

WSR 24-17-014
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 8, 2024, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-012.

Title of Rule and Other Identifying Information: WAC

392-172A-05135 Transfer of parental rights to the student at age of majority.

Hearing Location(s): On September 24, 2024, 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. For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: September 26, 2024.

Submit Written Comments to: Darryl Colman, OSPI, P.O. Box 47200, Olympia, WA 98504, email darryl.colman@k12.wa.us, beginning September 4, 2024, 8:00 a.m., by September 24, 2024, no later than 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by September 17, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making to replace the statutory references to chapter 11.88 RCW, which has been repealed under ESSB 6287 (2020), with chapter 11.130 RCW under WAC 392-172A-05135. The proposed rule amendment ensures updated and consistent references to RCW.

Reasons Supporting Proposal: The proposed amendments are intended to update and replace statutory references under WAC 392-172A-05135 that have been repealed under ESSB 6287 (2020).

Statutory Authority for Adoption: RCW 28A.155.090.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Darryl Colman, OSPI, 600 South Washington Street, Olympia, WA; and 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.

August 8, 2024

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-5251.1

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) Subject to subsections (4) and (5) of this section, when a student eligible for special education services reaches the age of (~~eighteen~~) 18 or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter (~~11.88~~) 11.130 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of (~~eighteen~~) 18 who have not been determined incapacitated under chapter (~~11.88~~) 11.130 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of

the student, may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter 11.125 RCW.