

Chapter 181-87 WAC

PROFESSIONAL CERTIFICATION—ACTS OF UNPROFESSIONAL CONDUCT

WAC

| | |
|------------|--|
| 181-87-003 | Authority. |
| 181-87-005 | Purpose. |
| 181-87-010 | Public policy goals of chapter. |
| 181-87-015 | Accountability for acts of unprofessional conduct. |

ADMINISTRATIVE PROVISIONS

| | |
|------------|--|
| 181-87-020 | Applicability of chapter to private conduct. |
| 181-87-025 | Exclusivity of chapter. |
| 181-87-030 | Prospective application of chapter and amendments. |
| 181-87-035 | Education practitioner—Definition. |
| 181-87-040 | Student—Definition. |
| 181-87-045 | Colleague—Definition. |

ACTS OF UNPROFESSIONAL CONDUCT

| | |
|------------|--|
| 181-87-050 | Misrepresentation or falsification in the course of professional practice. |
| 181-87-055 | Alcohol or controlled substance abuse. |
| 181-87-060 | Disregard or abandonment of generally recognized professional standards. |
| 181-87-065 | Abandonment of contract for professional services. |
| 181-87-070 | Unauthorized professional practice. |
| 181-87-080 | Sexual misconduct with students. |
| 181-87-085 | Furnishing alcohol or controlled substance to students. |
| 181-87-090 | Improper remunerative conduct. |
| 181-87-093 | Failure to assure the transfer of student record information or student records. |
| 181-87-095 | Failure to file a complaint. |

WAC 181-87-003 Authority. The authority for this chapter is RCW 28A.410.090 which authorizes the professional educator standards board to establish, publish, and enforce rules and regulations determining eligibility for and certification of personnel employed in the common schools of this state. This authority is supplemented by RCW 28A.410.090 which authorizes the revocation of certificates for unprofessional conduct. (Note: RCW 28A.02.201 (3)(a) requires most private school classroom teachers to hold appropriate Washington state certification with few exceptions.)

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-003, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-003, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-003, filed 1/2/90, effective 2/2/90.]

WAC 181-87-005 Purpose. The sole purpose of this chapter is to set forth policies and procedures related to reprimand, suspension, and revocation actions respecting certification of education practitioners in the state of Washington for acts of unprofessional conduct. It is recognized that grounds for the discharge, nonrenewal of contracts, or other adverse change in contract status affecting the employment contracts of education practitioners are broader than stated herein. The grounds set forth as unprofessional conduct in this chapter shall not limit discharge, nonrenewal of contracts, or other employment action by employers of education practitioners.

(11/13/12)

[WSR 06-02-051, recodified as § 181-87-005, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-005, filed 1/2/90, effective 2/2/90.]

WAC 181-87-010 Public policy goals of chapter. The public policy goals of this chapter are as follows:

(1) To protect the health, safety, and general welfare of students within the state of Washington.

(2) To assure the citizens of the state of Washington that education practitioners are accountable for acts of unprofessional conduct.

(3) To define and provide notice to education practitioners within the state of Washington of the acts of unprofessional conduct for which they are accountable pursuant to the provisions of chapter 181-86 WAC.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-010, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-010, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-010, filed 1/2/90, effective 2/2/90.]

WAC 181-87-015 Accountability for acts of unprofessional conduct. Any educational practitioner who commits an act of unprofessional conduct proscribed within this chapter may be held accountable for such conduct pursuant to the provisions of chapter 181-86 WAC.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-015, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-015, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-015, filed 1/2/90, effective 2/2/90.]

ADMINISTRATIVE PROVISIONS

WAC 181-87-020 Applicability of chapter to private conduct. As a general rule, the provisions of this chapter shall not be applicable to the private conduct of an education practitioner except where the education practitioner's role as a private person is not clearly distinguishable from the role as an education practitioner and the fulfillment of professional obligations.

[WSR 06-02-051, recodified as § 181-87-020, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-020, filed 1/2/90, effective 2/2/90.]

WAC 181-87-025 Exclusivity of chapter. No act, for the purpose of this chapter, shall be defined as an act of unprofessional conduct unless it is included in this chapter.

[WSR 06-02-051, recodified as § 181-87-025, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-025, filed 1/2/90, effective 2/2/90.]

WAC 181-87-030 Prospective application of chapter and amendments. The provisions of this chapter shall take effect ninety calendar days after adoption and shall apply pro-

[Ch. 181-87 WAC p. 1]

spectively to acts of unprofessional conduct committed after such effective date. Unless provided to the contrary, any revision shall take effect six months after adoption and shall apply prospectively from such effective date.

[WSR 06-02-051, recodified as § 181-87-030, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-030, filed 1/2/90, effective 2/2/90.]

WAC 181-87-035 Education practitioner—Definition. As used in this chapter, the term "education practitioner" means any certificate holder licensed under rules of the professional educator standards board to serve as a certificated employee.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-035, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-035, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-035, filed 1/2/90, effective 2/2/90.]

WAC 181-87-040 Student—Definition. As used in this chapter, the term "student" means the following:

- (1) Any student who is under the supervision, direction, or control of the education practitioner.
- (2) Any student enrolled in any school or school district served by the education practitioner.
- (3) Any student enrolled in any school or school district while attending a school related activity at which the education practitioner is performing professional duties.
- (4) Any former student who is under eighteen years of age and who has been under the supervision, direction, or control of the education practitioner. Former student, for the purpose of this section, includes but is not limited to drop outs, graduates, and students who transfer to other districts or schools.

[WSR 06-02-051, recodified as § 181-87-040, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-040, filed 1/2/90, effective 2/2/90.]

WAC 181-87-045 Colleague—Definition. As used in this chapter, the term "colleague" means any person with whom the education practitioner has established a professional relationship and includes fellow workers and employees regardless of their status as education practitioners.

[WSR 06-02-051, recodified as § 181-87-045, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-045, filed 1/2/90, effective 2/2/90.]

ACTS OF UNPROFESSIONAL CONDUCT

WAC 181-87-050 Misrepresentation or falsification in the course of professional practice. Any falsification or deliberate misrepresentation, including omission, of a material fact by an education practitioner concerning any of the following is an act of unprofessional conduct:

- (1) Statement of professional qualifications.
- (2) Application or recommendation for professional employment, promotion, certification, or an endorsement.
- (3) Application or recommendation for college or university admission, scholarship, grant, academic award, or similar benefit.
- (4) Representation of completion of inservice or continuing education credit hours.
- (5) Evaluations or grading of students and/or personnel.

[Ch. 181-87 WAC p. 2]

(6) Financial or program compliance reports submitted to state, federal, or other governmental agencies.

(7) Information submitted in the course of an official inquiry by the superintendent of public instruction related to the following:

- (a) Good moral character or personal fitness.
- (b) Acts of unprofessional conduct.

(8) Information submitted in the course of an investigation by a law enforcement agency or by child protective services regarding school related criminal activity.

(9) Assessments leading to certification.

(10) An education practitioner who aids, encourages, and/or abets another educator in any falsification or deliberate misrepresentation, including omission, of a material fact in conjunction with the acts listed above commits misrepresentation in the course of professional practice.

[Statutory Authority: Chapter 28A.410 RCW. WSR 12-23-028, § 181-87-050, filed 11/13/12, effective 12/14/12. WSR 06-02-051, recodified as § 181-87-050, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-050, filed 1/2/90, effective 2/2/90.]

WAC 181-87-055 Alcohol or controlled substance abuse. Unprofessional conduct includes:

(1) Being under the influence of alcohol or of a controlled substance, as defined in chapter 69.50 RCW, on school premises or at a school-sponsored activity involving students, following:

(a) Notification to the education practitioner by his or her employer of concern regarding alcohol or substance abuse affecting job performance;

(b) A recommendation by the employer that the education practitioner seek counseling or other appropriate and available assistance; and

(c) The education practitioner has had a reasonable opportunity to obtain such assistance.

(2) The possession, use, or consumption on school premises or at a school sponsored activity of a Schedule 1 controlled substance, as defined by the state board of pharmacy, or a Schedule 2 controlled substance, as defined by the state board of pharmacy, without a prescription authorizing such use.

(3) The consumption of an alcoholic beverage on school premises or at a school sponsored activity involving students if such consumption is contrary to written policy of the school district or school building.

[WSR 06-02-051, recodified as § 181-87-055, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-055, filed 1/2/90, effective 2/2/90.]

WAC 181-87-060 Disregard or abandonment of generally recognized professional standards. Any performance of professional practice in flagrant disregard or clear abandonment of generally recognized professional standards in the course of any of the following professional practices is an act of unprofessional conduct:

- (1) Assessment, treatment, instruction, or supervision of students.
- (2) Employment or evaluation of personnel.
- (3) Management of moneys or property.

[WSR 06-02-051, recodified as § 181-87-060, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-060, filed 1/2/90, effective 2/2/90.]

WAC 181-87-065 Abandonment of contract for professional services. Any permanent abandonment, constituting a substantial violation without good cause, of one of the following written contracts to perform professional services for a private school or a school or an educational service district is an act of unprofessional conduct:

- (1) An employment contract, excluding any extracurricular or other specific activity within such contract or any supplementary contract.
- (2) Professional service contract.

[WSR 06-02-051, recodified as § 181-87-065, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-065, filed 1/2/90, effective 2/2/90.]

WAC 181-87-070 Unauthorized professional practice. Any act performed without good cause that materially contributes to one of the following unauthorized professional practices is an act of unprofessional practice.

(1) The intentional employment of a person to serve as an employee in a position for which certification is required by rules of the professional educator standards board when such person does not possess, at the time of commencement of such responsibility, a valid certificate to hold the position for which such person is employed.

(2) The assignment or delegation in a school setting of any responsibility within the scope of the authorized practice of nursing, physical therapy, or occupational therapy to a person not licensed to practice such profession unless such assignment or delegation is otherwise authorized by law, including the rules of the appropriate licensing board.

(3) The practice of education by a certificate holder during any period in which such certificate has been suspended.

(4) The failure of a certificate holder to abide by the conditions within an agreement, executed pursuant to WAC 181-86-160, to not continue or to accept education employment.

(5) The failure of a certificate holder to comply with any condition, limitation, or other order or decision entered pursuant to chapter 181-86 WAC.

(6) Provided, That for the purpose of this section, good cause includes, but is not limited to, exigent circumstances where immediate action is necessary to protect the health, safety, or general welfare of a student, colleague, or other affected person.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-070, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-070, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410-010. WSR 97-21-075, § 180-87-070, filed 10/17/97, effective 11/17/97. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-070, filed 1/2/90, effective 2/2/90.]

WAC 181-87-080 Sexual misconduct with students. Unprofessional conduct includes the commission by an education practitioner of any sexually exploitive act with or to a student including, but not limited to, the following:

- (1) Any sexual advance, verbal or physical;
- (2) Sexual intercourse as defined in RCW 9A.44.010;
- (3) Indecent exposure as defined in RCW 9A.88.010;

(11/13/12)

(4) Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student;

(5) Provided, That the provisions of this section shall not apply if at the time of the sexual conduct the participants are married to each other.

[WSR 06-02-051, recodified as § 181-87-080, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-080, filed 1/2/90, effective 2/2/90.]

WAC 181-87-085 Furnishing alcohol or controlled substance to students. Unprofessional conduct includes the illegal furnishing of alcohol or a controlled substance, as defined in chapter 69.50 RCW, to any student by an education practitioner.

[WSR 06-02-051, recodified as § 181-87-085, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-085, filed 1/2/90, effective 2/2/90.]

WAC 181-87-090 Improper remunerative conduct. Any deliberate act in the course of professional practice which requires or pressures students to purchase equipment, supplies, or services from the education practitioner in a private remunerative capacity is an act of unprofessional conduct.

[WSR 06-02-051, recodified as § 181-87-090, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-090, filed 1/2/90, effective 2/2/90.]

WAC 181-87-093 Failure to assure the transfer of student record information or student records. The failure of a principal or other certificated chief administrator of a public school building to make a good faith effort to assure compliance with RCW 28A.225.330 by establishing, distributing, and monitoring compliance with written procedures that are reasonably designed to implement the statute shall constitute an act of unprofessional conduct.

[WSR 06-02-051, recodified as § 181-87-093, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010, 28A.225.330(3) and 1995 c 311. WSR 96-08-012, § 180-87-093, filed 3/25/96, effective 4/25/96.]

WAC 181-87-095 Failure to file a complaint. The intentional or knowing failure of an educational service district superintendent, a district superintendent, or a chief administrator of a private school to file a complaint pursuant to WAC 181-86-110 regarding the lack of good moral character or personal fitness of an education practitioner or the commission of an act of unprofessional conduct by an education practitioner is an act of unprofessional conduct.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-095, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-095, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-095, filed 1/2/90, effective 2/2/90.]