

TRANSMITTAL OF RULES ADOPTED BY INSTITUTION OF HIGHER EDUCATION

FROM: Community College District VIII
(Name of Institution)

TO: CODE REVISER
LEGISLATIVE BLDG. (Southwest Corner, Ground Floor)
OLYMPIA 98504

The enclosed rules Permanent rules , being Order No. 42
Emergency rules
relating to (Name of rules or description of subject matter)

Practice and Procedure and Formal Hearing Rules for Contested Case Hearings for
Community College District VIII.

(ALTERNATIVE A. Use only for adoption of permanent rules)

pursuant to Notice No. 5723 (1) filed with the code reviser
on 2-9-76 (2) were regularly adopted as permanent rules of
(date)
this institution at Bellevue Community College 3-2-76 and are herewith
(place) (date)
filed in the office of the code reviser pursuant to chapter 28B.19
RCW. The effective date of such rules shall be _____ (3)

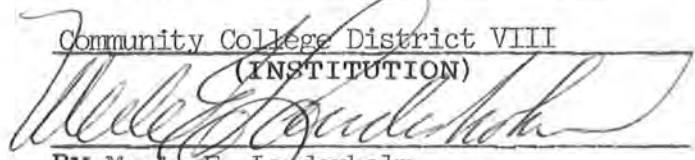
(ALTERNATIVE B. Use only for adoption of emergency rules)

pursuant to its finding in the attached administrative order,
that the immediate adoption of these rules is necessary for the
preservation of the public health, safety, or general welfare and
that observance of the requirements of notice and opportunity to
present views on the proposed action would be contrary to the
public interest, were regularly adopted as emergency rules of this
institution at _____ on _____ and
(place) (date)
are herewith filed in the office of the code reviser pursuant to
chapter 28B.19 RCW.

The undersigned hereby certifies that the requirements of chapter
28B.19 RCW and of the Open Public Meetings Act of 1971, chapter
42.30 RCW have been fulfilled.

Dated this 3rd day of March 19 76.

STATE OF WASHINGTON
FILED
MAR 5 1976
CODE REVISER'S OFFICE
DOCKET # 1169 FILE # 1

Community College District VIII
(INSTITUTION)

By Merie E. Landerholm
Secretary to the Board of Trustees
Title

- ① Notice number as appears on the copy of notice returned to you by reviser's office (if proceedings were continued, use no. of last notice)
- ② Stamped date as appears on the copy of notice returned to you by reviser's office (if proceedings were continued, use date of last notice)
- ③ Unless a later date is specified in this order or is prescribed in another statute, rules are effective 30 days after filing:
RCW 28B.19.050(2). Leave this space blank except in such special cases.

STATE OF WASHINGTON
COMMUNITY COLLEGE DISTRICT VIII
BOARD OF TRUSTEES

RESOLUTION NO. 80

Administrative Order 42

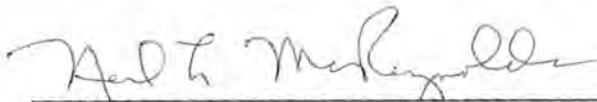
A RESOLUTION Relating to the adoption of permanent rules of Community College District VIII - Practice and Procedure and Formal Hearing Rules for Contested Case Hearings for Community College District VIII

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT VIII, STATE OF WASHINGTON.

WAC 132H-108-005 through WAC 132H-108-330 - Practice and Procedure and Formal Hearing Rules for Contested Case Hearings for Community College District VIII are being filed as permanent rules of Community College District VIII.

APPROVED AND ADOPTED March 2, 1976.

BOARD OF TRUSTEES



Neil L. McReynolds, Chairperson



Delores E. Teutsch, Vice Chairperson




C. W. Duffy, Trustee

(Absent)
Roy S. Peterson, Trustee



Claire Thomas, Trustee

ATTEST:



Merle E. Landerholm
Secretary, Board of Trustees

Chapter 132H-108

PRACTICE AND PROCEDURE AND FORMAL HEARING RULES FOR CONTESTED CASE HEARINGS

NEW WAC 132H-108-005 FORMAL HEARING POLICY. In each instance that a formal hearing is required by institutional policy or RCW 28B.19, the provisions of WAC 132H-108-005 through WAC 132H-108-330 shall be applicable.

NEW WAC 132H-108-010 GRAMMATICAL DEFINITION. In each instance personal pronouns are used such as he, his, she, hers, they should be deemed to mean either gender of sex as appropriate.

NEW WAC 132H-108-020 DEFINITIONS. As used herein, the term "agency" shall mean the Executive Officer of Community College District VIII and President of Bellevue Community College as the legally delegated authority of the Board of Trustees of Community College District VIII, state of Washington.

NEW WAC 132H-108-030 APPEARANCE AND PRACTICE BEFORE AGENCY. No person may appear in a representative capacity before the agency other than the following: (1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.
(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our State law.
(3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to the agency and have been duly authorized by the agency to appear in a representative capacity before the agency.
(4) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.

NEW WAC 132H-108-040 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES. In any contested case, all parties shall be served with a notice at least ten days before the date set for the hearing. The notice shall be signed by the Executive Officer of Community College District VIII and President of Bellevue Community College, or his designee, and shall state the time, place, and issues involved, as required by RCW 28B.19.120.

NEW WAC 132H-108-050 SERVICE OF PROCESS--BY WHOM SERVED. The agency shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

NEW WAC 132H-108-060 UPON WHOM SERVED. All papers served by either the agency or any party shall be served upon all counsel or record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then on record and all parties not represented by counsel of such fact.

NEW WAC 132H-108-070 SERVICE UPON PARTIES. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive of such papers, and a copy shall be furnished to counsel or record.

NEW WAC 132H-108-080 METHOD OF SERVICE. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; or by telegraph.

NEW WAC 132H-108-090 WHEN SERVICE COMPLETE. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

NEW WAC 132H-108-100 FILING WITH AGENCY. Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Executive Officer of Community College District VIII and President of Bellevue Community College at 3000 - 145th Place S.E., Bellevue, Washington 98007, accompanied by proof of service upon parties required to be served.

NEW WAC 132H-108-110 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--RIGHT TO TAKE. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint, application or petition. Depositions shall be taken only in accordance with this rule,

NEW WAC 132H-108-120 SCOPE. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding.

NEW WAC 132H-108-130 OFFICER BEFORE WHOM TAKEN. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the agency or agreed upon by the parties by stipulation in writing filed with the agency. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceedings.

NEW WAC 132H-108-140 AUTHORIZATION. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the agency may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used as other depositions.

NEW WAC 132H-108-150 PROTECTION OF PARTIES AND DEONENTS. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the agency may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the agency, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the agency, or the agency may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the agency may order the officer and conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

NEW

WAC 132H-108-160 ORAL EXAMINATION AND CROSS-EXAMINATION. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

NEW

WAC 132H-108-170 RECORDATION. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, electronic recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

NEW

WAC 132H-108-180 SIGNING ATTESTATION AND RETURN. (1) When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the agency holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the agency for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

NEW

WAC 132H-108-190 USE AND EFFECT. Subject to rulings by the agency upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the agency upon its own motion or the motion of any party. Except by agreement of the parties or ruling of the agency, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. 6

Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

NEW

WAC 132H-108-200 FEES OF OFFICERS AND DEPONENTS. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken.

NEW

WAC 132H-108-210 DEPOSITIONS UPON INTERROGATORIES—SUBMISSION OF INTERROGATORIES. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories.

NEW

WAC 132H-108-220 INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 132H-108-130 the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

NEW

WAC 132H-108-230 ATTESTATION AND RETURN. The officer before whom interrogatories are verified or answered shall: (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and

(2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the agency, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

NEW

WAC 132H-108-240 PROVISIONS OF DEPOSITION RULE. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

NEW WAC 132H-108-250 HEARING OFFICERS. In each instance that a formal hearing is required by institutional policy or RCW 28B.19, and upon receipt of a request for a formal hearing filed in accordance with RCW 28B.19, the Executive Officer of Community College District VIII and President of Bellevue Community College may appoint one or more hearing officers, not to exceed three for any one hearing, to preside over, conduct, make decisions or proposals for decisions as directed by the Board chairperson, including findings of fact and conclusions of law, in each instance, and shall afford an opportunity for a formal hearing after not less than ten days notice and provide such individual requesting formal hearing with notice of the hearing in accordance with the provisions of RCW 28B.19.

NEW WAC 132H-108-260 HEARING PROCEDURES. Each hearing shall be conducted in the manner provided for in these rules and in RCW 28B.19.

NEW WAC 132H-108-270 DUTIES OF HEARING OFFICERS. (1) All hearing officers appointed in accordance with WAC 132H-108-250 shall conduct hearings in the same manner and shall have the same authority as provided in hearings by the Executive Officer of Community College District VIII and President of Bellevue Community College: provided, that hearing officers may take final and binding findings or proposals or either or both at the direction of the President as set forth in these rules and in RCW 28B.19: (2) The proposals for decisions and findings of fact and conclusions of law shall be forthwith served upon the parties and transmitted to the President, together with a record of the proceeding. Within twenty days of service of such proposal for decisions, any party adversely affected may file exceptions, and thereafter all parties may present written argument to the President who shall consider the whole record or such portions as may be cited by the parties, and after such review the President shall announce his decision and final action to be taken.

NEW WAC 132H-108-280 STIPULATIONS AND ADMISSIONS OF RECORD. The existence or non-existence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon Whom Binding: Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or non-existence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a pre-hearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) Withdrawal. Any party bound by a stipulation or admission or record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the agency that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

NEW

WAC 132H-108-290 DEFINITION OF ISSUES BEFORE HEARING. In all proceedings the issue to be adjudicated shall be made initially as precise as possible, in order that the agency may proceed promptly to conduct the hearings on relevant and material matter only.

NEW

WAC 132H-108-300 CONTINUANCES. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the agency of said desire, stating in detail the reasons why such continuance is necessary. The agency, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the agency may grant such a continuance and may at any time order a continuance upon its motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the agency may in its discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

NEW

WAC 132H-108-310 RULES OF EVIDENCE—ADMISSIBILITY CRITERIA. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the agency is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the agency shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

NEW

WAC 132H-108-320 TENTATIVE ADMISSION—EXCLUSION—DISCONTINUANCE—OBJECTIONS. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The agency may, in its discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

NEW

WAC 132H-108-330 FORM AND CONTENT OF DECISIONS IN CONTESTED CASES. Every decision and order, whether proposed, initial, or final, shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered findings of fact and conclusions of law;
- (5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;

(6) Wherever practical, the conclusions and/or order shall be referred to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.