

**WSR 08-22-002**  
**EXPEDITED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed October 23, 2008, 10:11 a.m.]

Title of Rule and Other Identifying Information: Chapter 392-160 WAC, Special services program—Transitional bilingual.

**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 Bob Harmon, Assistant Superintendent of Special Programs and Federal Accountability Interim Director of Migrant/Bilingual Education, Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, AND RECEIVED BY January 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to be in compliance with RCW and to effectively educate English language learners (ELLs).

Statutory Authority for Adoption: Chapter 28A.180 RCW, Transitional bilingual instruction program, RCW 28A.180.060 Guidelines and rules.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bob Harmon, OSPI, (360) 725-6147.

October 22, 2008

Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 12, filed 8/12/91, effective 9/12/91)

**WAC 392-160-020 Approved test((s)) for determining initial eligibility—English proficiency scores. ((+))**  
~~Approved English proficiency test((s): The following tests are approved for the purpose of annually determining the English proficiency of newly enrolled students (other than those who speak little or no English) whose primary language is other than English:~~

- ~~(a) Language assessment scales (LAS and Pre-LAS);~~
- ~~(b) Basic inventory of natural language (BINL);~~
- ~~(c) Bilingual syntax measure (BSM); and~~
- ~~(d) Secondary level English proficiency test (SLEP). (To be used only at 8-12 level).~~

~~(2) Scores which establish an English skills deficiency: In the event a student scores within the appropriate range pro-~~

~~vided by the test maker to establish such English skill deficiency, the student's English skills shall be deemed sufficiently deficient or absent to impair learning~~

~~(3) The superintendent of public instruction may approve a school district request for use of a test other than those approved for use in this section when such request is supported by evidence that:~~

~~(a) The approved tests for use identified in this section are either unsuitable, inappropriate, or impractical for use by the school district;~~

~~(b) The scores that establish English skills deficiency for the requested test correspond with the scores that establish English skills deficiency for approved tests identified in this section; and~~

~~(c) The skills being measured by the requested test correspond to the skills measured by the approved tests identified in this section); Washington language proficiency placement test (WLPT).~~

**WSR 08-22-095**  
**EXPEDITED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-24—Filed November 5, 2008, 10:02 a.m.]

Title of Rule and Other Identifying Information: Discovery rules for contested cases or adjudicative hearings.

**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 Kacy Scott, Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, AND RECEIVED BY January 6, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules adopt the Washington civil rules of procedure without change for use in adjudicative hearings and contested cases before the office of the insurance commissioner.

Reasons Supporting Proposal: The office of administrative hearings specifically permits agencies to adopt discovery rules applicable to agency hearings and contested matters. At present, the office of the insurance commissioner does not have specific rules in place defining discovery procedures, and proposes these rules to provide greater clarity and certainty to all parties to contested cases and adjudicative hearings involving the agency.

Statutory Authority for Adoption: RCW 34.05.446(2) and 48.02.060.

Statute Being Implemented: RCW 34.05.220.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7197; Implementation and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

November 5, 2008

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-10, filed 7/2/08, effective 8/2/08)

**WAC 284-02-070 How does the OIC conduct hearings? (1) Generally.**

(a) Hearings of the OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). In addition to general hearings conducted pursuant to RCW 48.04.010, two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings or contested case hearings. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand or request a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Requests for hearings must be in writing and delivered to the Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

**(2) Proceedings for contested cases or adjudicative hearings.**

(a) Provisions specifically relating to disciplinary action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance agents, brokers, solicitors, and adjusters are contained in RCW 48.17.530; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are

found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against viatical settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer; or may use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

(iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).

(v) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(d) Discovery is available in adjudicative proceedings or contested cases in accordance with RCW 34.05.446(2).

(i) Any party may obtain discovery by the methods provided in CR 26(a). The procedures regarding these methods of discovery are found at CR 28 through 45 as now or hereaf-

ter amended, and are hereby adopted and incorporated in this section.

(ii) The administrative law judge or presiding officer is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel discovery or dismissal of the action. This rule does not limit the administrative law judge or presiding officer's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446.

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW) and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).