</b> Every claim will have an attending provider that can complete these forms. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 What reports are health care providers required to submit to the insurer? "Attending provider report (1)"</p>	<p>The condition(s) diagnosed including the current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition. <b>Cost implication:</b> The proposed language on the use of the DSM to diagnose mental health conditions is new to this table but reflects current practice. Similar language is in WAC 296-21-270 Mental health services and 296-20-330 Impairments of mental health. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 What reports are health care providers required to submit to the insurer? "Attending provider report (6)"</p>	<p>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested. <b>Cost implication:</b> All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language is new to this table but reflects current practice. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 What reports are health care providers required to submit to the insurer? "Consultation examination report (4)"</p>	<p>The condition(s) diagnosed including current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the DSM designated by the department and the subjective and objective findings for that condition. <b>Cost implication:</b> The proposed language is new to this table but reflects current practice. Similar language is in WAC 296-21-270 Mental health services and 296-20-330 Impairments of mental health. There is no additional cost to providers and no additional costs on the claim.</p>

<p>WAC 296-20-06101 What reports are health care providers required to submit to the insurer? "Consultation examination report (9)"</p>	<p>A provider's estimate of physical capacities should be included if the worker has not returned to work. If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included.</p> <p><b>Cost implication:</b> The proposed language related to return to work issues for a mental health condition is similar to the language on physical capacities that is currently in subsection (9). The proposed language is new to this table but reflects current practice. There is no additional cost to providers and no additional costs on the claim.</p>
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January 21, 2025  
Joel Sacks  
Director

## OTS-6004.2

AMENDATORY SECTION (Amending WSR 99-18-062, filed 8/30/99, effective 9/30/99)

**WAC 296-14-410 Reduction, suspension, or denial of compensation as a result of noncooperation.** (1) **Can the department or self-insurer reduce, suspend or deny industrial insurance benefits from a worker?** The department or the self-insurer, after receiving the department's order, has the authority to reduce, suspend or deny benefits when a worker (or worker's representative) is noncooperative with the management of the claim.

(2) **What does noncooperative mean?** Noncooperation is behavior by the worker (or worker's representative) which obstructs and/or delays the department or self-insurer from reaching a timely resolution of the claim.

(a) Noncooperation can include any one of the following:

(i) Not attending or cooperating with medical examinations or vocational evaluations requested by the department or self-insurer.

(ii) Failure to keep scheduled appointments or evaluations with (~~the attending physician~~) the attending provider or vocational counselor.

(iii) Engaging in unsanitary or harmful actions that jeopardize or slow recovery.

(iv) Not accepting medical and/or surgical treatment that is considered reasonably essential for recovery from the industrial injury or occupational disease.

(3) **Are there ever exceptions to attending a scheduled examination or vocational evaluation?** The worker will not be considered uncooperative if refusal to attend a scheduled examination is for any one of the following reasons:

(a) The department or self-insurer did not mail notice to the worker and designated representative at least 14 but no more than 60 days prior to the examination. The notice must contain the date, time and location of the examination.

(b) If the worker is 30 or less minutes late for the appointment.

(c) If the worker has not been examined or evaluated and leaves after waiting for more than one hour after the scheduled time.

(4) **What actions are taken before reducing, suspending or denying industrial insurance benefits?**

(a) The department or self-insurer must first send a letter to the worker (or the worker's representative) advising that benefits may be suspended and asking for an explanation for the noncooperation, obstruction and/or delay of the management of the claim.

(b) The worker has 30 days to respond in writing to the letter. This written response should include the reason(s) the worker has for not cooperating with the department or self-insurer.

(5) **What are the actions the department can take if a worker (or a worker's representative) is determined to be noncooperative?** If the worker does not respond in 30 days to the letter asking for justification for not cooperating or it is determined there is no good cause the department or self-insurer, after receiving the department's order, may take the following action:

(a) Reduce current or future time-loss compensation by the amount of the charge incurred by the department or self-insurer for any examination, evaluation, or treatment that the worker failed to attend.

(b) Reduce, suspend or deny all or part of the time-loss benefits.

(c) Suspend or deny medical benefits.

AMENDATORY SECTION (Amending WSR 04-20-024, filed 9/28/04, effective 11/1/04)

**WAC 296-14-4129 How will imputed wages be determined?** (1) When the worker has performed work or work-type activities within the state of Washington, the department imputes wages based on information collected and reported by the department of employment security. This information may include wages for the same or similar jobs within the geographic area proximate to the worker and for the same or most proximate time period as the work or work-type activities performed.

(2) When the worker performed work or work-type activities outside the state of Washington for which wages are to be imputed, the department will use information collected and reported by the United States Department of Labor Statistics to determine the correct imputed wage.

(3) In no case shall the imputed wages equal less than the hourly minimum wage for the proximate time period and geographic area used.

(4) If the worker engaged in reduced work or work-type activities when compared to the employment at the time of injury, except in pension cases, the department shall calculate the loss-of-earning power benefits consistent with RCW 51.32.090(3) to which the worker would have been entitled based on the imputed wage.

**Example of imputed wage:** A worker received time-loss compensation benefits and contended he was unable to work in his regular job as a construction laborer. Investigation showed that he was working painting houses on a regular full-time basis. The work he performed was ongoing over an extended period of time. Payments for this work were reportedly on a cash basis and no records were kept.

Wages would be imputed based on the average wage of a painter in his local area as reported by the department of employment security.

**Example of reduced work or work-type activity:** A worker was receiving time-loss compensation benefits for a shoulder injury she suffered while working as a registered nurse. She contended she was unable to perform nursing duties. The department received evidence that she had in fact been working on a regular basis as a cashier in her

husband's delicatessen. There were no wages reported for this work. The evidence also showed she had worked there for several months.

The medical and vocational providers were shown the investigative evidence and they determined the worker was able to work and had returned to work as a cashier.

The department would impute wages based on the average wage paid by the business owner to other employees in the same position. If there were no other employees, wages would be imputed based on the average wage of a cashier in the local area as reported by the department of employment security.

**Example of release for work and no imputed wage:** A worker, who was a carpenter on the date of injury, was receiving time-loss compensation benefits based on his alleged inability to return to work. He contended he had to use a wheelchair to get around.

Video evidence was obtained showing him performing extensive remodeling work on a rental home he owned. He did not use the wheelchair and there was no indication he had any difficulties performing the work. His activities included installing siding and windows, painting, and performing other activities inconsistent with his alleged level of disability. He received no wages as the work was done on his personal property.

The video was shown to his attending (~~(physician)~~) provider. (~~(The physician)~~) That provider withdrew (~~(his)~~) their certification of the worker's entitlement to time-loss compensation benefits and released him to return to work at his job of injury effective the first date of the video surveillance.

There is no need to impute wages because the release for work was to the job of injury.

AMENDATORY SECTION (Amending WSR 06-06-065, filed 2/28/06, effective 4/1/06)

**WAC 296-14-6226 What other information must be submitted to the department in a completed application for a residence modification?**

(1) The attending (~~(health services)~~) provider may need to submit medical documentation verifying the worker's condition and the necessity for any residence modification.

(2) The residence modification consultant must submit an evaluation, based on an in-home inspection, of the worker's needs for safety, mobility and activities of daily living. This evaluation must be in the form of a written report with pictures or drawings.

(3) Any additional information requested by the department or (~~(self-insured employer)~~) self-insurer that might be needed to evaluate a specific request.

AMENDATORY SECTION (Amending WSR 06-06-065, filed 2/28/06, effective 4/1/06)

**WAC 296-14-6230 What will the supervisor consider when approving or denying a residence modification request?** The supervisor will consider requests for residence modifications on a case-by-case basis. The supervisor may approve all or part of the requested modifications, based on what is reasonable and necessary for the individual worker.

In order to determine what is reasonable and necessary, the supervisor will review the completed application and will consider at least the following:

- (1) Whether the worker is eligible to receive a residence modification benefit; and
- (2) The needs and preferences of the individual worker, based on information provided by the injured worker; and
- (3) Whether the proposed residence is appropriate for modification; and
- (4) Whether the proposed modifications are appropriate for the style, nature and condition of the residence; and
- (5) The attending ((health-care)) provider's opinions of the medical condition, physical needs of the worker and whether the worker can reside in the residence after the modifications are complete; and
- (6) The residence modification consultant's evaluation of whether the proposed modification is necessary to meet the worker's current need for safety, mobility and activities of daily living; and
- (7) Whether the contractor's proposed plan will satisfy the necessary modification; and
- (8) Whether the proposed plans submitted by the contractors are consistent with state guidelines for specially adapted residential housing, if any; and
- (9) The contractor's proposed modification plan is consistent with the guidelines established by the United States Department of Veterans Affairs in their publication entitled "*Handbook for Design: Specially Adapted Housing*," or the recommendations published in "*The Accessible Housing Design File*" by Barrier Free Environments, Inc.; and
- (10) Whether the proposed modifications are being provided at the least cost while maintaining quality.

AMENDATORY SECTION (Amending WSR 06-06-065, filed 2/28/06, effective 4/1/06)

**WAC 296-14-6236 How is a worker advised that the supervisor has approved or denied the request for residence modification benefits?**  
The department will notify the worker, contractors, homeowner (if not the worker), residence modification consultant, attending ((health services)) provider and employer of the supervisor's decision in writing.

### OTS-6005.3

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-140 What information must a vocational rehabilitation provider include in a labor market survey?** (1) The following information must be included in a labor market survey that is submitted to the department as documentation in support of a vocational recommendation. This information must be presented in the form of a summary

report and accompanied by the results of the individual employer contacts:

- (a) The specific job title surveyed and its DOT code. If the DOT code is not an accurate reflection/description of the job, then list the specific job surveyed, the occupational code and the source from which the occupational code was obtained;
  - (b) The name of the surveyor;
  - (c) A summary of all contacts and the dates of contact;
  - (d) A summary of whether or not the industrially injured or ill worker has the physical and mental/cognitive capacities to perform the job, based upon information from the attending (~~physician~~) provider or from a preponderance of medical information;
  - (e) A summary of whether the labor market matches the industrially injured or ill worker's work pattern;
  - (f) A summary of whether the labor market is considered positive or negative, as follows:
    - (i) If the labor market survey is conducted during an ability to work assessment, a labor market is considered positive if it shows that there are sufficient job opportunities in the worker's relevant labor market to enable the injured worker to become employable.
    - (ii) If the labor market is conducted during a plan development, a labor market is considered positive if it shows that jobs suitable for the injured worker for the proposed job goal exist in sufficient numbers to reasonably conclude that the worker will be employable at plan completion.
  - (g) Additional information may be presented in the summary, but only as a supplement to the labor market survey. Additional information may include, but is not limited to, published statistical data regarding occupations and projected job openings.
- (2) The following information must be obtained from the individual employer contacts and submitted to the department with the summary report. If the information is not available, the ((VRC)) vocational rehabilitation counselor should document attempts made to obtain the information and why it was not available.
- (a) The specific job title surveyed;
  - (b) All specific employer contacts, including their firm names, phone numbers, contact name and job title;
  - (c) Physical and mental/cognitive demands of the job in relation to the industrially injured or ill worker's physical and mental/cognitive capacities;
  - (d) Minimum hiring requirements and the skills and training commonly and currently necessary to be gainfully employed in the job;
  - (e) Work patterns;
  - (f) Number of positions per job title;
  - (g) Wage;
  - (h) Date of last hire;
  - (i) Number of current openings; and
  - (j) An indication of whether each contact was considered positive or negative. The vocational rehabilitation provider must include specific documentation to support why a contact was positive or negative for the recommended occupation or proposed vocational goal.

**OTS-6006.6**

AMENDATORY SECTION (Amending WSR 17-16-133, filed 8/1/17, effective 9/1/17)

**WAC 296-20-01002 Definitions. Acceptance, accepted condition:**

Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a ~~((claimant's))~~ worker's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current federally adopted edition of the International Classification of Diseases, Clinically Modified (ICD-CM). For mental health conditions, the condition being accepted must also be specified from the edition of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM) designated by the department.

**Appointing authority:** For the evidence-based prescription drug program, the appointing authority shall mean the following people acting jointly: The director of the health care authority and the director of the department of labor and industries.

**Attendant care:** Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-23-246 for more information.

**Attending provider:** For these rules, means a person ~~((licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; and advanced registered nurse practitioner. An attending provider actively treats an injured or ill worker))~~ who is a member of the health care provider network established under RCW 51.36.010, is treating injured workers within their scope of practice, and is licensed under Title 18 RCW as one of the following: Physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, advanced registered nurse practitioner, psychologist in the case of claims solely for mental health conditions, and physician assistant.

**Attending provider report:** This type of report ~~((may))~~ is also ~~((be))~~ referred to as a "60 day" or "special" report. The following information must be included in this type of report. ~~((Also,))~~ Additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including the current federally adopted ICD-CM codes and the ~~((objective and))~~ subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM) designated by the department and the subjective and objective findings for that condition.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending ~~((doer))~~ provider should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker ~~((has not returned))~~ is unable to return to work, a ((doer's)) provider's estimate of physical capacities should



be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

(6) If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included with the report. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.

**Authorization:** Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

**Average wholesale price (AWP):** A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

**Baseline price (BLP):** Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

**Bundled codes:** When a bundled code is covered, payment for them is subsumed by the payment for) the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

**By report:** BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

**Chart notes:** This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;
- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X-rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

**Consultation examination report:** The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
  - (a) The type and severity of the industrial injury or occupational disease.
  - (b) The ~~((patient's))~~ worker's previous physical and mental health.
  - (c) Any social and emotional factors ~~((which))~~ that may ~~((effect))~~ affect recovery.
- (2) A comparison ~~((history))~~ between the history provided by the attending ~~((doctor))~~ provider and the injured worker~~((r))~~ must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all ~~((pathological))~~ conditions including the current federally adopted ICD-CM codes ~~((found to be listed))~~ and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM) designated by the department and the subjective and objective findings for that condition, and listed as:
  - (a) Due solely to injury.
  - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
  - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.

(d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).

(6) Conclusions must include:

(a) Type of treatment recommended for each pathological condition and the probable duration of treatment.

(b) Expected degree of recovery from the industrial condition.

(c) Probability, if any, of permanent disability resulting from the industrial condition.

(d) Probability of returning to work.

(7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

**Doctor (~~or attending doctor~~)**: For these rules, means ~~((a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry. An attending doctor is a treating doctor.~~

~~Only those persons so licensed may sign report of accident forms, the provider's initial report, and certify time loss compensation; however, physician assistants (PAs) also may sign these forms pursuant to WAC 296-20-01501 (PAs may be "treating providers" pursuant to the definition contained in WAC 296-20-01002); and ARNPs may also sign these forms pursuant to WAC 296-23-241 (ARNPs may be "attending providers" consistent with the definition contained in WAC 296-20-01002-))~~ one or more of the following acting within the scope of their professional license: Physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, or psychologist.

**Emergent hospital admission**: Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

**Endorsing practitioner**: A practitioner who has notified the health care authority that he or she agrees to allow therapeutic interchange.

**Fatal**: When the attending (~~doctor~~) provider has reason to believe a worker has died as a result of an industrial injury or exposure, (~~the doctor~~) that provider should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

**Fee schedules (~~or~~) (also called maximum fee schedule(s))**: The fee schedules consist of, but are not limited to, the following:

(1) Health Care Common Procedure Coding System Level I (Current Procedural Terminology CPT®) and Level II (HCPCS) codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(2) Codes, descriptions and modifiers developed by the department.

(3) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POACs), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(4) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(5) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

**Health services provider or provider:** For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

**Home nursing:** Those nursing services that are proper and necessary to maintain the worker in his or her residence. These services must be provided through an agency licensed, certified or registered to provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

**Independent or separate procedure:** Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

**Initial prescription drugs:** Any drug prescribed for an alleged industrial injury or occupational disease during the initial visit.

**Initial visit:** The first visit to a health care provider during which the Report of ((Industrial)) Accident (Workplace Injury, Accident, or Occupational Disease) form or the Provider's Initial Report form, where applicable, is completed and the worker files a claim for workers compensation.

**Medical aid rules:** The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

**Modified work status:** The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature or, for an accepted mental health condition(s), the ability to engage in modified work, which may include relevant accommodations. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self-confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the ((~~doctor~~)) attending provider and the worker with a statement describing the available work in terms that will enable the ((~~doctor~~)) attending provider to relate the physical activities of the job to the worker's physical limitations and capabilities. The ((~~doctor~~)) attending provider shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the ((~~doctor~~)) attending provider as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time-loss compensation will be resumed upon certification by the attending ((~~doctor~~)) provider.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be con-

ducted to determine whether the worker will require assistance in returning to work.

**Nonemergent (elective) hospital admission:** Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

**Physician (~~(or attending physician (AP))~~):** For these rules, means any person licensed to perform one (~~(or more)~~) of the following professions: Medicine and surgery; or osteopathic medicine and surgery. (~~(An AP is a treating physician.)~~)

**Practitioner (~~(or licensed health care provider)~~):** For these rules, means any person defined as (~~(a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; advanced registered nurse practitioners (ARNPs); certified medical physician assistants or osteopathic physician assistants; and massage therapy)~~) an "attending provider" or other licensed health care provider authorized to deliver services under Title 51 RCW.

**Preferred drug:** A drug selected by the appointing authority for inclusion in the Washington preferred drug list and designated for coverage by applicable state agencies or a drug selected for coverage by applicable state agencies.

**Preferred drug list:** Washington preferred drug list or "WPDL" is the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

**Proper and necessary:**

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services (~~(which)~~) that are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the (~~(claimant)~~) worker, the (~~(claimant's)~~) worker's attending (~~(doctor)~~) provider, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and nec-

essary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services (~~(which)~~) that are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

**Refill:** The continuation of therapy with the same drug, including the renewal of a previous prescription or adjustments in dosage.

**Regular work status:** The (~~(injured)~~) worker is (~~(physically)~~) capable of returning to (~~(his/her)~~) their regular work from physical, cognitive, emotional, and behavioral standpoints. It is the duty of the attending (~~(doctor)~~) provider to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending (~~(doctor)~~) provider if the condition is not stationary and such treatment is needed and otherwise in order.

**Temporary partial disability:** Partial time-loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time-loss can be made. No partial time-loss compensation can be paid after the worker's condition is stationary. All time-loss compensation must be certified by the attending (~~(doctor)~~) provider based on objective findings.

**Termination of treatment:** When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The (~~(patient)~~) worker may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the (~~(patient's)~~) worker's.

**Therapeutic interchange:** To dispense a preferred drug in place of a prescribed nonpreferred drug within the same therapeutic class listed on the Washington preferred drug list.

**Total permanent disability:** Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending (~~(doctor)~~) provider feels a worker may be totally and permanently disabled, the attending (~~(doctor)~~) provider should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

**Total temporary disability:** (~~(Full-time-loss)~~) Full time-loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

**Treating provider:** For these rules, means a (~~(person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; advanced registered nurse practitioner (ARNP); and certified medical physician assistants or os-~~

~~osteopathic physician assistants. A treating provider)) physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, advanced registered nurse practitioner, psychologist, or physician assistant that actively treats an injured or ill worker.~~

**Unusual or unlisted procedure:** Value of unlisted services or procedures should be substantiated "by report" (BR).

**Utilization review:** The assessment of a ~~((claimant's))~~ worker's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

AMENDATORY SECTION (Amending WSR 12-23-020, filed 11/13/12, effective 12/14/12)

**WAC 296-20-01010 Scope of health care provider network.** (1) The rules establish the development, enrollment, and oversight of a network of health care providers approved to treat injured workers. The health care provider network rules apply to care for workers covered by Washington state fund and self-insured employers.

(2) As of January 1, 2013, the following types of health care providers (hereafter providers) must be enrolled in the network with an approved provider agreement to provide and be reimbursed for care to injured workers in Washington state beyond the initial office or emergency room visit:

- (a) Medical physicians and surgeons;
- (b) Osteopathic physicians and surgeons;
- (c) Chiropractic physicians;
- (d) Naturopathic physicians;
- (e) Podiatric physicians and surgeons;
- (f) Dentists;
- (g) Optometrists;
- (h) Advanced registered nurse practitioners; ~~((and))~~
- (i) Psychologists; and
- (j) Physician assistants.

(3) The requirement in subsection (2) of this section does not apply to providers who practice exclusively in acute care hospitals or within inpatient settings in the following specialties:

- (a) Pathologists;
- (b) Consulting radiologists working within a hospital radiology department;
- (c) Anesthesiologists or certified registered nurse anesthetists (CRNAs) except anesthesiologists and CRNAs with pain management practices in either hospital-based or ambulatory care settings;
- (d) Emergency room providers; or
- (e) Hospitalists.

(4) The department may phase implementation of the network to ensure access within all geographic areas. The director of the department shall determine, at ~~((his/her))~~ their discretion, whether to establish or expand the network, after consideration of at least the following:

- The percent of injured workers statewide who have access to at least five primary care providers within ~~((fifteen))~~ 15 miles, com-

pared to a baseline established within the previous (~~twelve~~) 12 months;

- The percent of injured workers by county who have access to at least five primary care providers within (~~fifteen~~) 15 miles, compared to a baseline established within the previous (~~twelve~~) 12 months; and

- The availability within the network of a broad variety of specialists necessary to treat injured workers.

The department may expand the health care provider network scope to include additional providers not listed in subsection (2) of this section, listed in subsection (3) of this section, and to out-of-state providers. For providers outside the scope of the health care provider network rule, the department and (~~self-insured employers~~) self-insurers may reimburse for treatment beyond the initial office or emergency room visit.

AMENDATORY SECTION (Amending WSR 08-04-095, filed 2/5/08, effective 2/22/08)

**WAC 296-20-01501 Physician assistant rules.** (1) Physician assistants (~~(PA)~~) may be "~~(treating)~~ attending providers" pursuant to WAC 296-20-01002, under the workers' compensation system(~~, and~~). They may be approved for payment for those medical services for which the physician assistant is trained and licensed, under (~~the control and supervision of a licensed physician. Such control and supervision shall not be construed to require the personal presence of the supervising physician~~) a collaboration agreement with a licensed physician(s) as defined in RCW 18.71A.010.

(2) Physician assistants may perform those medical services (~~which~~) that are within the scope of their (~~physician's assistant~~) license and within the limitations of subsection (3) of this section.

(3) To be eligible to treat and be paid for workers' compensation related services, the physician assistant must obtain a provider number by:

(a) Providing the department with (~~a copy of his/her license~~) their license number and effective date of that license;

(b) Providing the name, address, specialty, and active provider number issued by the department of the supervising or collaborating physician(s) on the provider application (~~(PA)~~). A physician assistant may have to obtain more than one provider number if billing under multiple supervising or collaborating physicians(~~+~~); and

(c) Notifying the department of any change of the parameters listed in (a) or (b) of this subsection.

(4) Physician assistants may (~~sign and attest to any certificates, cards, forms or other required documentation required by the department that the physician assistant's supervising physician may sign provided that~~) perform the functions of an attending provider when it is within the physician assistant's scope of practice and is consistent with the terms of the physician assistant's (~~practice arrangement plan~~) collaboration agreement as required by chapter (~~18.57A and~~) 18.71A RCW. This includes, but is not limited to:

- Completing and signing the Report of Accident (Workplace Injury, Accident or Occupational Disease) form or the Provider's Initial Report form, where applicable;

- Certifying time-loss compensation;



- Completing and submitting all required or requested reports;
  - Referring workers for consultations;
  - Facilitating early return to work offered by and performed for the employer(s) of record; and
  - Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.
- (5) Physician assistants cannot:
- Rate permanent disability or impairment; and
  - Perform independent medical examinations or consultations.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-20-020 Acceptance of rules and fees.** The filing of (~~an accident report~~) the Report of Accident (Workplace Injury, Accident or Occupational Disease) form or the Provider's Initial Report form, where applicable; or the rendering of treatment to a worker who comes under the department's or self-insurer's jurisdiction, as the case may be, constitutes acceptance of the department's medical aid rules and compliance with its rules and fees.

In accordance with RCW 51.28.020 of the industrial insurance law, when a (~~doctor~~) provider renders treatment to a worker entitled to benefits under the law, "it shall be the duty of (~~the physician~~) that provider to inform the worker of (~~his~~) their rights under this title and to lend all necessary assistance in making the application for compensation and such proof of other matters as required by the rules of the department without charge to the worker," a worker shall not be billed for treatment rendered for (~~his~~) their accepted industrial injury or occupational disease.

The department or self-insurer must be notified immediately, when an unrelated condition is being treated concurrently with an industrial injury. See WAC 296-20-055 for specific information required.

When there is questionable eligibility, (i.e., service is not usually allowed for industrial injuries or investigation is pending, etc.) the provider may require the worker to pay for the treatment rendered.

In cases of questionable eligibility where the provider has billed the worker or other insurance, and the claim is subsequently allowed, the provider shall refund the worker or insurer in full and bill the department or self-insurer for services rendered using billing instructions, codes, and policies as listed in the medical aid rules and fee schedules.

(~~Cases in which there is a question of medical ethics or quality of medical care, will be referred to the Washington state medical association's medical advisory and utilization review committee to the department of labor and industries for recommendations.~~)

AMENDATORY SECTION (Amending WSR 12-12-059, filed 6/5/12, effective 7/6/12)

**WAC 296-20-030 Treatment not requiring authorization for accepted conditions.** (1) A maximum of (~~twenty~~) 20 office calls for the

treatment of the industrial condition, during the first (~~(sixty)~~) 60 days, following injury. Subsequent office calls must be authorized. Reports of treatment rendered must be filed at (~~(sixty)~~) 60-day intervals to include number of office visits to date. See chapter 296-20 WAC and department policies for report requirements and further information.

(2) Initial diagnostic X-rays necessary for evaluation and treatment of the industrial injury or condition. See WAC 296-20-121 for further information.

(3) The first (~~(twelve)~~) 12 physical therapy treatments as provided by chapters 296-21, 296-23, and 296-23A WAC, upon consultation by the attending (~~(doctor)~~) provider or under (~~(his)~~) their direct supervision. Additional physical therapy treatment must be authorized and the request substantiated by evidence of improvement. In no case will the department or self-insurer pay for inpatient hospitalization of a (~~(claimant)~~) worker to receive physical therapy treatment only. USE OF DIAPULSE, THERMATIC (standard model only), SPECTROWAVE AND SUPERPULSE MACHINES AND IONTOPHORESIS IS NOT AUTHORIZED FOR WORKERS ENTITLED TO BENEFITS UNDER THE INDUSTRIAL INSURANCE ACT.

(4) Routine laboratory studies reasonably necessary for diagnosis and/or treatment of the industrial condition. Other special laboratory studies require authorization.

(5) Routine standard treatment measures rendered on an emergency basis or in connection with minor injuries not otherwise requiring authorization.

(6) Consultation with specialist when indicated. See WAC 296-20-051 for consultation guidelines.

(7) Myelogram if prior to emergency surgery.

AMENDATORY SECTION (Amending WSR 15-17-104, filed 8/18/15, effective 10/1/15)

**WAC 296-20-03001 Treatment requiring authorization.** Certain treatment procedures require authorization by the department or self-insurer. Requests for authorization must include a statement of: The condition(s) diagnosed; the current federally adopted ICD-CM codes; their relationship, if any, to the industrial injury/exposure; an outline of the proposed treatment program, its length and components, procedure codes, and expected prognosis; and an estimate of when treatment would be concluded and condition stable.

(1) Office calls in excess of the first (~~(twenty)~~) 20 visits or (~~(sixty)~~) 60 days whichever occurs first.

(2) The department may designate those inpatient hospital admissions that require prior authorization.

(3) X-ray and radium therapy.

(4) Diagnostic studies other than routine X-ray and blood or urinalysis laboratory studies.

(5) Myelogram in nonemergent cases.

(6) Physical therapy treatment beyond initial (~~(twelve)~~) 12 treatments as outlined in chapters 296-21, 296-23, and 296-23A WAC.

(7) Diagnostic or therapeutic injections that include, but are not limited to:

(a) Therapeutic subarachnoid, epidural, or caudal injections for chronic pain;

(b) Diagnostic facet injections;

(c) Sacroiliac joint injections for chronic pain;

(d) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per ((patient)) worker. The attending ((~~doctor~~)) provider must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one ((patient)) worker.

Refer to fee schedule payment policies and coverage decisions for authorization criteria.

(8) Home nursing, attendant services or convalescent center care must be authorized per provisions outlined in WAC 296-20-091 or 296-23-246.

(9) Provision of prosthetics, orthotics, surgical appliances, special equipment for home or transportation vehicle; custom made shoes for ankle/foot injuries resulting in permanent deformity or malfunction of a foot; masking devices; hearing aids; etc., must be authorized in advance as per WAC 296-20-1101 and 296-20-1102.

(10) Biofeedback program; structured intensive multidisciplinary pain programs (SIMPs); pain clinic; weight loss program; psychotherapy; rehabilitation programs; and other programs designed to treat special problems must be authorized in advance. Refer to the department's medical aid rules and fee schedules for details.

(11) Prescription or injection of vitamins for specific therapeutic treatment of the industrial condition(s) when the attending ((~~doctor~~)) provider can demonstrate that published clinical studies indicate vitamin therapy is the treatment of choice for the condition. Authorization for this treatment will require presentation of facts to and review by department medical consultant.

(12) The long-term prescription of medication under the specific conditions and circumstances in (a) and (b) of this subsection are considered corrective therapy rather than palliative treatment and approval in advance must be obtained.

(a) Nonsteroidal anti-inflammatory agents for the treatment of degenerative joint conditions aggravated by occupational injury.

(b) Anticonvulsive agents for the treatment of seizure disorders caused by trauma.

(13) The department may designate those diagnostic and surgical procedures ((which)) that can be performed in other than a hospital inpatient setting. Where a worker has a medical condition ((which)) that necessitates a hospital admission, prior approval of the department or self-insurer must be obtained.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-20-035 Treatment in cases that remain open beyond ((sixty)) 60 days.** Conditions requiring treatment beyond ((sixty)) 60 days are indicative of a major industrial condition or complication by other conditions. Except in cases of severe and extensive injuries, i.e., quadriplegia, paraplegia, multiple fractures, etc., when the worker requires treatment beyond ((sixty)) 60 days following injury, a complete examination is necessary to determine and/or establish need for continued treatment and/or payment of time-loss compensation. This may be accomplished either by the attending ((~~doctor~~)) provider or a consultation exam. In either case, a detailed exam report must be provi-

ded to the department or self-insurer. Refer to chapter 296-20 WAC (including the definition section) and department policy for the type of information that must be included in these reports.

AMENDATORY SECTION (Amending WSR 81-01-100, filed 12/23/80, effective 3/1/81)

**WAC 296-20-055 Limitation of treatment and temporary treatment of unrelated conditions when retarding recovery.** Conditions preexisting the injury or occupational disease are not the responsibility of the department. When an unrelated condition is being treated concurrently with the industrial condition, the attending (~~doctor~~) provider must notify the department or self-insurer immediately and submit the following:

- (1) Diagnosis and/or nature of unrelated condition.
- (2) Treatment being rendered.
- (3) The effect, if any, on industrial condition.

Temporary treatment of an unrelated condition may be allowed, upon prior approval by the department or self-insurer, provided these conditions directly retard recovery of the accepted condition. The department or self-insurer will not approve or pay for treatment for a known preexisting unrelated condition for which the (~~claimant~~) worker was receiving treatment prior to (~~his~~) their industrial injury or occupational disease, which is not retarding recovery of (~~his~~) that industrial condition.

A thorough explanation of how the unrelated condition is affecting the industrial condition must be included with the request for authorization.

The department or self-insurer will not pay for treatment of an unrelated condition when it no longer exerts any influence upon the accepted industrial condition. When treatment of an unrelated condition is being rendered, reports must be submitted monthly outlining the effect of treatment on both the unrelated and the accepted industrial conditions.

**The department or self-insurer will not pay for treatment for unrelated conditions unless specifically authorized.** This includes prescription of drugs and medicines.

AMENDATORY SECTION (Amending WSR 15-17-104, filed 8/18/15, effective 10/1/15)

**WAC 296-20-06101 What reports are health care providers required to submit to the (~~insurer~~) department or self-insurer?** The department or self-insurer requires different kinds of information at various stages of a claim in order to approve treatment, time-loss compensation, and treatment bills. The information provided in these reports is needed to adequately manage industrial insurance claims.

This list defines the provider types and associated acronyms used in the table below: Physician (MD), osteopathic physician (DO), psychologist (PhD/PsyD), chiropractor (DC), naturopath (ND), podiatric physician (DPM), dentist (DDS), advanced registered nurse practitioner (ARNP), physician assistant (PA), and optometrist (OD).

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
<p><b>Report of ((Industrial Injury)) Accident (Workplace Injury, Accident or Occupational Disease) (form)</b>  <b>Self-Insurance: Provider's Initial Report (form)</b></p>	<p>Immediately - Within five days of first visit.</p>	<p>See form</p> <p>If additional space is needed, please attach the information to the application. The claim number should be at the top of the page.</p>	<p>Only MD, DO, PhD/PsyD, DC, ND, DPM, DDS, ARNP, PA, and OD may sign and be paid for completion of this form.</p>
<p><b><u>Attending provider report, also known as the Sixty Day report</u></b> (narrative)  <b>Purpose:</b> Support and document the need for continued care when conservative (nonsurgical) treatment is to continue beyond sixty days</p>	<p>Every sixty days when only conservative (nonsurgical) care has been provided.</p>	<p>(1) The <b>conditions diagnosed</b>((s)) including the current federally adopted ICD-CM codes and the subjective ((complaints)) and objective findings.</p> <p><u>For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.</u></p>	<p>Providers may submit legible comprehensive chart notes in lieu of sixty day reports <b>PROVIDED</b> the chart notes include all the information required as noted in the "What Information Should Be Included?" column.</p> <p><b>However, office notes are not acceptable in lieu of requested narrative reports and providers may not bill for the report if chart notes are submitted in place of the report.</b></p> <p><b>Providers must include their name, address, and date on all chart notes submitted.</b></p>
		<p>(2) The <b>relationship of diagnoses</b>, if any, to the industrial injury or exposure.</p>	<p>((<b>However, office notes are not acceptable in lieu of requested narrative reports and providers may not bill for the report if chart notes are submitted in place of the report.</b>))</p>
		<p>(3) Outline of <b>proposed treatment program</b>, its length, components and expected prognosis including an <b>estimate of when treatment should be concluded</b> and condition(s) stable. An <b>estimated return to work date</b> and the <b>probability, if any, of permanent partial disability</b> resulting from the industrial condition.</p>	
		<p>(4) <b>Current medications</b>, including dosage and amount prescribed. With repeated prescriptions, include the plan and need for continuing medication.</p>	<p>((<b>Providers must include their name, address and date on all chart notes submitted.</b>))</p>

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
		(5) If the worker has not returned to work, <b>indicate whether a vocational assessment will be necessary</b> to evaluate the worker's ability to return to work and why.	
		(6) If the worker ( <del>has not returned</del> ) <u>is unable to return</u> to work, a <del>((doctor's))</del> <b>provider's estimate of physical capacities</b> should be included.  <u>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.</u>	
		(7) <b>Response to any specific questions</b> asked by the insurer or vocational counselor.	
<b>Opioid Authorization Requirement</b>	Opioids in subacute phase - Six weeks from the date of injury or surgery.  Opioids in chronic phase - Twelve weeks from the date of injury or surgery.  Opioids for ongoing chronic therapy - Every ninety days.	Please see WAC 296-20-03056 through 296-20-03059 for documentation requirements for those workers receiving opioids.	
<b>Special Reports/Follow-up Reports</b> (narrative)	As soon as possible following request by the <del>((department/insurer))</del> <u>department or self-insurer.</u>	<b>Response to any specific questions</b> asked by the insurer or vocational counselor.	"Special reports" are payable only when requested by the <del>((insurer))</del> <u>department or self-insurer.</u>
<b>Consultation Examination Reports</b> (narrative)	At one hundred twenty days if only conservative (nonsurgical) care has been provided.	(1) Detailed history.	If the injured/ill worker had been seen by the consulting doctor within the past three years for the same condition, the consultation will be considered a follow-up office visit, not a consultation.
<b>Purpose:</b> Obtain an objective evaluation of the need for ongoing conservative medical management of the worker.		(2) <del>((Comparative history))</del> <b>A comparison</b> between the history provided by the attending <del>((or treating))</del> provider and <u>the injured worker.</u>	

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
		(3) Detailed physical examination.	
The attending <del>((or treating))</del> provider may choose the consultant.		(4) <u>The condition(s) diagnosed</u> , including the current federally adopted ICD-CM codes <del>((;))</del> and the subjective <del>((complaints))</del> and objective findings.  <u>For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the DSM designated by the department and the subjective and objective findings for that condition.</u>	A copy of the consultation report must be submitted to both the attending <del>((or treating))</del> provider and the <del>((department/insurer))</del> department or self-insurer.
		(5) Outline of <b>proposed treatment program</b> : Its length, components, expected prognosis including when treatment should be concluded and condition(s) stable.	
		(6) <b>Expected degree of recovery</b> from the industrial condition.	
		(7) <b>Probability of returning to regular work</b> or modified work and an <b>estimated</b> return to work <b>date</b> .	
		(8) <b>Probability</b> , if any, of <b>permanent partial disability</b> resulting from the industrial condition.	
		(9) A <del>((doctor's))</del> <u>provider's estimate of physical capacities</u> should be included if the worker has not returned to work.  <u>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included.</u>	
		(10) <b>Reports</b> of necessary, reasonable <b>X-ray</b> and <b>laboratory</b> studies to establish or confirm diagnosis when indicated.	

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
<p><b>Attending Provider Review of IME Report</b> (form)</p> <p><b>Purpose:</b> Obtain the attending provider's opinion about the accuracy of the diagnoses and information provided based on the IME.</p>	As soon as possible following request by the department( <del>(insurer)</del> ) or <u>self-insurer</u> .	Agreement or disagreement with IME findings. If you disagree, provide objective/subjective findings to support your opinion.	Payable only to the attending provider upon request of the department( <del>(insurer)</del> ) or <u>self-insurer</u> . PAs can concur with treatment recommendations but not PPD ratings.
<p><b>Loss of Earning Power</b> (form)</p> <p><b>Purpose:</b> Certify the loss of earning power is due to the industrial injury/occupational disease.</p>	As soon as possible after receipt of the form.	See form	Payable only to the attending ( <del>(or treating)</del> ) provider.
<p><b>Application to Reopen Claim Due to Worsening of Condition</b> (form)</p> <p><b>Purpose:</b> Document worsening of the accepted condition and need to reopen claim for additional treatment.</p>	<p>Immediately following identification of worsening after a claim has been closed for sixty days.</p> <p><b>Crime Victims:</b> Following identification of worsening after a claim has been closed for ninety days.</p>	See form	Only MD, DO, <u>PhD/PsyD</u> , DC, ND, DPM, DDS, ARNP, PA, and OD may sign and be paid for completion of this form.

**What documentation is required for initial and follow up visits?**

Legible copies of office or progress notes are required for the initial and all follow-up visits.

**What documentation are ancillary providers required to submit to the insurer?**

Ancillary providers are required to submit the following documentation to the department or self-insurer:

<b>Provider</b>	<b>Chart Notes</b>	<b>Reports</b>
Audiology	X	X
Biofeedback	X	X
Dietician		X
Drug & Alcohol Treatment	X	X
Free Standing Surgery	X	X
Free Standing Emergency Room	X	X
<del>((Head))</del> <u>Brain Injury</u> Program	X	X
Home Health Care		X
Infusion Treatment, Professional Services		X
Hospitals	X	X
Laboratories		X
Licensed Massage Therapy	X	X
Medical Transportation		X
Nurse Case Managers		X



Provider	Chart Notes	Reports
Nursing Home	X	X
Occupational Therapist	X	X
Optometrist	X	X
Pain Clinics	X	X
Panel Examinations		X
Physical Therapist	X	X
Prosthetist/Orthotist	X	X
Radiology		X
Skilled Nursing Facility	X	X
Speech ((Therapist)) Language Pathologist	X	X

AMENDATORY SECTION (Amending WSR 09-14-104, filed 6/30/09, effective 7/31/09)

**WAC 296-20-071 Concurrent treatment.** In some cases, treatment by more than one practitioner may be allowed. The department or self-insurer will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system and/or require specialty or multidisciplinary care.

When requesting consideration for concurrent treatment, the attending ((~~doctor~~)) provider must provide the department or self-insurer with the following:

The name, address, discipline, and specialty of all other practitioners assisting in the treatment of the injured worker and an outline of their responsibility in the case and an estimate of the length of the period of concurrent care.

When concurrent treatment is allowed, the department or self-insurer will recognize one primary attending provider, who will be responsible for directing the over-all treatment program, including monitoring or prescribing medications when appropriate, providing copies of all reports and other data received from the involved practitioners and, in time-loss cases, providing adequate certification evidence of the worker's inability to work. The department or self-insurer may allow a concurrent care provider to prescribe medications. In such cases, the concurrent care provider is required to send the attending provider and the department or self-insurer all required reports, including a report of the medications prescribed.

The department or self-insurer will approve concurrent care on a case-by-case basis. Consideration will be given to all factors in the case including availability of providers in the worker's geographic location.

AMENDATORY SECTION (Amending WSR 81-01-100, filed 12/23/80, effective 3/1/81)

**WAC 296-20-09701 Request for reconsideration.** On occasion, a claim may be closed prematurely or in error or other adjudication action may be taken, which may seem inappropriate to the ((~~doctor~~)) at-

tending provider or injured worker. When this occurs the attending ~~((doetor))~~ provider should submit immediately in writing ~~((his))~~ a request for reconsideration of the adjudication action, supported by an outline of:

- (1) The ~~((elaimant's))~~ worker's current condition.
- (2) The treatment program being received.
- (3) The prognosis of when stabilization will occur.

All requests for reconsideration must be received by the department or self-insurer within ~~((sixty))~~ 60 days from date of the order and notice of closure. Request for reconsideration of other department or self-insurer orders or actions must be made in writing by either the ~~((doetor))~~ attending provider or the injured worker within ~~((sixty))~~ 60 days of the date of the action or order.

AMENDATORY SECTION (Amending WSR 05-23-143, filed 11/22/05, effective 1/3/06)

**WAC 296-20-1102 Special equipment rental and purchase prosthetic and orthotics equipment.** The department or self-insurer will authorize and pay rental fee for equipment or devices if the need for the equipment will be for a short period of treatment during the acute phase of condition. Rental extending beyond ~~((sixty))~~ 60 days requires prior authorization. If the equipment will be needed on long-term basis, the department or self-insurer will consider purchase of the equipment or device. The department's or self-insurer's decision to rent or purchase an item of medical equipment will be based on a comparison of the projected rental costs of the item with its purchase price. An authorized representative of the department or self-insurer will decide whether to rent or purchase certain items, provided they are appropriate and medically necessary for treatment of the worker's accepted industrial condition. Decisions to rent or purchase items will be based on the following information:

- (1) Purchase price of the item.
- (2) Monthly rental fee.

(3) The prescribing ~~((doetor's))~~ provider's estimate of how long the item will be needed.

The prescribing ~~((doetor))~~ provider must obtain prior authorization from the department or self-insurer, for rental or purchase of special equipment or devices. Also, all equipment (rentals and purchases), prosthetics, and orthotics must be billed using the appropriate codes, and billing forms, as determined by the medical aid rules and fee schedules.

The department or self-insurer will authorize and pay for prosthetics and orthotics as needed by the worker and substantiated by the attending ~~((doetor))~~ provider. If such items are furnished by the attending ~~((doetor))~~ provider, the department or self-insurer will reimburse the ~~((doetor-his))~~ provider for their cost for the item. See chapter 296-20 WAC (including WAC 296-20-124) and the fee schedules for information regarding replacement of such items on closed claims.

The department or self-insurer will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation and substantiation from the attending ~~((doetor))~~ provider.

Provision of such equipment requires prior authorization.

THE GRAVITY GUIDING SYSTEM, GRAVITY LUMBAR REDUCTION DEVICE, BACKSWING AND OTHER INVERSION TRACTION EQUIPMENT MAY ONLY BE USED IN A SUPERVISED SETTING. RENTAL OR PURCHASE FOR HOME USE WILL NOT BE ALLOWED NOR PAID BY THE DEPARTMENT OR SELF-INSURER.

EQUIPMENT NOT REQUIRING PRIOR AUTHORIZATION INCLUDES CRUTCHES, CERVICAL COLLARS, LUMBAR AND RIB BELTS, AND OTHER COMMONLY USED ORTHOTICS OF MINIMAL COST.

PERSONAL APPLIANCES SUCH AS VIBRATORS, HEATING PADS, HOME FURNISHINGS, HOT TUBS, WATERBEDS, EXERCISE BIKES, EXERCISE EQUIPMENT, JACUZZIES, PILLOWS, CASSETTE TAPES, EDUCATIONAL MATERIALS OR BOOKS, AND OTHER SIMILAR ITEMS WILL NOT BE AUTHORIZED OR PAID.

In no case will the department or self-insurer pay for rental fees once the purchase price of the rented item has been reached with the exception of oxygen equipment. The department or self-insurer may pay for rental fees of oxygen equipment beyond its purchase price.

AMENDATORY SECTION (Amending WSR 86-06-032, filed 2/28/86, effective 4/1/86)

**WAC 296-20-121 X-rays.** Recognizing the greatest need for access to X-rays lies with the attending (~~doctor~~) provider, the department or self-insurer requires only submission of X-ray findings and does not require submission of the actual films except upon specific request when needed for purposes of permanent disability rating, other administrative or legal decisions, or in litigation cases. The department or self-insurer requires the attending (~~doctor~~) provider retain X-rays for a period of not less than (~~ten~~) 10 years. In transfer cases, the X-rays in the possession of the current attending (~~doctor~~) provider must be made available to the new attending (~~doctor~~) provider.

When requesting consultation, the attending (~~doctor~~) provider should make any X-rays in (~~his~~) their possession available to the consultant.

When a special exam has been arranged for the worker by the department or self-insurer, the worker's existing X-rays should be provided to the special examiner. The worker may carry such X-rays to the exam.

When the (~~doctor's~~) provider's office is closed because of death, retirement or leaving the state, arrangements must be made with the department or self-insurer regarding custody of X-rays to insure availability on request. When submitting billing for X-ray service, a copy of the X-ray findings is required. No payment will be made for excessive or unnecessary X-rays. No payment will be made on closed or rejected claims, except under conditions outlined in WAC 296-20-124.

Prior authorization is required for X-rays subsequent to the initial study. Repeat or serial radiology examinations may be performed only upon adequate clinical justification to confirm changes in the condition(s) accepted. The subjective complaints and the objective findings substantiating the repeat study must be submitted by the practitioner in the request for authorization to the department or self-insurer.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-20-200 General information for impairment rating examinations by attending (~~doctors~~) providers, consultants or independent medical examination (IME) providers.** (1) The department of labor and industries has promulgated the following rules and categories to provide a comprehensive system of classifying unspecified permanent partial disabilities in the proportion they reasonably bear to total bodily impairment. The department's objectives are to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities pursuant to RCW 51.32.080(2).

(2) The following system of rules and categories directs the provider's attention to the actual conditions found and establishes a uniform system for conducting rating examinations and reporting findings and conclusions in accord with broadly accepted medical principles.

The evaluation of bodily impairment must be made by experts authorized to perform rating examinations. After conducting the examination, the provider will choose the appropriate category for each bodily area or system involved in the particular claim and include this information in the report. The provider will, therefore, in addition to describing the worker's condition in the report, submit the conclusions as to the relative severity of the impairment by giving it in terms of a defined condition rather than a personal opinion as to a percentage figure. In the final section of this system of categories and rules are some rules for determining disabilities and the classification of disabilities in bodily impairment is listed for each category. These last provisions are for the department's administrative use in acting upon the expert opinions which have been submitted to it.

(3) In preparing this system, the department has complied with its duty to enact rules classifying unspecified disabilities in light of statutory references to nationally recognized standards or guides for determining various bodily impairments. Accordingly, the department has obtained and acted upon sound established medical opinion in thus classifying unspecified disabilities in the reasonable proportion they bear to total bodily impairment. In framing descriptive language of the categories and in assigning a percentage of disability, careful consideration has been given to nationally recognized medical standards and guides. Both are matters calling for the use of expert medical knowledge. For this reason, the meaning given the words used in this set of categories and accompanying rules, unless the text or context clearly indicates the contrary, is the meaning attached to the words in normal medical usage.

(4) The categories describe levels of physical and mental impairment. Impairment is anatomic or functional abnormality or loss of function after maximum medical improvement has been achieved. This is the meaning of "impairment" as the word is used in the guides mentioned above. This standard applies to all persons equally, regardless of factors other than loss of physical or mental function. Impairment is evaluated without reference to the nature of injury or the treatment therefore, but is based on the functional loss due to the injury or occupational disease. The categories have been framed to include conditions in other bodily areas which derive from the primary impairment. The categories also include the presence of pain, tenderness and

other complaints. Workers with comparable loss of function thus receive comparable awards.

(5) These rules and categories (WAC 296-20-200 through 296-20-690) shall only be applicable to compensable injuries occurring on or after the effective date of these rules and categories.

(6) These rules and categories (WAC 296-20-200 through 296-20-690) shall be applicable only to cases of permanent partial disability. They have no applicability to determinations of permanent total disability.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-20-2010 General rules for impairment rating examinations by attending ~~((doctors))~~ providers and consultants.** These general rules must be followed by ~~((doctors))~~ providers who perform examinations or evaluations of permanent bodily impairment.

(1) Impairment rating examinations shall be performed only by ~~((doctors))~~ attending providers and consultants currently licensed in both medicine and surgery (including osteopathic and podiatric) or dentistry, and department-approved chiropractors subject to RCW 51.32.112. ~~((The department or self-insurer may request the worker's attending doctor conduct the impairment rating when appropriate. If the attending doctor is unable or unwilling to perform the impairment rating examination, a consultant, at the attending doctor's request, may conduct a consultation examination and provide an impairment rating based on the findings. The department or self-insurer can also request an impairment rating examination from an independent medical examination (IME) provider. A chiropractic impairment rating examination may be performed only when the worker has been clinically managed by a chiropractor.))~~

(a) When the worker's attending provider is eligible to perform impairment ratings according to this section, the department or self-insurer may request that the attending provider conduct the impairment rating when appropriate.

(b) If the attending provider is unable or unwilling to perform the impairment rating examination, a consultant, at the attending provider's request according to this section, may conduct a consultation examination and provide an impairment rating based on the findings.

(c) The department or self-insurer can also request an impairment rating examination from an independent medical examination (IME) provider.

(d) A chiropractic impairment rating examination may be performed only when the worker has been clinically managed by a chiropractor.

(2) Whenever an impairment rating examination is made, the attending ~~((doctor))~~ provider or consultant must complete a rating report that includes, at a minimum, the following:

(a) Statement that the ~~((patient))~~ worker has reached maximum medical improvement (MMI) and that no further curative treatment is recommended;

(b) Pertinent details of the physical examination performed (both positive and negative findings);

(c) Results of any pertinent diagnostic tests performed (both positive and negative findings). Include copies of any pertinent tests or studies ordered as part of the exam;

(d) An impairment rating consistent with the findings and a statement of the system on which the rating was based (for example, the *AMA Guides to the Evaluation of Permanent Impairment* and edition used, or the Washington state category rating system - refer to WAC 296-20-19000 through 296-20-19030 and WAC 296-20-200 through 296-20-690); and

(e) The rationale for the rating, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, tables, figures and page numbers on which the rating was based.

(3) It is the responsibility of attending (~~doctors~~) providers and consultants to be familiar with the contents of the *Medical Examiner Handbook* section on how to rate impairment.

(4) Attending (~~doctors~~) providers and consultants performing impairment ratings must be available and willing to testify on behalf of the department or self-insurer, worker or employer and accept the department fee schedule for testimony.

(5) A complete impairment rating report must be sent to the department or self-insurer within (~~fourteen~~) 14 calendar days of the examination date, or within (~~fourteen~~) 14 calendar days of receipt of the results of any special tests or studies requested as a part of the examination. Job analyses (JAs) sent to the IME provider at the time of the impairment rating exam must be completed and submitted with the impairment rating report.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-20-2015 What rating systems are used for determining an impairment rating conducted by the attending (~~doctor~~) provider or a consultant?** The following table provides guidance regarding the rating systems generally used. These rating systems or others adopted through department policies should be used to conduct an impairment rating.

**Overview of Systems for Rating Impairment**

<b>Rating System</b>	<b>Used for These Conditions</b>	<b>Form of the Rating</b>
RCW 51.32.080	Specified disabilities: Loss by amputation, total loss of vision or hearing	Supply the level of amputation
<i>AMA Guides to the Evaluation of Permanent Impairment</i>	Loss of function of extremities, partial loss of vision or hearing	Determine the percentage of loss of function, as compared to amputation value listed in RCW 51.32.080

Rating System	Used for These Conditions	Form of the Rating
Category Rating System	Spine, neurologic system, mental health, respiratory, taste and smell, speech, skin, or disorders affecting other internal organs	Select the category that most accurately indicates overall impairment
Total Bodily Impairment (TBI)	Impairments not addressed by any of the rating systems above, and claims prior to 1971	Supply the percentage of TBI

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-20-2025 May a worker bring someone with them to an impairment rating examination conducted by the attending (~~doctor~~) provider or a consultant?** (1) Workers can bring an adult friend or family member to the impairment rating examination to provide comfort and reassurance. The accompanying person may attend the physical examination but may not attend a psychiatric examination.

(2) The accompanying person cannot be compensated for attending the examination by anyone in any manner.

(3) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.

(4) The purpose of the impairment rating examination is to provide information to assist in the determination of the level of any permanent impairment, not to conduct an adversarial procedure. Therefore, the accompanying person cannot be:

(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or

(b) The worker's attending (~~doctor~~) provider, any other provider involved in the worker's care, or any other personnel employed by the attending (~~doctor~~) provider or other provider involved in the worker's care.

The department may designate other conditions under which the accompanying person is allowed to be present during the impairment rating examination.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-20-2030 May the worker videotape or audiotape the impairment rating examination conducted by the attending (~~doctor~~) provider or a consultant?** The use of recording equipment of any kind by the worker or accompanying person is not allowed.

OTS-6007.2

AMENDATORY SECTION (Amending WSR 14-23-064, filed 11/18/14, effective 1/1/15)

**WAC 296-21-290 Physical medicine.** (1) **Whom does the department authorize and pay for physical medicine or physical therapy services?** The department or self-insurer may authorize and pay for physical medicine services from the following providers:

- A medical or osteopathic physician who is "board certified or board qualified" in the field of physical medicine and rehabilitation; or

- A licensed physical therapist; or

- The injured worker's attending (~~(doctor)~~) provider, within the limitations listed below.

The physical medicine services must be personally performed by the:

- Physical medicine and rehabilitation physician; or

- Attending (~~(doctor)~~) provider; or

- Licensed physical therapist; or

- Physical therapist assistant employed by and serving under the direction of a licensed physical therapist, physical medicine and rehabilitation physician, or attending (~~(doctor)~~) provider as required in RCW 18.74.180 (3) (a); or

- Licensed athletic trainer employed by and serving under the direction of a licensed physical therapist, physical medicine and rehabilitation physician, or attending (~~(doctor)~~) provider as required in RCW 18.250.010 (4) (a) (v).

Note: Licensed physical therapy provider rules are contained in chapter 296-23 WAC.

(2) **When may the department or self-insurer pay the attending (~~(doctor)~~) provider for physical medicine services?** The department or self-insurer may pay the attending (~~(doctor)~~) provider to provide physical medicine modalities and/or procedures in the following situations:

(a) The attending (~~(doctor's)~~) provider's scope of practice includes physical medicine modalities and procedures.

(b) Only the physical medicine modalities and procedures allowed under the department's fee schedules and payment policies will be authorized or paid.

(c) No more than six physical medicine visits may be authorized and paid to the attending (~~(doctor)~~) provider. If the worker requires treatment beyond six visits, the worker must be referred to a licensed physical therapist or a board certified or qualified physical medicine and rehabilitation physician for such treatment. Payments will be made in accordance with the department's fee schedules and payment policies.

(d) In remote areas, where no physical medicine and rehabilitation specialist, licensed physical therapist or physical therapist assistant is available, physical medicine visits required by the (~~(patient's)~~) worker's accepted condition(s) may be authorized and paid to the attending (~~(doctor)~~) provider. Payments will be made in accordance with the department's fee schedules and payment policies.

(e) The attending (~~(doctor)~~) provider may bill for office visits in addition to the physical medicine services only when a separately



identifiable office visit service is provided in addition to the physical medicine service.

(3) **What codes and fees are payable for physical medicine services?**

- The codes, reimbursement levels, and other policies for physical medicine services are listed in the department's *Medical Aid Rules and Fee Schedules*. Physicians licensed in physical medicine and licensed physical therapists use CPT and/or HCPCS codes, rules and payment policies as listed in the department's *Medical Aid Rules and Fee Schedules* or provider bulletins.

- Attending (~~doctors~~) providers must use the local codes, rules and payment policies published in the department's *Medical Aid Rules and Fee Schedules* or provider bulletins.

### OTS-6008.3

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-140 Custody of X-rays.** (1) Radiographs should not be sent to the department or self-insurer unless they are requested for comparison and interpretation in determining a permanent disability, administrative or legal decisions, and for cases in litigation. X-rays must be retained for a period of (~~ten~~) 10 years by the radiologist or the attending (~~doctor~~) provider.

(2) X-rays must be made available upon request to consultants, to medical examiners, to the department, to self-insurers, and/or the board of industrial insurance appeals.

(3) In cases where the worker transfers from one (~~doctor~~) provider to another, the former attending (~~doctor~~) provider will immediately forward all films in his possession to the new attending (~~doctor~~) provider.

(4) When a (~~doctor's~~) provider's office is closed because of death, retirement, or upon leaving the state, department approved custodial arrangements must be made to insure availability on request. If a radiological office is closed for any of the previously listed reasons or because the partnership or corporation is being dissolved, disposition of X-rays for industrial injuries will be handled in the same manner. In the event custodial arrangements are to be made, the department must approve the arrangements prior to transfer of X-rays to the custodian so as to assure their availability to the department or self-insurer upon request.

(5) Refer to chapter 296-20 WAC (including WAC 296-20-125) and to chapter 296-21 WAC for additional information.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-145 Duplication of X-rays and extra views.** Every attempt should be made to minimize the number of X-rays taken for workers. The attending (~~doctor~~) provider or any other person or institu-

tion having possession of X-rays which pertain to the injury and are deemed to be needed for diagnostic or treatment purposes should make these X-rays available upon request.

The department or self-insurer will not authorize or pay for additional X-rays when recent X-rays are available except when presented with adequate information regarding the need to re-X-ray.

AMENDATORY SECTION (Amending WSR 01-18-041, filed 8/29/01, effective 10/1/01)

**WAC 296-23-165 Miscellaneous services and appliances.** (1) The department or self-insurer will reimburse for certain proper and necessary miscellaneous services and items needed as a result of an industrial accident. Nursing care, attendant services, transportation, hearing aids, eyeglasses, orthotics and prosthetics, braces, medical supplies, oxygen systems, walking aids, and durable medical equipment are included in this classification.

(a) When a fee maximum has been established, the rate of reimbursement for miscellaneous services and items will be the supplier's usual and customary charge or the department's current fee maximum, whichever is less. In no case may a supplier or provider charge a worker the difference between the fee maximum and their usual and customary charge.

(b) When the department or self-insurer has established a purchasing contract with a qualified supplier through an open competitive request for proposal process, the department or self-insurer will require that workers obtain specific groups of items from the contractor. When items are obtained from a contractor, the contractor will be paid at the rates established in the contract. When a purchasing contract for a selected group of items exists, suppliers who are not named in the contract will be denied reimbursement if they provide a contracted item to a worker. The noncontracting supplier, not the worker, will be financially responsible for providing an item to a worker when it should have been supplied by a contractor. This rule may be waived by an authorized representative of the department or self-insurer in special cases where a worker's attending (~~doctor~~) provider recommends that an item be obtained from another source for medical reasons or reasons of availability. In such cases, the department may authorize reimbursement to a supplier who is not named in a contract. Items or services may be provided on an emergency basis without prior authorization, but will be reviewed for appropriateness to the accepted industrial condition and medical necessity on a retrospective basis.

(2) The department or self-insurer will inform providers and suppliers of the selected groups of items for which purchasing contracts have been established, including the beginning and ending dates of the contracts.

(3) Prior authorization by an authorized representative of the department or self-insurer will be required for reimbursement of selected items and services which are provided to workers. Payment will be denied for selected items or services supplied without prior authorization. The supplier, not the worker, will be financially responsible for providing selected items or services to workers without prior authorization. In cases where a worker's (~~doctor~~) provider recom-

mends rental or purchase of a contracted item from a supplier who lacks a contract agreement, prior authorization will be required.

The decision to grant or deny prior authorization for reimbursement of selected services or items will be based on the following criteria:

(a) The worker is eligible for coverage.

(b) The service or item prescribed is appropriate and medically necessary for treatment of the worker's accepted industrial condition.

(4) The decision to rent or purchase an item will be made based on a comparison of the projected rental costs of the item with its purchase price. An authorized representative of the department or self-insurer will decide whether to rent or purchase certain items provided they are appropriate and medically necessary for treatment of the worker's accepted condition. Decisions to rent or purchase items will be based on the following information:

(a) Purchase price of the item.

(b) Monthly rental fee.

(c) The prescribing (~~doctor's~~) provider's estimate of how long the item will be needed.

(5) The department will review the medical necessity, appropriateness, and quality of items and services provided to workers.

(6) The department's STATEMENT FOR MISCELLANEOUS SERVICES form or electronic transfer format specifications must be used for billing the department for miscellaneous services, equipment, supplies, appliances, and transportation. Bills must be itemized according to instructions in WAC 296-20-125 and the department or self-insurer's billing instructions. Bills for medical appliances and equipment must include the type of item, manufacturer name, model name and number, and serial number.

(7) All miscellaneous materials, supplies and services must be billed using the appropriate HCPCS Level II codes and billing modifiers. HCPCS codes are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 24-11-122, filed 5/21/24, effective 7/1/24)

**WAC 296-23-205 General instructions—Naturopathic physicians.**

General instructions for naturopathic physicians:

(1) Refer to WAC 296-20-010 through 296-20-125 for general rules and billing procedures including, but not limited to:

(a) WAC 296-20-06101 for reporting requirements.

(b) WAC 296-20-01002 for the definition of "proper and necessary" health care services.

(c) WAC 296-20-03002 for treatment not authorized by the department.

(2) Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

(3) Refer to WAC 296-23-135 through 296-23-145 and 296-20-121 for requirements for X-rays.

(4) Refer to chapter 246-836 WAC for scope of practice including prescribing authority and injection requirements.

(5) Refer to WAC 296-21-290 for physical medicine limitations for attending (~~doctors~~) providers.

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

**WAC 296-23-240 Licensed nursing rules.** (1) Registered nurses and licensed practical nurses may perform private duty nursing care in industrial injury cases when the attending (~~(physician)~~) provider deems this care necessary. Registered nurses may be reimbursed for services as outlined by department policy. (See chapter 296-20 WAC for home nursing rules.)

(2) Advanced registered nurse practitioners (ARNPs) may perform advanced and specialized levels of nursing care on a fee for service basis in industrial injury cases within the limitations of this section. ARNPs may be reimbursed for services as outlined by department policy.

(3) In order to treat workers under the Industrial Insurance Act, the advanced registered nurse practitioner must be:

(a) Recognized by the Washington state board of nursing or other government agency as an advanced registered nurse practitioner (ARNP). For out-of-state nurses an equivalent title and training may be approved at the department's discretion.

(b) Capable of providing the department with evidence and documentation of a reliable and rapid system of obtaining physician consultations.

(4) Billing procedures outlined in the medical aid rules and fee schedules apply to all nurses.

AMENDATORY SECTION (Amending WSR 09-14-104, filed 6/30/09, effective 7/31/09)

**WAC 296-23-241 Advanced registered nurse practitioners.** (1) Advanced registered nurse practitioners (ARNPs) may independently perform the functions of an attending provider under the Industrial Insurance Act and applicable rules in Title 296 WAC, with the exception of rating permanent impairment. These functions (~~(are referenced in the medical aid rules as those of an attending or treating provider, and)~~) include, but are not limited to:

- Completing and signing the Report of Accident (Workplace Injury, Accident, or Occupational Disease) form or the Provider's Initial Report form, where applicable;
- Certifying time-loss compensation;
- Completing and submitting all required or requested reports;
- Referring workers for consultations;
- Performing consultations;
- Facilitating early return to work offered by and performed for the employer(s) of record;
- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

(2) Psychiatric advanced registered nurse practitioners can provide psychiatric services as defined in WAC 296-21-270.

(3) ARNPs can state whether a worker has permanent impairment, such as on the department's activity prescription form (APF). ARNPs cannot rate permanent impairment or perform independent medical examinations (IMEs).

AMENDATORY SECTION (Amending WSR 03-21-069, filed 10/14/03, effective 12/1/03)

**WAC 296-23-246 Attendant services.** (1) **What are attendant services?** Attendant services are proper and necessary personal care services provided to maintain the injured worker in ((his or her)) their residence.

(2) **Who may receive attendant services?** Workers who are temporarily or permanently totally disabled and rendered physically helpless by the nature of their industrial injury or occupational disease may receive attendant services.

(3) **Is prior authorization required for attendant services?** Yes. To be covered by the department, attendant services must be requested by the attending ((physician)) provider and authorized by the department before care begins.

(4) **What attendant services does the department cover?** The department covers proper and necessary attendant services that are provided consistent with the injured worker's needs, abilities and safety. Only attendant services that are necessary due to the physical restrictions caused by the accepted industrial injury or occupational disease are covered.

The following are examples of attendant services that may be covered:

- Bathing and personal hygiene;
- Dressing;
- Administration of medications;
- Specialized skin care, including changing or caring for dressings or ostomies;
- Tube feeding;
- Feeding assistance (not meal preparation);
- Mobility assistance, including walking, toileting and other transfers;
- Turning and positioning;
- Bowel and incontinent care; and
- Assistance with basic range of motion exercises.

Services the department considers everyday environmental needs, unrelated to the medical care of the worker are not covered. The following chore services are examples of services that are not covered: Housecleaning, laundry, shopping, meal planning and preparation, transportation of the injured worker, errands for the injured worker, recreational activities, yard work, and child care.

(5) **Who may provide attendant services?** Attendant services provided on or after June 1, 2002, must be provided through an agency licensed, certified or registered to provide home care or home health services.

**EXCEPTION:** A worker who received department approved attendant services from a spouse prior to October 1, 2001, may continue to receive attendant services from that spouse as long as all of the following criteria are met.  
The attendant service spouse provider:  
(a) Had an active provider account with the department on September 30, 2001; and  
(b) Maintains an active provider account with the department; and  
(c) Remains legally married to the injured worker; and  
(d) Allows the department or its designee to perform periodic independent nursing evaluations in the worker's residence.

(6) **What are the treatment limits for attendant services?** The department will determine the maximum hours of authorized attendant care services based on an independent nursing assessment of the worker's care needs.

Spouses eligible to provide attendant services are limited to a maximum of ((seventy)) 70 hours of attendant services per week or to

the maximum hours authorized for the worker, whichever is less. Workers who are receiving attendant services from spouses and whose care needs exceed ~~((seventy))~~ 70 hours per week must receive attendant services in excess of ~~((seventy))~~ 70 hours from an agency eligible to provide attendant services.

EXCEPTION: The department may exempt a spouse from the ~~((seventy))~~ 70-hour limit if, after review by the department and based on independent nursing assessment:

- (a) The injured worker is receiving proper and necessary care; and
- (b) The worker's care needs exceed ~~((seventy))~~ 70 hours per week; and
- (c) No eligible agency provider is available.

(7) **Will the department review attendant services?** Yes. The department or its designee will perform periodic independent nursing evaluations of attendant services. Evaluations may include, but are not limited to, on-site review of the injured worker and review of medical records.

AMENDATORY SECTION (Amending WSR 08-09-120, filed 4/22/08, effective 7/1/08)

**WAC 296-23-250 Massage therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers. See WAC 296-20-125 for billing instructions.

Refer to WAC 296-20-132 and 296-20-135 for information regarding use of the conversion factors.

Massage therapy treatment will be permitted when given by a licensed massage practitioner only upon written orders from the worker's attending ~~((doctor. In addition, physician assistants may order massage therapy under these rules for the attending doctor))~~ provider.

A progress report must be submitted to the attending ~~((doctor))~~ provider and the department or the self-insurer following six treatment visits or one month, whichever comes first. Massage therapy treatment beyond the initial six treatments will be authorized only upon substantiation of improvement in the worker's condition in terms of functional modalities, i.e., range of motion; sitting and standing tolerance; reduction in medication; etc. In addition, an outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Massage therapy in the home and/or places other than the practitioners usual and customary business facilities will be allowed only upon prior justification and authorization by the department or self-insurer.

No inpatient massage therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

Massage therapy treatments exceeding once per day must be justified by the attending ~~((doctor))~~ provider.

Maximum daily reimbursement levels for massage therapy are ~~((seventy-five))~~ 75 percent of the maximum daily reimbursement levels for physical and occupational therapy services that may be found in WAC 296-23-220 and 296-23-230.

Billing codes, reimbursement levels, and supporting policies for massage therapy services are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 22-07-110, filed 3/23/22, effective 4/23/22)

**WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider** - A licensed (~~doctor~~) provider or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including, but not limited to, file preparation, scheduling of examinations, and processing billing. An approved IME provider is assigned a unique provider number.

**Case progress examination** - An examination requested for an accepted condition because:

(a) A proper and necessary treatment plan, per the definition of "proper and necessary" found in WAC 296-20-01002, is not in place; or

(b) The treatment plan has stalled or been completed without resulting in objective or functional improvement for physical conditions, or clinically meaningful signs of improvement for mental health conditions.

**Department** - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

**Direct patient care** - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the (~~patient~~) worker for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

**Impairment rating examination** - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

**Independent medical examination (IME)** - An objective medical-legal examination requested (by the department or self-insurer) to establish medical findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

**Independent medical examination (IME) provider** - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

**Medical director** - A licensed (~~doctor~~) provider and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

**Medical Examiners' Handbook** - A handbook developed by the department containing department policy and information to assist providers who perform independent medical examinations and impairment rating examinations.

**Patient related services** - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for (~~(treating/attending doctors)~~) at-  
tending providers;
- Clinical instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in (~~(his or her)~~) their specialty.

**Provider number** - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

**Suspension** - A department action during which the provider is approved by the department but not available to accept referrals.

**Temporarily unavailable** - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

**Termination** - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-347 What are the independent medical examination (IME) provider's responsibilities in an examination?** (1) The IME provider's responsibilities prior to the examination are to:

- (a) Be familiar with the contents of the medical examiner's handbook;
- (b) Review all claim documents provided by the department or (~~(self-insured employer)~~) self-insurer;
- (c) Contact the worker prior to the examination to confirm the appointment date, time and location; and
- (d) Review the purpose of the examination and the questions to be answered in the examination report.

(2) The IME provider's responsibilities during the examination are to:

- (a) Introduce (~~(himself or herself)~~) themselves to the worker;
- (b) Verify the identity of the worker;
- (c) Let the worker know that the claim documents from the department or self-insurer have been reviewed;
- (d) Explain the examination process and answer the worker's questions about the examination process;
- (e) Advise the worker that (~~(he/she)~~) they should not perform any activities beyond their physical capabilities;
- (f) Allow the worker to remain fully dressed while taking the history;
- (g) Ensure adequate draping and privacy if the worker needs to remove clothing for the examination;



(h) Refrain from expressing personal opinions about the worker, the employer, the attending ~~((doetor))~~ provider, or the care the worker has received;

(i) Conduct an examination that is unbiased, sound and sufficient to achieve the purpose and reason the examination was requested;

(j) Conduct the examination with dignity and respect for the worker;

(k) Ask if there is any further information the worker would like to provide; and

(l) Close the examination by telling the worker that the examination is over.

(3) The IME provider's responsibilities following the examination are to:

(a) Send a complete IME report to the department or self-insurer within ~~((fourteen))~~ 14 calendar days of the examination date, or within ~~((fourteen))~~ 14 calendar days of receipt of the results of any special tests or studies requested as a part of the examination. Reports received after ~~((fourteen))~~ 14 calendar days may be paid at a lower rate per the fee schedule. The report must meet the requirements of WAC 296-23-382; and

(b) The claim file information received from the department or self-insurer should be disposed of in a manner used for similar health records containing private information after completion of the IME or any follow-up test results are received. IME reports should be retained per WAC 296-20-02005.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-377 If an independent medical examination (IME) provider is asked to do an impairment rating examination only, what information must be included in the report?** When doing an impairment rating examination, the IME provider must first review the determination by the attending ~~((doetor))~~ provider that the worker has reached maximum medical improvement (MMI).

(1) If, after reviewing the records, taking a history from the worker and performing the examination, the IME provider concurs with the attending ~~((doetor's))~~ provider's determination of MMI, the impairment rating report must, at a minimum, contain the following:

(a) A statement of concurrence with the attending ~~((doetor's))~~ provider's determination of MMI;

(b) Pertinent details of the physical or psychiatric examination performed (both positive and negative findings);

(c) Results of any pertinent diagnostic tests performed (both positive and negative findings). Include copies of pertinent tests with the report;

(d) An impairment rating consistent with the findings and a statement of the system on which the rating was based (for example, the *AMA Guides to the Evaluation of Permanent Impairment* and edition used, or the Washington state category rating system - refer to WAC 296-20-19000 through 296-20-19030 and WAC 296-20-200 through 296-20-690); and

(e) The rationale for the rating, supported by specific references to the clinical findings, especially objective findings and sup-

porting documentation including the specific rating system, tables, figures and page numbers on which the rating was based.

(2) If, after review of the records, a history from the worker and the examination, the IME provider does not concur with the attending (~~doctor's~~) provider's determination of MMI, an IME report must be completed. (See WAC 296-23-382.)

**WSR 25-03-116**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed January 21, 2025, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-135.

Title of Rule and Other Identifying Information: Contractor registration rules; WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration?

Hearing Location(s): On February 25, 2025, at 10:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically (Zoom) at <https://lni-wa.gov.zoom.us/j/83338607370?pwd=LZl18Lshkw7yTRbgRSo2WbBh0jLND1C.1>, Passcode HE.HuW7#; or join by phone (audio only) 253-215-8782, Meeting ID 833 3860 7370, Passcode 14603885. The in-person and virtual/telephonic hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: April 22, 2025.

Submit Written Comments to: Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email [Meagan.Edwards@lni.wa.gov](mailto:Meagan.Edwards@lni.wa.gov), fax 360-704-1980, beginning January 22, 2025, at 8:00 a.m., by February 25, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Meagan Edwards, phone 360-522-0125, fax 360-704-1980, email [Meagan.Edwards@lni.wa.gov](mailto:Meagan.Edwards@lni.wa.gov), by February 11, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose amendments to the contractor registration fees under WAC 296-200A-900. The proposed amendments would increase fees by the fiscal growth factor of 6.41 percent to cover operating expenses for L&I's contractor registration program (program). This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2026. The current fee levels are insufficient to cover current program expenses. The fee increase is necessary to ensure that revenues match expenditures.

Reasons Supporting Proposal: The program registers contractors to ensure that all general and specialty contractors operating in Washington state have appropriate bonding and insurance. The current fee levels are not adequate to cover current program expenses. A fee increase is needed to ensure the program's revenues match expenditures.

Statutory Authority for Adoption: Chapter 18.27 RCW.

Statute Being Implemented: Chapter 18.27 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McBride, Program Manager, Tumwater, Washington, 360-902-5571; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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 is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act. RCW 34.05.328 (5) (b) (vi) exempts

rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

January 21, 2025  
Joel Sacks  
Director

### OTS-6067.1

AMENDATORY SECTION (Amending WSR 24-10-086, filed 4/30/24, effective 7/1/24)

**WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration?** The department charges the following fees:

(1) (~~(\$132.60)~~) \$141.10 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

(2) (~~(\$62.60)~~) \$66.60 for the reinstatement of a certificate of registration.

(3) (~~(\$14.60)~~) \$15.50 for providing a duplicate certificate of registration.

(4) (~~(\$29.90)~~) \$31.80 for each requested certified letter prepared by the department.

(5) (~~(\$189.50)~~) \$201.60 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which runs from November 1 through October 31. Each issue costs (~~(\$15.70)~~) \$16.70.

(6) (~~(\$2.20)~~) \$2.30 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be (~~(\$32.70)~~) \$34.80.

(7) (~~(\$58.50)~~) \$62.20 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) (~~(\$29.20)~~) \$31.00 is required to cover the costs for the service of processing refunds.

**WSR 25-03-124**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-17—Filed January 21, 2025, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-093 on October 17, 2024.

Title of Rule and Other Identifying Information: The Washington department of fish and wildlife (WDFW) is seeking to amend several regulations in chapter 220-330 WAC that affect recreational harvesting of clams, mussels, and oysters, and include WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons and 220-330-140 Oysters—Areas and seasons.

Hearing Location(s): On February 25, 2025, at 5:30 p.m., via Zoom webinar. Register in advance for this webinar [https://us06web.zoom.us/webinar/register/WN\\_jZWSUSwiTgS2nIMymGTOpg](https://us06web.zoom.us/webinar/register/WN_jZWSUSwiTgS2nIMymGTOpg).

Date of Intended Adoption: On or after February 28, 2025.

Submit Written Comments to: WDFW Rules Coordinator, P.O. Box 43152, Olympia, WA 98502, email [2025clamandoystercr102@publicinput.com](mailto:2025clamandoystercr102@publicinput.com), <https://publicinput.com/2025clamandoystercr102>, voice comments call 855-925-2801 and enter code 11012, beginning January 22, 2025, 4:00 p.m., by February 25, 2025, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <https://wdfw.wa.gov/accessibility/requestsaccomodation>, by February 18, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on recent clam and oyster survey data, recreational harvest projections, comangement agreements, and public health considerations, WDFW is seeking to extend or shorten the 2025 recreational clam and oyster seasons on some public beaches.

Reasons Supporting Proposal: The amendments to the rules will perpetuate shellfish resources while maximizing recreational fishing opportunity and protecting public health.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Camille Speck, 375 Hudson Street, Port Townsend, WA 98368, 360-744-8491; Implementation: Kelly Cunningham, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2325; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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 does not require a cost-benefit analysis per RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Relative to the recreational clam and oyster seasons portion of this proposal (WAC 220-330-110 and 220-330-140), WDFW is exempt from the requirements of chapter 19.85 RCW because the proposed recreational fishing rules do not regulate small businesses; these rule changes clarify dates for anticipated open and closed periods and areas for harvesting clams and oysters for personal use. There are no anticipated professional services required to comply.

Scope of exemption for rule proposal:  
Is fully exempt.

January 20, 2025  
Scott Bird  
Rules Coordinator

### RDS-6113.1

AMENDATORY SECTION (Amending WSR 24-06-062, filed 3/4/24, effective 4/4/24)

**WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons.** It is lawful to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open (~~July~~) August 1 through September 30 only.
- (7) Billy Frank Jr. Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.
- (8) Blaine Marine Park: Closed year-round.
- (9) Blake Island State Park Marina: Closed year-round.
- (10) Blowers Bluff North: Closed year-round.
- (11) Brown's Point Lighthouse: Closed year-round.
- (12) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- (13) Cama Beach State Park: Closed year-round.
- (14) Camano Island State Park: Closed year-round.
- (15) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.
- (16) Coupeville: Closed year-round.
- (17) Cultus Bay: Closed year-round.
- (18) Dash Point County Park: Closed year-round.

- (19) Dash Point State Park: Open September 1 through May 31 only.
- (20) Dave Mackie County Park: Closed year-round.
- (21) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary, south to Rosario Head (48.4172°, -122.6663°) are closed year-round.
- (22) Des Moines City Park: Closed year-round.
- (23) Discovery Park: Closed year-round.
- (24) DNR-142: Closed year-round.
- (25) DNR-144 (Sleeper): Closed year-round.
- (26) Dockton County Park: Closed year-round.
- (27) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is (~~open July 15 through September 30 only~~) closed year-round.
- (28) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- (29) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except tidelands identified as prohibited by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.
- (30) Duckabush: Open November 1 through April 30 only.
- (31) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.
- (32) Eagle Creek: Open August 1 through September 15 only.
- (33) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- (34) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- (35) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- (36) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- (37) Fay Bainbridge Park: Closed year-round.
- (38) Fort Flagler State Park: Open January 1 through April 15 and (~~July~~) June 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- (39) Freeland County Park: Open October 1 through May 31 only.
- (40) Frye Cove County Park: Open May 1 through May 31 only.
- (41) Fudge Point State Park: Closed year-round.
- (42) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- (43) Golden Gardens: Closed year-round.
- (44) Graveyard Spit: Closed year-round.
- (45) Guillemot Cove Nature Reserve: Closed year-round.
- (46) Guss Island: All tidelands of Guss Island are closed year-round.
- (47) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- (48) Howarth Park/Darlington Beach: Closed year-round.
- (49) Illahee State Park: Open (~~April~~) March 1 through (~~July 31~~) June 30 only.
- (50) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open April 1 through (~~June 30~~) May 31 only.
- (51) Jacoby (Shorecrest) County Park: Closed year-round.

- (52) Ingvald J. Gronvold Park: Open April 1 through May 31 only.
- (53) Joemma Beach State Park: Closed year-round.
- (54) Kayak Point County Park: Closed year-round.
- (55) Kitsap Memorial State Park: Closed year-round.
- (56) Kopachuck State Park: (~~Open April 1 through May 31 only~~)  
Closed year-round.
- (57) Lent Landing (Port Washington Narrows): Closed year-round.
- (58) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- (59) Lincoln Park: Closed year-round.
- (60) Lions Park (Bremerton): Closed year-round.
- (61) Lofall: Closed year-round.
- (62) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.
- (63) Long Island Slough Oyster Reserve (Willapa Harbor reserves):  
Closed year-round.
- (64) Long Point West: Closed year-round.
- (65) Lower Roto Vista Park: Closed year-round.
- (66) Maple Grove County Park: Closed year-round.
- (67) March Point Recreation Area: Closed year-round.
- (68) McNeil Island: All tidelands of McNeil Island are closed year-round.
- (69) Meadowdale County Park: Closed year-round.
- (70) Mee-Kwa-Mooks Park: Closed year-round.
- (71) Monroe Landing: Closed year-round.
- (72) Mukilteo: Closed year-round.
- (73) Mystery Bay State Park: Open October 1 through April 30 only.
- (74) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.
- (75) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.
- (76) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through October (~~15~~) 31, from one hour before official sunrise until one hour after official sunset only.
- (77) North Beach County Park: Closed year-round.
- (78) Oak Bay County Park: Closed year-round.
- (79) Oak Harbor: Closed year-round.
- (80) Oak Harbor Beach Park: Closed year-round.
- (81) Oak Harbor City Park: Closed year-round.
- (82) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.
- (83) Old Mill County Park (Silverdale): Closed year-round.
- (84) Olympia Shoal: Closed year-round.
- (85) Pat Carey Vista Park: Closed year-round.



- (86) Penrose Point State Park: Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is closed year-round.
- (87) Picnic Point County Park: Closed year-round.
- (88) Pitship Point: Closed year-round.
- (89) Pitt Island: All tidelands on Pitt Island are closed year-round.
- (90) Pleasant Harbor State Park: Closed year-round.
- (91) Pleasant Harbor WDFW Boat Launch: Closed year-round.
- (92) Point Defiance: Closed year-round.
- (93) Point Whitney Tidelands and Point Whitney Lagoon: Closed year-round.
- (94) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.
- (95) Port Gamble Heritage Park Tidelands: Open (~~August~~) September 1 through September 30 only.
- (96) Port Gardner: Closed year-round.
- (97) Port Townsend Ship Canal/Portage Beach: Open April 1 through (~~June 30~~) May 31 only.
- (98) Post Point: Closed year-round.
- (99) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through May 31 only.
- (100) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.
- (101) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.
- (102) Quilcene Bay Boat Ramp: Open January 1 through May 15 only.
- (103) Retsil: Closed year-round.
- (104) Richmond Beach Saltwater Park: Closed year-round.
- (105) Salt Creek Recreation Area (DNR-419): Closed year-round.
- (106) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- (107) Saltwater State Park: Closed year-round.
- (108) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (48.5745°, -122.4440°) are closed year-round.
- (109) Scenic Beach State Park: Closed year-round.
- (110) Seahurst County Park: Closed year-round.
- (111) Semiahmoo County Park: Closed year-round.
- (112) Semiahmoo Marina: Closed year-round.
- (113) Sequim Bay State Park: Open January 1 through (~~May~~) June 15 only.
- (114) Shine Tidelands State Park: Open January 1 through May 15 only.
- (115) Silverdale Waterfront Park: Closed year-round.
- (116) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.
- (117) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.
- (118) South Carkeek Park: Closed year-round.
- (119) South Lilliwaup: Open November 1 through April 30 only.

- (120) Southworth: Closed year-round.
- (121) Spencer Spit State Park: Open March 1 through July 31 only.
- (122) Squaxin Park (Priest Point County Park): Closed year-round.
- (123) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.
- (124) Taylor Bay: Closed year-round.
- (125) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.
- (126) Triton Cove Tidelands: Open June 1 through August 31 only.
- (127) Twanoh State Park: Open August 1 through August 31 only.
- (128) Walker County Park: Closed year-round.
- (129) WDFW Hoodspport Hatchery: Tidelands at Hoodspport Salmon Hatchery are closed year-round.
- (130) West Dewatto: DNR Beach 44A open July 1 through September 30 only.
- (131) West Pass Access: Closed year-round.
- (132) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open June (~~15~~) 1 through September 30 only.
- (133) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.
- (134) Wolfe Property State Park: Open January 1 through May 15 only.
- (135) Woodard Bay Natural Resource Conservation Area: Closed year-round.
- (136) It is lawful to take, dig for, and possess clams and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

AMENDATORY SECTION (Amending WSR 24-06-062, filed 3/4/24, effective 4/4/24)

**WAC 220-330-140 Oysters—Areas and seasons.** It is lawful to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open (~~July~~) August 1 through September 30 only.
- (7) Billy Frank Jr. Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

- (8) Blaine Marine Park: Closed year-round.
- (9) Blake Island State Park Marina: Closed year-round.
- (10) Blowers Bluff North: Closed year-round.
- (11) Brown's Point Lighthouse: Closed year-round.
- (12) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- (13) Cama Beach State Park: Closed year-round.
- (14) Camano Island State Park: Closed year-round.
- (15) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.
- (16) Coupeville: Closed year-round.
- (17) Cultus Bay: Closed year-round.
- (18) Dash Point County Park: Closed year-round.
- (19) Dash Point State Park: Open September 1 through May 31 only.
- (20) Dave Mackie County Park: Closed year-round.
- (21) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary to Rosario Head (48.4172°, -122.6663°) are closed year-round.
- (22) Des Moines City Park: Closed year-round.
- (23) Discovery Park: Closed year-round.
- (24) DNR-142: Closed year-round.
- (25) DNR-144 (Sleeper): Closed year-round.
- (26) Dockton County Park: Closed year-round.
- (27) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.
- (28) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- (29) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except the tidelands identified as prohibited by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.
- (30) Duckabush: Open November 1 through April 30 only.
- (31) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.
- (32) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- (33) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- (34) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- (35) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- (36) Fay Bainbridge Park: Closed year-round.
- (37) Fort Flagler State Park: Open January 1 through April 15 and ((July)) June 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- (38) Freeland County Park: Open October 1 through May 31 only.
- (39) Frye Cove County Park: Open May 1 through May 31 only.
- (40) Fudge Point State Park: Closed year-round.
- (41) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- (42) Golden Gardens: Closed year-round.
- (43) Graveyard Spit: Closed year-round.
- (44) Guillemot Cove Nature Reserve: Closed year-round.

- (45) Guss Island: All tidelands of Guss Island are closed year-round.
- (46) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- (47) Howarth Park/Darlington Beach: Closed year-round.
- (48) Illahee State Park: Open (~~(April)~~) March 1 through (~~(July 31)~~) June 30 only.
- (49) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open April 1 through (~~(June 30)~~) May 31 only.
- (50) Ingvald J. Gronvold Park: Open April 1 through May 31 only.
- (51) Jacoby (Shorecrest) County Park: Closed year-round.
- (52) Joemma Beach State Park: Closed year-round.
- (53) Kayak Point County Park: Closed year-round.
- (54) Kitsap Memorial State Park: Closed year-round.
- (55) Kopachuck State Park: (~~(Open April 1 through May 31 only)~~) Closed year-round.
- (56) Lent Landing (Port Washington Narrows): Closed year-round.
- (57) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- (58) Lincoln Park: Closed year-round.
- (59) Lions Park (Bremerton): Closed year-round.
- (60) Lofall: Closed year-round.
- (61) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.
- (62) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.
- (63) Long Point West: Closed year-round.
- (64) Lower Roto Vista Park: Closed year-round.
- (65) Maple Grove County Park: Closed year-round.
- (66) March Point Recreation Area: Closed year-round.
- (67) McNeil Island: All tidelands of McNeil Island are closed year-round.
- (68) Meadowdale County Park: Closed year-round.
- (69) Mee-Kwa-Mooks Park: Closed year-round.
- (70) Monroe Landing: Closed year-round.
- (71) Mukilteo: Closed year-round.
- (72) Mystery Bay State Park: Open October 1 through April 30 only.
- (73) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.
- (74) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.
- (75) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through October (~~(15)~~) 31, from one hour before official sunrise until one hour after official sunset only.

- (76) North Beach County Park: Closed year-round.
- (77) Oak Bay County Park: Closed year-round.
- (78) Oak Harbor: Closed year-round.
- (79) Oak Harbor Beach Park: Closed year-round.
- (80) Oak Harbor City Park: Closed year-round.
- (81) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.
- (82) Old Mill County Park (Silverdale): Closed year-round.
- (83) Olympia Shoal: Closed year-round.
- (84) Pat Carey Vista Park: Closed year-round.
- (85) Penrose Point State Park: Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is closed year-round.
- (86) Picnic Point County Park: Closed year-round.
- (87) Pitship Point: Closed year-round.
- (88) Pitt Island: Closed year-round.
- (89) Pleasant Harbor State Park: Closed year-round.
- (90) Pleasant Harbor WDFW Boat Launch: Closed year-round.
- (91) Point Defiance: Closed year-round.
- (92) Point Whitney Tidelands and Point Whitney Lagoon: Open January 1 through (~~June 30~~) July 31 only.
- (93) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.
- (94) Port Gamble Heritage Park Tidelands: Open (~~August~~) September 1 through September 30 only.
- (95) Port Gardner: Closed year-round.
- (96) Port Townsend Ship Canal/Portage Beach: Open April 1 through (~~June 30~~) May 31 only.
- (97) Post Point: Closed year-round.
- (98) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through May 31 only.
- (99) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.
- (100) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.
- (101) Quilcene Boat Ramp: Open January 1 through May 15 only.
- (102) Retsil: Closed year-round.
- (103) Richmond Beach Saltwater Park: Closed year-round.
- (104) Salt Creek Recreation Area (DNR-419): Closed year-round.
- (105) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- (106) Saltwater State Park: Closed year-round.
- (107) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (48.5745°, -122.4440°) are closed year-round.
- (108) Scenic Beach State Park: Closed year-round.
- (109) Seahurst County Park: Closed year-round.
- (110) Semiahmoo County Park: Closed year-round.
- (111) Semiahmoo Marina: Closed year-round.
- (112) Sequim Bay State Park: Open January 1 through (~~May~~) June 15 only.
- (113) Shine Tidelands State Park: Open January 1 through May 15 only.

(114) Silverdale Waterfront Park: Closed year-round.

(115) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

(116) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

(117) South Carkeek Park: Closed year-round.

(118) South Lilliwaup: Open November 1 through April 30 only.

(119) Southworth: Closed year-round.

(120) Spencer Spit State Park: Open March 1 through July 31 only.

(121) Squaxin Park (Priest Point County Park): Closed year-round.

(122) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

(123) Taylor Bay: Closed year-round.

(124) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

(125) Walker County Park: Closed year-round.

(126) WDFW Hoodspout Hatchery: Open April 1 through (~~June 30~~) July 31, from one hour before official sunrise until one hour after official sunset only.

(127) West Pass Access: Closed year-round.

(128) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open June (~~15~~) 1 through September 30 only.

(129) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

(130) Wolfe Property State Park: Open January 1 through May 15 only.

(131) Woodard Bay Natural Resource Conservation Area: Closed year-round.

(132) It is lawful to take and possess oysters for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

WSR 25-03-125  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-13—Filed January 21, 2025, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-058 on September 25, 2024.

Title of Rule and Other Identifying Information: Amending commercial crab gear requirements and implementing comprehensive line marking in the coastal Dungeness crab fishery.

Hearing Location(s): On March 20-22, 2025, at 8:00 a.m., in person in Kennewick (Tri-Cities) and virtually. Visit our website at <https://wdfw.wa.gov/about/commission/meetings>, contact the commission office at 360-902-2267, or email [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov) for instructions on how to join the meeting.

Date of Intended Adoption: Not before April 1, 2025.

Submit Written Comments to: Agency Rules Coordinator, P.O. Box 43200, Olympia, WA 98501, email [commercial\\_crab\\_rules\\_cr102@publicinput.com](mailto:commercial_crab_rules_cr102@publicinput.com), [https://publicinput.com/commercial\\_crab\\_rules\\_cr102](https://publicinput.com/commercial_crab_rules_cr102), voice comments call 855-925-2801 and enter code 11027, beginning January 23, 2025, 12:00 p.m., by March 24, 2025, 11:59 a.m.

Assistance for Persons with Disabilities: Contact VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <https://wdfw.wa.gov/accessibility/requestsaccomodation>, by March 17, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes include both non-administrative and administrative amendments and are described below. The nonadministrative changes are presented first, followed by administrative changes.

**Nonadministrative:**

**Comprehensive line marking in the coastal Dungeness crab fishery** (WAC 220-340-430): Proposed changes would require that line marking must be sufficient to identify the line as being exclusive to the coastal Dungeness crab fishery with dual-colored state fishery specific manufactured line or sets of solid marks with a phased implementation. With rule adoption, the current continuous 12-inch red mark within one fathom of the buoy would be required; for the 2025-2026 fishing season, all trailer/surface line must be marked; and for the 2028-2029 season, the uppermost 15 fathoms of the main vertical line must be marked. These changes advance the intended purpose of line marking to increase gear visibility in marine mammal entanglements and thus traceability to the fishery.

**Surface gear limitations in the coastal Dungeness crab fishery** (WAC 220-340-430): Proposed rule changes would limit the overall length of surface gear to no more than 36 feet of line and limit the number of buoys to no more than three, which includes the main (diver) buoy and up to two trailer buoys. A small end marker buoy is permissible and does not count towards the total. This proposed measure limits the length of surface gear allowed on each pot to reduce entanglement risk.

**Prohibition to register or use buoy brand required by a treaty tribal fishery in the coastal Dungeness crab fishery** (WAC

220-340-430): Proposed changes would prohibit a buoy brand required by a treaty tribal fishery to be used or registered for the nontreaty coastal Dungeness crab fishery. The effect of the proposed rule is to not allow fishers to use buoy brands used in a treaty tribal fishery to support the traceability of entangled gear to the nontreaty fishery.

**Prohibit the use of line marks or colors required in another fishery** (WAC 220-340-430): Proposed changes would prohibit the use of line marks or manufactured color combinations in Washington commercial crab fisheries that are required for other west coast state or federal fisheries. The effect of the proposed rule change is to disallow fishers to use line marked or manufactured to marking specifications required in another fishery and to further support the traceability of line in marine life entanglements to the fishery of origin. Line marking prohibitions were adopted for all other Washington fixed gear fisheries in prior rule making; the proposed changes expand the prohibition to the commercial Dungeness crab fisheries for consistency and comprehensive coverage.

**Administrative:**

**Update language in commercial crab fisheries to describe what is lawful** (WAC 220-340-430): Proposed changes would shift from language that described what is unlawful to language that describes what is required with regards to buoy brand registration and coastal line marking requirements. The effect of the change is to improve clarity regarding what action is required for compliance.

**Designated operator in commercial crab fisheries is responsible for compliance** (WAC 220-340-430): Proposed changes would clarify the natural person who is responsible for compliance with regulations. Changes shift responsibility from the license holder to the designated vessel operator for buoy brand registration and fishing with buoys not registered. Changes clarify the vessel operator is responsible for using only the amount of line reasonably necessary, where the current rule does not specify a responsible party.

**Clarify buoy registration requirements** (WAC 220-340-430): Proposed changes would clarify that required annual buoy brand and color combinations must be completed prior to fishing each season. Existing rules require the registration of a unique buoy color scheme and buoy brand each season, but do not specify when in the season registration is required. Additionally, proposed rule changes would clarify that buoys fished under a single license must be uniformly marked with the buoy brand number submitted during registration.

Reasons Supporting Proposal: The adoption of these proposed rules will enhance fishery monitoring in marine life entanglements and clarify existing rules. Overall, these rule amendments will accomplish conservation objectives, advance achieving orderly fisheries, and improve enforceability of current rules.

**Comprehensive line marking in the coastal Dungeness crab fishery** (WAC 220-340-430); **Prohibition to register or use buoy brand required by a treaty tribal fishery in the coastal Dungeness crab fishery** (WAC 220-340-430); **Prohibit the use of line marks or colors required in another fishery** (WAC 220-340-430): These regulatory changes enhance compliance with federal laws; specifically, the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected. To address entanglements with marine mammals where the entangling gear is visible



but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service (NMFS) has indicated that lines and buoys marked in a manner that is unique to each fishery would aid in achieving compliance with the MMPA and ESA. This proposed rule aims to contribute to the coordinated efforts to improve traceability of entangled fishing lines to their source fishery along the United States (U.S.) west coast by prohibiting the use of line marks required in other fisheries, prohibiting the use of treaty tribal buoy brands, and requiring the use of red and black line marking in the Washington coastal Dungeness crab fishery. Comprehensive gear marking is necessary to meet the monitoring needs of fisheries gear entanglements in marine life and will aid in fishery attribution. Comprehensive line marking requirements have been developed in collaboration with other west coast fisheries.

**Surface gear limitations in the coastal Dungeness crab fishery**

(WAC 220-340-430): The proposed rule also aims to directly address entanglement risk by setting new limits in the coastal fishery on the overall length of surface gear, including main (diver) and trailer buoys, and capping the number of trailer buoys at two per pot. This is necessary because the risk of whale entanglement can be reduced by setting standards that limit surface gear.

**Update language in commercial crab fisheries to describe what is lawful** (WAC 220-340-430); **Designated operator in commercial crab fisheries is responsible for compliance** (WAC 220-340-430); **Clarify buoy registration requirements** (WAC 220-340-430): The proposed changes improve management and enforcement of coastal and Puget Sound commercial Dungeness crab fisheries. Current regulations often assign the compliance responsibility to the license holder; however, license holders often lease their licenses and may not participate in the fishery. The rule language fails to specify the responsible party at times. The proposed changes provide clarity by shifting responsibility to the designated vessel operator, who is specified on the license. The changes clarify that it is the vessel operator who must register buoy brands and color combinations and that registration is required annually and prior to the start of fishing.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Megan Hintz, 1111 Washington Street S.E., Olympia, WA 98501, 564-215-1757; Implementation: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA 98501, 360-581-5611; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2605.

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.

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

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Pursuant to Regulatory Fairness Act (Chapter 19.85 RCW)

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-04 issue of the Register.

A copy of the statement may be obtained by contacting Lorna L. Wargo, 1111 Washington Street S.E., Olympia, WA, phone 360-581-5611, email Lorna.Wargo@dfw.wa.gov.

January 20, 2025  
Scott Bird  
Rules Coordinator

## RDS-6114.1

AMENDATORY SECTION (Amending WSR 23-22-110, filed 10/31/23, effective 12/1/23)

### **WAC 220-340-430 Commercial crab fishery—Gear requirements. (1) Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

### **(3) Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters, except if authorized by permit issued by the director, each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, except if authorized by permit issued by the director, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection by the department, except under the following conditions: The holder or alternate operator of a Puget Sound crab license has declared, as permitted under (f) of this subsection, that deployed tags have been lost and are unrecoverable, under penalty of perjury, and has been granted permission by the department to use undeployed buoy tags as a replacement.

(f) Replacement crab buoy tags.

(i) Puget Sound: Puget Sound commercial crab license holders are required to request permission to use undeployed buoy tags in the event deployed buoy tags are lost and are unrecoverable. Requests to use undeployed buoy tags must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss. Requests must be made using a department provided electronic form.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

**(5) Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when ~~((5))~~ five pounds of weight is attached, unless otherwise authorized by permit issued by the director.

(b) It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy. The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the excess line from floating on the water's surface.

(c) No buoys attached to Puget Sound or coastal commercial crab gear may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

(d) ~~((It is unlawful for))~~ Any coastal or Puget Sound commercial Dungeness crab fishery license ((holder)) designated operator must register the buoy brand number and buoy color or color combinations to be used with the license to fish for crab ((unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. The license holder, or alternate operator, must register the buoy brand and buoy color(s) to be used with the license)) each crab

season prior to the commencement of fishing using the WDFW online registration form. (~~In the event that a license is transferred to another vessel or owner in the same season, the license holder must re-register the buoy brand and buoy color(s) to be used with the license for the remainder of that crab season. A license holder may register only one unique buoy brand and one unique buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a~~) Buoy registration must provide color photographs that allows identification of the registered buoy brand number and all color or color combinations used on the buoy.

(i) All buoys fished under a single license must be marked in a uniform manner with ~~((one))~~ the buoy brand number registered ~~((by the license holder))~~ with the department and be of identical color or color combinations, unless otherwise authorized by permit issued from the director.

(ii) A license holder may register only one unique buoy brand and one unique buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different.

(iii) It is unlawful for a coastal Dungeness crab fishery ((license holder)) vessel operator to fish for crab using any other buoy brand ((or color(s))) and buoy color or color combinations than those registered with and assigned to the license by the department.

(iv) It is unlawful for a nontreaty coastal Dungeness crab fishery vessel operator to register a buoy brand or fish for crab using a buoy brand used in a treaty tribal fishery.

(v) In the event that a license is transferred to another vessel or owner in the same season, the license holder must reregister the buoy brand and buoy color or color combinations to be used with the license for the remainder of that crab season.

**(6) Commercial crab fishery line requirements.**

(a) Vessel operators must set all crab pots used in any Dungeness crab fishery ((shall be set up)) to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b) ~~((i) It is unlawful for a)~~ Vessel operators may not use line in any Puget Sound or coastal Dungeness crab fishery that features specific marking or color combinations required by regulation for any other state or federally managed commercial fishery in the U.S. West Coast Exclusive Economic Zone or in the state waters of Washington, Oregon, or California.

(c) Vessel operators fishing or participating in the Washington coastal nontreaty Dungeness crab fishery ((license holder to)) must use line ((that connects the main buoy to the crab pot)) that is ((not)) marked sufficiently to identify it as gear used exclusively in ((the Washington coastal Dungeness crab)) that fishery.

~~((ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery and rigged with line, that line))~~ (i) Line must be marked as red and black. Dual-colored line must be marked through the manufacturing process and is defined as two strands colored red and at least one strand colored black. Tracer line may be used, see compliance guide for acceptable tracer lines (see subsection (6)(c)(iii) of this section).

(A) Through November 30, 2035, line with any of the following sets of solid marks may be substituted for manufactured dual-colored line. A solid mark must cover the entire circumference of the line and

be regularly serviced and maintained in a condition to readily identify the required line marking scheme.

(I) On line of any color, other than red or black, a set of solid marks consists of one solid two-foot red mark spaced at a distance of no more than six inches from one solid two-foot black mark.

(II) On line originally red, a set of marks consists of one solid two-foot black mark spaced at a distance of 12 to 24 inches from a second solid two-foot black mark.

(ii) For each shellfish pot used in the fishery rigged with line, the line must be marked as follows:

(A) Effective immediately, the line connecting the main (diver) buoy closest to the shellfish pot must be marked with no less than 12 continuous inches of red ((in at least two places. At a minimum, 12 continuous inches of line must be marked in red,)) no more than one fathom from the main (diver) buoy ((and no more than one fathom from the pot)). Red and black manufactured line described in subsection (6)(c)(ii) of this section meets this requirement.

(B) Effective December 1, 2025, all line connecting two buoys, except the buoy gangion lines, must be marked with red and black pursuant to subsection (6)(c)(ii) of this section.

(I) For the purpose of this section, buoy gangion lines are defined as a line that passes through and is affixed to the buoy forming loops on each end of the buoy, that are less than four feet long as measured from opposing loop ends.

(II) Through November 30, 2035, one set of solid marks on any line connecting two buoys, except buoy gangion lines, as defined in subsection (6)(c)(ii)(A) of this section may be substituted for dual-colored manufactured line.

(C) Effective December 1, 2028, the line connecting the main (diver) buoy to the shellfish pot must be marked with red and black pursuant to subsection (6)(c)(ii) of this section.

(I) When fishing with 20 fathoms (120 feet) or more of line connecting the main (diver) buoy to the shellfish pot, the top 15 fathoms (90 feet) of line must be marked.

(II) When fishing with less than 20 fathoms (120 feet) of line connecting the main (diver) buoy to the shellfish pot, the top 50 percent of line must be marked.

(III) Through November 30, 2035, on the portion of line connecting the main (diver) buoy to the shellfish pot three sets of solid marks as defined in subsection (6)(c)(ii)(A) of this section may be substituted for dual-colored manufactured line. Sets of marks shall be distributed such that one set of marks is within one fathom of each end and one set of marks is near the middle of the length of line required to be marked.

(iii) The department has published a compliance guide for the line marking which provided additional information and instructions to follow in complying with this regulation and is incorporated by reference herein. The guide can be obtained by contacting the Coastal Shellfish Manager: 48 Devonshire Road, Montesano, WA 98563; phone 360-249-4628; or [wdfw.wa.gov/fishing/commercial/crab/coastal](http://wdfw.wa.gov/fishing/commercial/crab/coastal).

**(7) Coastal commercial Dungeness crab fishery surface gear limitations.**

Surface gear is limited to one main (diver) buoy connected closest to the shellfish pot and the following:

(a) Two trailer buoys.

(b) One end marker buoy less than five inches in diameter can extend no more than three feet beyond the last trailer buoy. End marker buoys are not considered trailer buoys.

(c) The maximum distance between the leading edge of the main buoy and the trailing edge of the last trailer buoy, including all line connecting surface gear, must not exceed 36 feet.

(8) Violation of subsection (5), (6), or (7) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

**WSR 25-03-133**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed January 21, 2025, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-133.

Title of Rule and Other Identifying Information: Chapter 296-123 WAC, Equal Pay and Opportunities Act. New chapter under Title 296 WAC, Department of labor and industries.

Hearing Location(s): On March 4, 2025, at 3:30 p.m., virtual/ telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/82405652366?pwd=iSmCMZae4zCuHOIWAKvfqO1grTKich.1>, Passcode EPOA2025!; or join by phone (audio only) US 253-205-0468, Meeting ID 824 0565 2366, Passcode 746514953. A prehearing overview will begin at 3:00 p.m. The hearing will start at 3:30 p.m. and will continue until all oral comments are received; and

On March 6, 2025, at 10:30 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501. A pre-hearing overview will begin at 10:00 a.m. The hearing will start at 10:30 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: May 21, 2025.

Submit Written Comments to: Reed Simock, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, email [ESRules@lni.wa.gov](mailto:ESRules@lni.wa.gov), fax 360-902-5300, beginning January 21, 2025, at 8:00 a.m., by March 19, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Reed Simock, phone 360-480-3237, fax 360-902-5300, email [ESRules@lni.wa.gov](mailto:ESRules@lni.wa.gov), by February 27, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I is proposing rules to implement SHB 1905, chapter 353, Laws of 2024. The bill expands existing protections against pay and promotion discrimination based on gender found in chapter 49.58 RCW, the Equal Pay and Opportunities Act. SHB 1905 extends the protections to additional protected classes including, but not limited to, age, race, and sexual orientation. L&I is proposing rules to clarify and implement the provisions of SHB 1905.

L&I is also proposing rules to clarify other requirements created by chapter 49.58 RCW, including:

- The free discussion of wages and salary;
- Protection against retaliation;
- Wage and salary history privacy; and
- Disclosure of wage scale, salary range, and benefits on a job posting.

The proposed rules explain L&I's enforcement of chapter 49.58 RCW. The proposed rules also describe L&I's complaint investigation and resolution processes.

SHB 1905 goes into effect on July 1, 2025. L&I does not currently have rules under chapter 49.58 RCW.

Reasons Supporting Proposal: Rules are necessary to clarify and enforce chapter 49.58 RCW and implement the requirements of SHB 1905.

Statutory Authority for Adoption: RCW 49.58.090.

Statute Being Implemented: RCW 49.58.010, 49.58.020, 49.58.030, 49.58.040, 49.58.050, and 49.58.060.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Reed Simock, Tumwater, Washington, 360-480-3237; Implementation and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-5310.

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 Reed Simock, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-480-3237, fax 360-902-5300, email ESRules@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The portions of proposed rules listed in the section below are 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. L&I determined that the proposed rules do not impose additional cost on businesses. The proposed rules do not create additional requirements that employers must meet.

WAC 296-123-010 (1), (2), (4), (7), (8), (11), (12), (13), and (14)	These definitions are explanatory and provide L&I's interpretation for terms used in chapter 49.58 RCW and throughout the proposed rule. The definitions do not independently impose a penalty or sanction an employer.
WAC 296-123-020(1) and 296-123-030(1)	These subsections describe how L&I will enforce the requirements in RCW 49.58.020(1) and 49.58.030(2) that employers cannot discriminate based on a person's gender or membership in a protected class. RCW 49.58.010(6) defines "protected class" using characteristics that are in turn defined in RCW 49.60.040. "Perceived" is included in the definition of several of the characteristics in RCW 49.60.040. By including "perceived" in WAC 396-123-020(1), L&I is making it easier to follow the requirements of RCW 49.58.020, 49.58.010, and 49.60.040. The subsections do not create an additional cost of compliance for employers. The statute prohibits employers from discriminating based on gender or membership in a protected class. The proposed rule clarifies that employers may not discriminate based on what they believe the employee's gender or protected class to be. As employers are already prohibited from discrimination, there is no additional cost of compliance.
WAC 296-123-030(5)	This subsection provides a definition for the term "pattern of violations" found in RCW 49.58.030 (4)(a). The section is explanatory and has limited impact beyond providing L&I's interpretation of the statute. The subsection does not independently impose a penalty or sanction on a person or entity.
WAC 296-123-040(2)	This subsection provides L&I's interpretation of RCW 49.58.040(2). The section further clarifies the statute by providing examples of protected activities. The subsection does not independently impose a penalty or sanction on a person or entity.
WAC 296-123-050(1)	This subsection provides L&I's interpretation of RCW 49.58.100(1). The subsection clarifies that the prohibition against employer inquiry into wage or salary history includes optional questions. The subsection does not independently impose a penalty or sanction on a person or entity.



WAC 296-123-050(3)	This subsection provides L&I's interpretation of RCW 49.58.100(2). This provision of the rule does not independently impose a penalty or sanction on a person or entity. The subsection does not create an additional cost of compliance for employers, as employers do not have to take additional action to comply with the rule.
WAC 296-123-060 (2), (3), and (5)	The subsections are interpretive and provide L&I's definitions for terms used in the statute. The definitions do not independently impose a penalty or sanction an employer.
WAC 296-123-070(2)	This subsection provides L&I's interpretation of RCW 49.58.050. The rule could impose a penalty on an establishment. RCW 49.58.060 allows L&I to enforce retaliation violations under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation. The employer also does not have to take additional action to comply with the rule.
WAC 296-123-090 (1), (4), and (7)	These subsections provide L&I's interpretation of RCW 49.58.060. These subsections do not independently impose a penalty or sanction on a person or entity.
WAC 296-123-090(3)	This subsection provides L&I's interpretation of RCW 49.58.060. The subsection does not independently impose a penalty or sanction on a person or entity, as payments are only required in the event of a violation.
WAC 296-123-090(5)	This subsection provides L&I's interpretation of RCW 49.58.060. The section does not independently impose a penalty or sanction on a person or entity. The section does not create an additional cost of compliance for employers. Employers are not required to create or retain additional records and must simply provide records they already created to L&I when requested.
WAC 296-123-090(6)	This subsection provides L&I's interpretation of RCW 49.58.060. The subsection does not come with a corresponding obligation to perform the self-audit, and since there's no certainty that it will be requested, there's no continuous demand placed on impacted employers. As a result, there's no on going associated costs with the proposed rule. Consequently, self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations.
WAC 296-123-100(1)	This subsection provides L&I's interpretation of RCW 49.58.060(2). The section further clarifies the actions L&I may order in the event the agency issues a notice of assessment. The rule does not independently impose a penalty or sanction on a person or entity.
WAC 296-123-100(2)	This subsection provides L&I's interpretation of RCW 49.58.060. The subsection clarifies the enforcement methods L&I will pursue for violations of WAC 296-123-060. The subsection does not create an additional cost of compliance for employers, as payments are only required in the event of a violation. The subsection clarifies L&I enforcement of the chapter and does not create an additional requirement employers must meet.
WAC 296-123-100(5)	This subsection provides L&I's interpretation of RCW 49.58.060. This rule clarifies the methods L&I may use to collect on unpaid assessments. The subsection does not create an additional cost of compliance for employers, as payments are only required in the event of a violation. The subsection clarifies L&I enforcement of the chapter and does not create an additional requirement employers must meet.
WAC 296-123-120	This section describes L&I's ability to enforce the rules if a portion of the rules is found to be invalid and does not impose any requirements.

A copy of the detailed cost calculations may be obtained by contacting Reed Simock, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-480-3237, fax 360-902-5300, email [ESRules@Lni.wa.gov](mailto:ESRules@Lni.wa.gov).

January 21, 2025  
Joel Sacks  
Director

OTS-6051.2

**Chapter 296-123 WAC**  
**EQUAL PAY AND OPPORTUNITIES**

NEW SECTION

**WAC 296-123-010 Definitions.** (1) "Actual damages" means compensation including, but not limited to, wages, salary, or other employment benefit, denied or lost to an employee or applicant, and may include other monetary losses suffered, as a result of a violation.

(2) "Benefits" are perks provided by an employer to an employee in addition to the employee's normal wage or salary. Benefits may be mandated by law or optionally provided by employers. Benefits may include, but are not limited to, health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, family leave, and paid time off or vacation benefits), and any other benefit that must be reported for federal tax purposes, such as fringe benefits.

(3) "Compensation" means discretionary and nondiscretionary wages and benefits provided by an employer to an employee as a result of the employment relationship.

(4) "Conference and conciliation" means an effort to find a voluntary resolution to the violation found as a result of an investigation. If the department finds that damages are owed to the employee or applicant as a result of the violation, the department may mediate, or appoint a third party to act as mediator, between the employee or applicant and the employer to find a mutually agreeable resolution. If the department finds that a violation occurred but the employee or applicant is not owed damages, the department may negotiate directly with the employer to resolve the violation.

(5) "Department" means the department of labor and industries.

(6) "Director" means the director of the department of labor and industries, or the director's designated representative.

(7) "Effort" means the amount of physical or mental exertion needed to perform a job. "Effort" encompasses the requirements of a job as a whole, including any factors of the job that cause or mitigate mental fatigue and stress.

(8) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise. For the purposes of this chapter, the term "employee" does not include independent contractors or business partners but does include employees who are exempt under chapter 49.46 RCW.

(9) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(10) "Protected class" means a person's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or

the use of a trained dog guide or service animal by a person with a disability, as those terms are defined in RCW 49.60.040.

(11) "Responsibility" means the degree of discretion or accountability involved in performing the essential functions of a job, and includes factors such as the amount of supervision the employee receives, whether the employee supervises others, the degree to which the employee is involved in decision-making such as determining policy, procedure, purchases, investments, or other such activities.

(12) "Retaliation" means any adverse action taken or threatened by an employer against an employee for their exercise of their rights under chapter 49.58 RCW or this chapter, which may include, but is not limited to:

- (a) Terminating, suspending, demoting, or denying a promotion;
- (b) Reducing or changing the number of work hours for which the employee is scheduled;
- (c) Altering the employee's preexisting work schedule;
- (d) Reducing the employee's rate of pay;
- (e) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member; and
- (f) Preventing future job opportunities whether for the employer or elsewhere.

(13) "Skill" means factors such as experience, training, education, and ability required to perform a job. Only skills necessary to perform a particular job are relevant in determining whether employees are similarly employed.

(14) "Working conditions" means the environmental factors and similar circumstances, such as physical surroundings and hazards, encountered by employees while performing a job.

#### NEW SECTION

**WAC 296-123-020 Wage discrimination prohibited.** (1) Any employer in this state who discriminates in any way in providing compensation based on a person's gender, perceived gender, or membership or perceived membership in a protected class between similarly employed employees of the employer is guilty of a misdemeanor. If any employee receives less compensation because of discrimination on account of the person's gender, perceived gender, or membership or perceived membership in a protected class in violation of this section, that employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules. In such action, however, the employer shall be credited with any compensation which has been paid to the employee upon account.

(2) For purposes of this section, employees are similarly employed if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

(3) (a) Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

- (i) Are consistent with business necessity;
- (ii) Are not based on or derived from a gender-based differential and are not based on or derived from the employee being a member of a protected class; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system;

(iv) A system that measures earnings by quantity or quality of production; or

(v) A bona fide regional difference in compensation levels.

(c) A differential in compensation based in good faith on a local government ordinance providing for a minimum wage different from state law does not constitute discrimination under this section.

(d) An individual's previous wage or salary history is not a defense under this section.

(e) The employer carries the burden of proof on these defenses.

(4) A person may file a complaint or bring an action under this chapter asserting discrimination based on the person's membership in more than one protected class.

#### NEW SECTION

**WAC 296-123-030 Finding—When career advancement limited by gender or membership in other protected class.** (1) An employer may not, on the basis of a person's gender, perceived gender, or membership or perceived membership in a protected class, limit or deprive an employee of career advancement opportunities that would otherwise be available. For the purposes of this section, "career advancement opportunities" means formal or informal occasions for an employee to gather additional skills, knowledge, or experience with the purpose of furthering their career. Career advancement opportunities may include, but are not limited to, promotions, trainings, classes, mentorships, or special projects.

(2) (a) A differential in career advancement does not constitute discrimination within the meaning of this section if the differential is based on a bona fide job-related factor or factors that:

(i) Are consistent with business necessity;

(ii) Are not based on or derived from a gender-based differential; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system; or

(iv) A system that measures earnings by quantity or quality of production.

(3) Upon complaint by an employee, the director must investigate pursuant to the procedures outlined in WAC 296-123-090 to determine if there has been compliance with this section.

(4) Subject to subsection (3) of this section, a person may file a complaint or bring an action under this chapter asserting discrimination based on the person's membership in more than one protected class.

(5) (a) If it is determined that an employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the employee is entitled to the remedies in WAC 296-123-100 and RCW 49.58.070.

(b) For the purposes of this section, a "pattern of violations" will consider whether the employer has committed multiple violations of this chapter against one employee or committed violations of this section against multiple employees.

#### NEW SECTION

**WAC 296-123-040 Certain employer conduct prohibited.** (1) An employer may not:

(a) Require nondisclosure by an employee of their wages as a condition of employment; or

(b) Require an employee to sign a waiver or other document that prevents the employee from disclosing the amount of the employee's wages.

(2) An employer may not discharge or in any other manner retaliate against an employee for:

(a) Inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, which includes, but is not limited to, asking for a raise, asking for payment of agreed or obligated wages, and may also include filing a wage-related complaint with the department;

(b) Asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement; or

(c) Aiding or encouraging an employee to exercise their rights under this section.

(3) An employer may prohibit an employee who has access to compensation information of other employees or applicants as part of such employee's essential job functions from disclosing the wages of the other employees or applicants to individuals who do not otherwise have access to such information, unless the disclosure is in response to a complaint or charge, in furtherance of an investigation, or consistent with the employer's legal duty to provide the information and the disclosure is part of the employee's essential job functions. An employee described in this subsection otherwise has the protections of this section, including to disclose the employee's wages without retaliation.

(4) This section does not require an employee to disclose the employee's compensation.

(5) This section does not permit an employee to violate the requirements in chapter 49.17 RCW and rules adopted under that chapter.

#### NEW SECTION

**WAC 296-123-050 Employer seeking wage and salary history.** (1) An employer may not:

(a) Seek or inquire about the wage or salary history of an applicant for employment from the applicant or a current or former employer, even if the question is optional; or

(b) Require that an applicant's prior wage or salary history meet certain criteria such as being above a minimum threshold, except as provided in subsection (2) of this section.

(2) An employer may confirm an applicant's wage or salary history:

(a) If the applicant has voluntarily disclosed the applicant's wage or salary history; or

(b) After the employer has negotiated and made an offer of employment with compensation to the applicant and the offer has been accepted by the applicant.

(3) An employer may not reduce the compensation offered to an applicant after confirming the applicant's wage or salary history.

(4) An individual is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee.

#### NEW SECTION

##### **WAC 296-123-060 Disclosure of wage or salary range by employer.**

(1) The employer must disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. For the purposes of this section, "posting" means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants.

(2) The wage scale or salary range must reflect the employer's most reasonable and genuinely expected range of compensation for the job at the time of posting. The range must include a minimum and maximum dollar amount. An employer may also include a more specific hiring wage scale, salary range, or amount.

(3) A general description of all benefits must provide the applicant with the employer's most reasonable and genuinely expected benefits offered for the specific available position. A "general description of all benefits" includes, but is not limited to, health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits.

(4) Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee's new position.

(5) This section only applies to employers with 15 or more employees. For the purposes of this section, the employer's size is based on the number of employees employed at the time the job opening is posted and includes employees who do not have a physical presence in Washington.

(6) A job applicant or an employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee.

NEW SECTION

**WAC 296-123-070 Employer retaliation prohibited.** (1) An employer may not retaliate, discharge, or otherwise discriminate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of themselves or others of any right afforded by this chapter.

(2) An employer may not interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.58 RCW or associated rules. An employer may not use an employee's exercise of any of the rights provided under chapter 49.58 RCW or associated rules as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under chapter 49.58 RCW or associated rules.

NEW SECTION

**WAC 296-123-080 Violation of chapter.** A violation of this chapter occurs when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

NEW SECTION

**WAC 296-123-090 Complaint by employee—Investigation by director.** (1)(a) An employee or applicant may file a complaint with the department alleging a violation under chapter 49.58 RCW or this chapter within four years of the date of the last alleged violation.

(b) Former employees may file a complaint with the department for alleged violations that occurred while working for the employer, even if the employee is not currently employed by the employer.

(2) Upon complaint by an employee or applicant, the director must investigate to determine if there has been compliance with chapter 49.58 RCW and this chapter. The director, upon complaint, may also initiate an investigation on behalf of one or more employees or applicants for a violation of chapter 49.58 RCW and this chapter. The director may require the testimony of witnesses and production of documents as part of an investigation.

(3) The director may initiate an investigation without a complaint to ensure compliance with this chapter. The director may also initiate an investigation when the director otherwise has reason to believe that a violation has occurred.

(4) The director may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such pla-

ces and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as they may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(5) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

(6) The department may request an employer perform a self-audit of any records relating to chapter 49.58 RCW and associated rules which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The department must determine reasonable time based on the number of affected employees and the period of time covered by the self-audit. The records examined by the employer in order to perform the self-audit must be made available to the department upon request.

(7) The department may conduct a consolidated investigation for any alleged violation identified under chapter 49.58 RCW, or associated rules, when there are common questions of law or fact. If the department consolidates such matters into a single investigation, it will provide notice to the employer.

#### NEW SECTION

**WAC 296-123-100 Resolving the violation.** (1)(a) If, following an investigation, the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(b) If no agreement is reached to resolve the violation, the director may issue a citation and notice of assessment and order:

(i) The employer to pay to the complainant actual damages;

(ii) The employer to pay to the complainant statutory damages equal to the actual damages or \$5,000, whichever is greater;

(iii) Interest of one percent per month on all compensation owed until the balance is paid in full;

(iv) Payment to the department of the costs of investigation and enforcement; and

(v) Any other appropriate relief including, but not limited to:

(A) Ordering an employer to correct, revise, or update a policy or practice.

(B) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment for violations of WAC 296-123-070.

(2) For the purpose of department enforcement under RCW 49.58.060 and associated rules, a job applicant or employee must demonstrate that compensation or any other damages have been denied or lost by reason of a violation of WAC 296-123-060 to be entitled to damages under RCW 49.58.060 and this section. This does not diminish the right of a job applicant or employee to pursue remedies under RCW 49.58.070. Filing a civil action under RCW 49.58.070 shall terminate the director's processing of the complaint under RCW 49.58.060 and associated rules.



(3) Any wages and interest owed must be calculated from the last violation before the complaint, up to a period of four years.

(4) In accordance with RCW 49.58.060, in addition to the citation and notice of assessment, the director may order payment to the department of a civil penalty. For purposes of a civil penalty for violation of RCW 49.58.020, 49.58.030, 49.58.040, 49.58.050, 49.58.100, 49.58.110, and associated rules, the violation as to each affected employee or applicant constitutes a separate violation.

(a) For a first violation, the civil penalty may not exceed \$500.

(b) For a repeat violation, the civil penalty may not exceed \$1,000 or 10 percent of the damages, whichever is greater.

(5) For enforcement actions under this section, if any person fails to pay an assessment under this chapter, or under any rule under this chapter, after it has become a final and binding order, or after the court has entered final judgment in favor of the agency, the director may initiate collection procedures in accordance with the collection procedures under RCW 49.48.086.

(6) The department must deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

#### NEW SECTION

**WAC 296-123-110 Appeals.** An appeal from the director's determination received within 30 days may be taken in accordance with chapter 34.05 RCW. An employee who prevails is entitled to costs and reasonable attorneys' fees from the employer.

#### NEW SECTION

**WAC 296-123-120 Severability.** If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

**WSR 25-03-136**

**WITHDRAWAL OF PROPOSED RULES**

**STATE BOARD OF EDUCATION**

[Filed January 21, 2025, 4:46 p.m.]

The Washington state board of education withdraws [proposed rule making] WSR 25-01-078, filed on December 12, 2024, that lists the subject of rule making as chapter 180-55 WAC.

Randy Spaulding, Ph.D.  
Executive Director

## WSR 25-03-138

## PROPOSED RULES

## STATE BOARD OF EDUCATION

[Filed January 21, 2025, 5:05 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 February 26, 2025, at 3 p.m., in the Brouillet 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: March 25, 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 February 5, 2025, 8 a.m. PST, by February 25, 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 February 25, 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].

January 21, 2025  
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)-(f))~~ 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.