

WSR 07-07-026
EXPEDITED RULES
HIGHER EDUCATION
COORDINATING BOARD

[Filed March 12, 2007, 11:44 a.m.]

Title of Rule and Other Identifying Information: Public records disclosure, chapter 250-82 WAC.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Donald G. Alexander, Washington Higher Education Coordinating Board, 917 Lakeridge Way S.W., P.O. Box 43430, Olympia, WA 98504-3430, AND RECEIVED BY May 21, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of these rules is to establish the procedures the Washington higher education coordinating board will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington higher education coordinating board and establish processes for both requestors and the Washington higher education coordinating board staff that are designed to best assist members of the public in obtaining such access.

Reasons Supporting Proposal: RCW 42.56.100 requires the agency to adopt reasonable rules and regulations to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency.

Statutory Authority for Adoption: RCW 42.56.100.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Washington higher education coordinating board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Donald G. Alexander, 917 Lakeridge Way S.W., Olympia, WA 98504, (360) 753-7816; and Enforcement: Don Bennett, 917 Lakeridge Way S.W., Olympia, WA 98504, (360) 753-7831.

March 12, 2007

Donald G. Alexander
Associate Director for
Accounting, Budgeting and Facilities

NEW SECTION

WAC 250-82-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record"

to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public Records held by that agency.

(2) The purpose of these rules is to establish the procedures the Washington Higher Education Coordinating Board will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington Higher Education Coordinating Board and establish processes for both requestors and the Washington Higher Education Coordinating Board staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the Washington Higher Education Coordinating Board will be guided by the provisions of the act describing its purposes and interpretation.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 250-82-020 Agency description—Contact information—Public records officer. (1) The Washington Higher Education Coordinating Board administers all state student financial aid programs. These programs include state and federal student need based aid, merit based aid, work-force incentive aid, and other outreach programs. In addition, the Board provides state level policy development, research, analysis, planning, and coordination of various issues confronting higher education. The Washington Higher Education Coordinating Board serves as the administrative agency for the state's Guaranteed Education Tuition Program, overseen by the GET Committee. The Washington Higher Education Coordinating Board central office is located at 917 Lakeridge Way SW, P.O. Box 43430, Olympia, WA 98504-3430.

(2) Any person wishing to request access to public records of Washington Higher Education Coordinating Board, or seeking assistance in making such a request should contact the public records officer of the Washington Higher Education Coordinating Board:

Public Records Officer
Washington Higher Education Coordinating Board
917 Lakeridge Way SW
P.O. Box 43430
Olympia, WA 98504-3430
Voice-360-753-7800
Fax-360-753-7808
publicrecordsofficer@hecb.wa.gov

Information is also available at the Washington Higher Education Coordinating Board web site at <http://www.hecb.wa.gov/>.

(3) The public records officer will oversee compliance with the act but another Washington Higher Education Coordinating Board staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the Washington Higher Education Coordinating Board will provide the "fullest assistance" to requestors; create and maintain for use by the public and Washington Higher Education Coordinating Board officials an index to public records of the Washington Higher Education Coordinating Board; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington Higher Education Coordinating Board.

NEW SECTION

WAC 250-82-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the Washington Higher Education Coordinating Board, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the offices of the Washington Higher Education Coordinating Board.

(2) **Records index.** An index of public records is available for use by members of the public, including final orders, declaratory orders, interpretive statements, and statements of policy issued after June 30, 1990.

The volume of records maintained by the Washington Higher Education Coordinating Board is such that it would be unduly burdensome to develop and maintain an index for all such records. In lieu of an index the following filing system is utilized:

(a) Resolutions by the board are filed by resolution number by year.

(b) The following records are filed by the name of the academic institution:

- Complaints filed by persons claiming loss of tuition or fees as a result of an unfair business practice;
- Records regarding the issuance or denial of authorization for an academic institution to issue one or more degrees, or the waiver or exemption of any requirement of authorization;
- Records regarding the approval or denial of a degree program for an academic institution;
- Records regarding program approval for the use of G.I. Bill benefits;
- Records regarding the approval or denial of an academic institution to participate in the state need grant program.

(3) **Organization of records.** The Washington Higher Education Coordinating Board will maintain its records in a reasonably organized manner. The Washington Higher Education Coordinating Board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from Washington Higher Education Coordinating Board offices without the permission of the public records officer or designee. A variety of records is available on the Washington Higher Education

Coordinating Board web site at <http://www.hecb.wa.gov/>. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.** (a) Any person wishing to inspect or copy public records of the Washington Higher Education Coordinating Board should make the request in writing on the Washington Higher Education Coordinating Board's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;

Other contact information, including telephone number and any e-mail address;

- Identification of the public records adequate for the public records officer or designee to locate the records; and the date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to section 7 of this rule, standard photocopies will be provided at 15 cents per page.

(c) A form is available for use by requestors at the office of the public records officer and on-line at <http://www.hecb.wa.gov/>.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 250-82-040 Processing of public records requests—General. (1) Providing "fullest assistance." The Washington Higher Education Coordinating Board is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit, for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) deny the request.

(3) **Consequences of failure to respond.** If the Washington Higher Education Coordinating Board does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the Washington Higher Education Coordinating Board believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the non-exempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the Washington Higher Education Coordinating Board shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the Washington Higher Education Coordinating Board's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the Washington Higher Education Coordinating Board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public

records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the Washington Higher Education Coordinating Board has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the Washington Higher Education Coordinating Board has closed the request.

(11) **Later discovered documents.** If, after the Washington Higher Education Coordinating Board has informed the requestor that it has provided all available records, the Washington Higher Education Coordinating Board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 250-82-050 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the Washington Higher Education Coordinating Board for inspection and copying:

Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)

Health Insurance Portability and Accountability Act of 1996 (HIPAA). (PL 104-191 Health Insurance Portability and Accountability Act of 1996; 45 CFR Parts 160, 162, and 164)

28B.76.280 Data collection and research — Research advisory group — Privacy protection.

28B.85.020 Board's duties — Rules — Investigations — Interagency agreements for degree and nondegree programs — Information on institutions offering substandard or fraudulent degree programs — Financial disclosure exempt from public disclosure.

(2) The Washington Higher Education Coordinating Board is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 250-82-060 Costs of providing copies of public records. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for 15 cents per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Washington Higher Education Coordinating Board will not charge sales tax when it makes copies of public records.

(2) **Costs of mailing.** The Washington Higher Education Coordinating Board may also charge actual costs of mailing, including the cost of the shipping container.

(3) **Payment.** Payment may be made by cash, check, or money order to the Washington Higher Education Coordinating Board.

NEW SECTION

WAC 250-82-070 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the deputy director. The deputy will immediately consider the petition and either affirm or reverse the denial within two business days following the Washington Higher Education Coordinating Board's receipt of the petition, or within such other time as the Washington Higher Education Coordinating Board and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the Washington Higher Education Coordinating Board denies a requestor access to public records because it claims the record is exempt in whole or part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-07-115
EXPEDITED RULES
DEPARTMENT OF LICENSING

[Filed March 20, 2007, 11:05 a.m.]

Title of Rule and Other Identifying Information: Relating to brief adjudicative proceedings and the Collection Agency Act.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ramona Provost, Department of Licensing, 1125 South Washington Street S.E., P.O. Box 9020, Olympia, WA 98507-9020, AND RECEIVED BY May 22, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align the WACs covering brief adjudicative proceedings with WAC 308-08-525 which are authorized by chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

Changes WAC 308-29-090, 308-29-110 and 308-29-120; deleting WAC 308-29-100; establishing WAC 308-29-130, relating to brief adjudicative proceedings.

Reasons Supporting Proposal: The rules being proposed by the collection agency board program area incorporate the Uniform Regulation of Business and Professions Act Brief Adjudication Process (BAP) step...referring to chapter 18.235 RCW specifically, and repeating the wording from the URBP WAC that covers that RCW. This would bring their current WAC on BAP into conformity with the overarching regulations.

Statutory Authority for Adoption: RCW 19.16.410.

Statute Being Implemented: Chapters 19.16, 43.24 RCW.

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

Name of Proponent: Department of licensing, collection agency board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Harumi Tolbert, 405 Black Lake Boulevard S.W., Olympia, WA 98507, (360) 664-1389.

March 16, 2007

Nancy Skewis
Administrator

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

WAC 308-29-090 (~~Application of~~) Brief adjudicative proceedings—When they can be used. (1) The board adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted ((by request of an applicant or licensee, or)) at the discretion of the board ((chair pursuant to RCW 34.05.482, for the categories of matters set out below)). Brief adjudicative proceedings ((may be conducted where the matter is limited solely to one or more of the following issues:

(1) ~~Whether an applicant for licensure meets the minimum criteria for a license to practice as a collection agency, out-of-state collection agency, or collection agency branch~~

office in this state and the board proposes to deny the application;

(2) Whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the board;

(3) Whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal; and

(4) Whether a license holder meets the surety bond requirements to maintain their license and the board proposes to terminate the license)) can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profession for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of surety bonds or other proof of financial security, as required by law;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(f) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held;

(g) Whether an applicant or licensee has defaulted on education loans;

(h) Whether an applicant or licensee has violated the terms of a final order issued by the board;

(i) Whether a licensee has committed recordkeeping violations;

(j) Whether a licensee has committed trust account violations;

(k) Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising; or

(l) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (1) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

WAC 308-29-110 Conduct of brief adjudicative proceedings. ~~((+))~~ Brief adjudicative proceedings shall be conducted by a presiding officer designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

~~((2))~~ The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

~~(3)~~ The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

~~(4)~~ No witnesses may appear to testify.

~~(5)~~ In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

~~(6)~~ The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.)

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

WAC 308-29-120 Appeal process for brief adjudicative proceedings. If you do not receive satisfaction from the brief adjudicative proceeding, you may appeal to the board for an administrative review. The board must receive your written appeal within twenty-one days after the brief adjudicative proceeding order is posted in the United States mail. The board considers your appeal and either upholds or overturns the brief adjudicative proceeding decision. The board's decision, also called an order, is mailed to you. This section does not apply to brief adjudicative proceedings conducted by the board through WAC 308-29-090(2).

NEW SECTION

WAC 308-29-130 Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings. (1) At least five days before the scheduled brief adjudicative proceeding, any party to the proceeding, including the board, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that a matter be converted to a formal adjudicative hearing. Upon receiving a timely written objection, the presiding officer shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding officer may convert any brief adjudicative proceeding to a formal adjudicative hearing whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the board.

(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

- (a) Whether witness testimony will aid the presiding officer in resolving contested issues of fact;
- (b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;
- (c) Whether a brief adjudicative proceeding will establish an adequate record for further board or judicial review;
- (d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the board;
- (e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and
- (f) Any other factors that the presiding officer deems relevant in reaching a determination.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-29-100	Preliminary record in brief adjudicative proceedings.
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