

WSR 14-15-078
EXPEDITED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 16, 2014, 2:37 p.m.]

Title of Rule and Other Identifying Information: Amends WAC 181-82-110 due to drafting error. A reference in the opening paragraph refers to the section applying to nonprovisional teachers (employed for less than three years). That section was removed in a recent amendment changing policy on assignment. The section is intended to apply to all teachers.

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 David Brenna, Professional Educator Standards Board, 600 Washington Street South, Room 400, Olympia, WA 98504, AND RECEIVED BY September 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies that recent rule changes to assignment policy applies to all teachers.

Reasons Supporting Proposal: Clarifies intent of the rule. Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street South, Olympia, WA 98504, (360) 725-6238.

July 16, 2014
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-11-106, filed 5/21/14, effective 6/21/14)

WAC 181-82-110 School district response and support for nonmatched endorsements to course assignment of teachers. Individuals with initial, residency, endorsed continuing, or professional teacher certificates who (~~have completed provisional status~~) are employed with a school district under RCW (~~(28A.405.220)~~) 28A.405.210 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(1) A designated representative of the district and any such teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher,

and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(2) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(3) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned;

(4) A teacher who has completed twenty-four quarter credit hours (sixteen semester credit hours) of course work applicable to a special education endorsement shall be eligible for a preendorsement waiver from the special education office per chapter 392-172A WAC which will allow that person to be employed as a special education teacher. All remaining requirements for special education endorsement shall be completed within five years.

WSR 14-15-148
EXPEDITED RULES
COLUMBIA BASIN COLLEGE

[Filed July 23, 2014, 10:13 a.m.]

Title of Rule and Other Identifying Information: Chapter 132S-40 WAC, Code of student rights and responsibilities.

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 Ralph Reagan, Columbia Basin College, 2600 North 20th Avenue, MS-A1, Pasco, WA 99301, AND RECEIVED BY September 22, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132S-40 WAC, Code of student rights and responsibilities, is not compliant with requirements of the Violence Against Women Reauthorization Act of 2013 (VAWA). The student code needs additional definitions, sexual misconduct procedures and appeal rights in order to be in compliance with the requirements of VAWA.

Reasons Supporting Proposal: New mandate from federal government concerning Title IX and VAWA. The proposed changes will allow the college to be in compliance with Title IX and VAWA.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Not applicable.

Rule is necessary because of federal law, Title IX-20 U.S.C. §§ 1681-88; VAWA-42 § 13701.

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting: Camilla Glatt, Columbia Basin College, HR and Legal Affairs, (509) 542-5548; Implementation and Enforcement: Ralph Reagan, Columbia Basin College, Student Services, (509) 542-4765.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The changes are required by federal law.

July 21, 2014
Ralph Reagan
Assistant Dean for
Student Conduct

NEW SECTION

WAC 132S-40-315 Supplemental definitions. The following supplemental definitions shall apply for the purposes of student conduct proceedings which include allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (5) of this section.

(2) A "respondent" is the student against whom disciplinary action is initiated.

(3) A "conduct officer," also referred to as the "chief student services officer (CSSO)" and or "student conduct officer" is the person designated by the college to be responsible for the student conduct area within student services, which includes the administration of the code of student rights and responsibilities.

(4) "Preponderance of the evidence" is the standard of proof used with all student disciplinary matters at Columbia Basin College that fall within the student rights and responsibilities, which means that the amount of evidence needs to be at fifty-one percent or "more likely than not" before a student is found responsible for a violation.

(5) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student, including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, dating violence, intimate violence, and sexual or gender-based stalking;

(e) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender based online harassment, sexual or gender-based cyber-bullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132S-40-365 Supplemental sexual misconduct procedures. (1) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the ini-

tial disciplinary decision-making process and to appeal any disciplinary decision.

(2) Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132S-40-360. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132S-40-375 Supplemental appeal rights. (1) The following actions by the conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132S-40-360. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) Exoneration and dismissal of the proceedings;

(b) An disciplinary warning;

(c) A written reprimand;

(d) Disciplinary probation;

(e) Suspensions of ten instructional days or less; and/or

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct board.

(7) In proceedings before the student conduct board, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct board, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the board chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct board.

(10) The chair of the student conduct board, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of his or her appeal rights.

(11) Complainant may appeal the student conduct board's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

NEW SECTION

WAC 132S-40-425 Supplemental complaint process.

The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the acting conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college com-

munity or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

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 14-15-155
EXPEDITED RULES
DEPARTMENT OF
ENTERPRISE SERVICES**

[Filed July 23, 2014, 11:35 a.m.]

Title of Rule and Other Identifying Information: Chapter 200-600 WAC, Employee training and development.

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 Jack Zeigler, Department of Enterprise Services (DES), 1500 Jefferson Street S.E., Olympia, WA 98504-1401, AND RECEIVED BY September 22, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 200-600-030 requires agencies to report to DES their compliance with sexual harassment awareness and prevention training requirements under WAC 357-34-100 and 357-34-105. WAC 200-600-030 is no longer needed because a system is in place that automatically captures relevant state agency training information and is capable of providing reports sufficient to comply with the sexual harassment awareness and prevention training requirements of this rule as well as those

of WAC 357-34-100 and 357-34-105. This system is known as the learning management system (LMS) and is managed by DES.

WAC 200-600-015 requires state agencies to develop a training and development plan. While the specific requirements of the plan are listed under WAC 200-600-025; WAC 200-600-015 incorrectly directs the reader to WAC 357-34-030.

Reasons Supporting Proposal: This proposal is necessary to align state personnel training rules with current circumstances and to correct errors.

Statutory Authority for Adoption: Chapter 43.19 RCW.

Statute Being Implemented: Chapter 43.19 RCW.

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

Name of Proponent: DES, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Zeigler, 1500 Jefferson Street S.E., Olympia, WA, (360) 407-9209; Implementation: Patrick Seigler, 1500 Jefferson Street S.E., Olympia, WA; and Enforcement: Scott Turner, 1500 Jefferson Street S.E., Olympia, WA.

July 23, 2014

Jack Zeigler

Policy and Rules Manager

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 200-600-030 How do agencies report their compliance with WAC 357-34-100 to the department?

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-600-015 What are the employer's training and development responsibilities? Each employer is responsible for:

- (1) Developing a training and development plan as prescribed by ~~WAC 357-34-030~~ WAC 200-600-025; and
- (2) Providing employee orientation, required job-related training, and assistance with career planning.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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.