

WSR 21-24-012
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 19, 2021, 7:34 a.m., effective November 24, 2021]

Effective Date of Rule: November 24, 2021.

Purpose: The developmental disabilities administration (DDA) is enacting changes to WAC 388-823-0720 on an emergency basis to remove the "Woodcock-Johnson test of achievement." Recently under WSR 21-13-164, DDA mistakenly adopted language that says DDA will accept the "Woodcock-Johnson test of achievement" as evidence of a person's full scale intelligence quotient (FSIQ); however, the text should continue to read "Woodcock-Johnson test of cognitive abilities" as it stated before filing WSR 21-13-164.

Citation of Rules Affected by this Order: Amending WAC 388-823-0720.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: RCW 34.05.350.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The accidental removal of the test of cognitive abilities has the potential to create a health and safety issue for an applicant who urgently needs to become DDA-eligible and receive services. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest because DDA would not be permitted to continue to accept the Woodcock-Johnson test of cognitive abilities for several months; during that time, some applicants might be denied eligibility who would otherwise be deemed eligible based on results of their Woodcock-Johnson test of cognitive abilities.

DDA relies on the test of cognitive abilities to determine full-scale intelligence quotient scores, which are a necessary part of determining DDA eligibility. The Woodcock-Johnson test of achievement measures a person's academic level of achievement and does not produce an FSIQ score. In WAC 388-823-0720 What evidence do I need of my FSIQ?, the table lists tests that result in an FSIQ and DDA accepts the results of all of those tests as evidence of a qualifying FSIQ. It is not possible for DDA to determine an FSIQ based on the results of the Woodcock-Johnson test of achievement.

This is the second emergency filing on these changes. This filing is necessary to keep the emergency rule enacted until the permanent rule is adopted. DDA is progressing through the permanent rule-making process, the public rules hearing was held November 9, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 19, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4880.1

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less
Differential abilities scale (DAS)	69 or less	77 or less	84 or less
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Woodcock-Johnson-Test of ((achievement)) cognitive abilities III, III(r), or IV	69 or less	77 or less	84 or less
Reynolds intellectual assessment scales, 2nd edition (RIAS 2)	69 or less	77 or less	84 or less

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, reasonable in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are nonverbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS, WNV)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning Index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of nineteen at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 and 71A.16.020. WSR 21-13-164, § 388-823-0720, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0720, filed 5/29/14, effective 7/1/14.]