WSR 17-14-019

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 23, 2017, 6:43 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 16-520 WAC, Seed potatoes.

Hearing Location(s): WSU Extension, 1000 North Forest Street, Suite 201, Bellingham, WA 98225, on August 8, 2017, at 1:00 p.m.

Date of Intended Adoption: October 13, 2017.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax (360) 902-2094, by August 8, 2017.

Assistance for Persons with Disabilities: Contact agency receptionist by July 31, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington seed potato commission wishes to amend chapter 16-520 WAC to reduce the size of the commission board from eight members to five members and to increase the assessment authority cap from five cents per hundredweight to ten cents per hundredweight.

Reasons Supporting Proposal: The commission has determined that an increase in the range of allowable assessment rates is necessary for the board to address the increased costs of testing requirements and research needs. This increase will allow the commission to continue to carry out its mandated mission. In addition, the small number of seed potato growers necessitates a smaller commission board.

Statutory Authority for Adoption: RCW 15.66.055 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.66 RCW.

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

Name of Proponent: Washington seed potato commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Henry Bierlink, 1796 Front Street, Lynden, WA 98264, (360) 354-8767.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.66.090, the adoption of the final amendments to chapter 16-520 WAC will be determined by referendum vote of affected producers.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture and the Washington seed potato commission are not listed agencies under RCW 34.05.328 (5)(a)(i).

June 22, 2017
Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

WAC 16-520-020 Seed potato commission—Structure, powers, duties, and procedure. (1) **Establishment and membership.** A seed potato commission is hereby established to administer this marketing order. The commission shall be composed of ((~~three~~)) two members who shall be affected producers elected by the producers as provided in the act, and ((~~four~~)) two members who shall be appointed by the director. In addition, the director shall be a voting member of the commission.

(a) Elected producer positions on the board shall be designated as positions 2((~~, 3,~~)) and 4.

(b) Director-appointed positions on the board shall be designated as positions 1((~~, 5, 6, and 7~~)) and 3.

(c) The position representing the director shall be designated as position ((~~8~~)) 5.

(2) **Membership qualifications.** Commission members shall be citizens and residents of this state, over the age of eighteen years and producer members of the commission shall be producers of seed potatoes in the state of Washington. The qualifications of producer members of the commission as herein set forth must continue during their term of office. Members appointed by the director shall be either producers or others active in matters relating to seed potatoes.

(3) **Term of office.** (((~~a~~))) The term of office of commission members shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified so that one-third of the terms will commence as nearly as practicable each year.

(((~~(b) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the prior marketing order's elected board members in positions 1, 5, 6, and 7 shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order to serve out the remainder of their terms.~~)))

(4) **Nomination, appointment and election of commission members.** Nomination, appointment, and election of commission members shall be as set forth in the act and specified by the director. Dates for this process are as follows:

(a) Not earlier than March 19 and not later than April 3 of each year, the director shall give notice by mail to all affected producers that an open commission position(s) will occur in the commission and call for nominations. Nominating petitions shall be signed by three persons qualified to vote for the candidates. The notice shall state the final date for filing nominating petitions which shall be not earlier than April 7 and not later than April 12 of such year.

(b) The director shall conduct an election or advisory vote by mail to all affected producers in the district wherein the open commission position(s) will occur not earlier than April 17 and not later than May 2 of each year. Ballots shall be returned not later than June 1 of each year. An election or advisory vote shall be conducted in a manner so that it shall be a secret ballot in accordance with rules adopted by the director. An affected producer is entitled to one vote.

(c) When only one nominee is nominated by the affected producers for a director-appointed position, RCW 15.66.120 shall apply.

(d) Except with respect to the initial seed potato commission, the members of the commission not elected by the producers or appointed by the director shall be elected by a majority of the commission within ninety days prior to the expiration of the term.

(5) **Vacancies.**

(a) In the event of a vacancy in an elected position, the remaining members shall select a qualified person to fill the term. The appointment shall be made at the commission's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in chapter 15.66 RCW.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

WAC 16-520-027 Procedure for commission. (1) The commission may by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(2) The commission shall hold at least two regular meetings during each fiscal year with the time and date thereof to be fixed by the resolution of the commission. Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be provided in compliance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) The commission may hold special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice to the members, provided, that the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

(4) Any action taken by the commission shall require the majority vote of the members present provided a quorum is present.

(5) A quorum of the commission shall consist of at least ((~~five~~)) three members.

(6) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which rate shall not exceed the compensation rate set by RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expenses in accordance with RCW 43.03.050 and 43.03.060. The commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

WAC 16-520-040 Assessments and assessment funds. (1) **Assessments levied.** There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. ((~~The assessment shall be three cents per hundredweight.~~)) The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than one cent or more than ((~~five~~)) ten cents per hundredweight. No assessment may be collected on the following:

(a) Seed potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;

(b) Seed potatoes donated or shipped for relief or charitable purposes; or

(c) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed potatoes for the fiscal year to which the assessment applies.

(2) **Collection of assessment.**

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect the assessments, the commission may require:

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Handlers receiving seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at the times as required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or occur at different or later times, such person subject to the assessment shall give adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commis-

sion shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment has been paid and the receipt issued or stamp canceled, but no liability or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section, are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemption(s).

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) **Funds.**

(a) Moneys collected by the seed potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer which may include, bills of lading, bills of sale or receipts.

WSR 17-14-022
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed June 23, 2017, 2:57 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-296-090 Public water system eligibility requirements, the rule making will align the state rule with the federal rule concerning eligible public water systems for a drinking water state revolving fund (DWSRF) loan.

Hearing Location(s): Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on August 10, 2017, at 1:30 p.m.

Date of Intended Adoption: August 15, 2017.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email https://fortress.wa.gov/doh/policyreview, by August 10, 2017.

Assistance for Persons with Disabilities: Contact Theresa Phillips by August 1, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The change is necessary to bring the state rule into alignment with the federal rule as required under 40 C.F.R. 35.3520. This federal rule disallows federally owned public water systems from applying for a DWSRF loan. The current rule includes a prohibition for public water systems that are federally regulated. This requirement is more stringent than the federal rule and as such does not allow tribal governments to apply for a DWSRF loan, not because they are federally owned, but because the United States Environmental Protection Agency regulates these public water systems.

Reasons Supporting Proposal: This rule making will allow tribal governments to apply for and receive a DWSRF loan for water system infrastructure improvements to provide safe and reliable drinking water for those communities served by Washington tribes.

Statutory Authority for Adoption: RCW 70.119A.170.

Statute Being Implemented: RCW 70.119A.170.

Rule is necessary because of federal law, 40 C.F.R. 35.3520.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98504-7820, (360) 236-3147; Implementation and Enforcement: Janet Cherry, 243 Israel Road S.E., Tumwater, WA 98504-7822, (360) 236-3153.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

June 23, 2017
Clark Halvorson
Assistant Secretary

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-090 Public water system eligibility requirements. (1) Public water systems eligible for a DWSRF loan include:

(a) Publicly and privately owned community public water systems, except those public water systems not eligible for a DWSRF loan under WAC 246-296-100; and

(b) Noncommunity public water systems owned by a nonprofit organization.

(2) Public water systems not eligible for a DWSRF loan include:

(a) Noncommunity public water systems owned by a for-profit organization;

(b) State-owned public water systems;

(c) Federally owned ((~~or regulated~~)) public water systems;

(d) Group B public water systems, unless restructuring; and

(e) Public water systems lacking the system capacity to comply with all applicable federal, state, and local drinking water requirements, unless:

(i) The project will bring the public water system into compliance; and

(ii) The owner of the public water system agrees to reasonable and appropriate changes in operation and management to stay in compliance.

WSR 17-14-054
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY
[Filed June 28, 2017, 4:08 p.m.]

Supplemental Notice to WSR 17-07-052.

Preproposal statement of inquiry was filed as WSR 17-01-111.

Title of Rule and Other Identifying Information: Amending chapter 172-121 WAC, Student conduct code, to codify rules related to the conduct hearing process for students of Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, Washington 99004, on August 9, 2017, at 11:00 a.m.

Date of Intended Adoption: August 9, 2017.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, email clamberson@ewu.edu, fax (509) 359-7036, by August 2, 2017.

Assistance for Persons with Disabilities: Contact Chelsea L. Goss by August 2, 2017, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is changing based on a recent state appellate court case, indicating institutions must offer full adjudicative hearing, if a sanction could lead to suspension, expulsion or if charges were filled [filed] for felony level sexual misconduct. The changes amend university standards and processes to comply with the court case for handling conduct violations. In sexual misconduct hearings the conduct review officer (CRO) also acts as the decision maker. The student disciplinary council hears all conduct violation cases except violations involving sexual misconduct. Complainants, respondents and their advisors may ask questions of each other except in sexual misconduct hearings where the questions are submitted to the CRO, whom may ask or reject the questions, if deemed irrelevant or inappropriate. The vice president of student affairs decides appeals of sexual misconduct hearings. Emergency appeal hearings are available for students suspended on an interim bases [basis]. The section outlines the procedures.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

Rule is necessary because of state court decision, *Arishi v. Washington State University*, No. 33306-0-III, (Wash. Ct. App. Div. III, 2016).

Name of Agency Personnel Responsible for Drafting: Chelsea L. Goss, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Angela Jones, 214 Showalter, Cheney, WA 99004, (509) 359-6361.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-121 WAC is not considered a significant legislative rule by Eastern Washington University.

June 28, 2017
Chelsea L. Goss
University Policy Administrator

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

((~~"Accused" refers to any student or student organization that is accused of violating the student conduct code under this chapter.~~))

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any ((~~accused~~)) respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the university when the university files the complaint.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or a designee of the dean of students.

"Director of SRR" refers to the director of student rights and responsibilities, or designated representative.

((~~"Harassment" encompasses harassment, sexual harassment, gender-based harassment, and stalking for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.~~))

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to 300 Showalter Hall, or emailing them to studentrights@ewu.edu.

"Hearing authority" refers to the university official or student disciplinary council who holds a conduct review hearing.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant and the respondent.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Respondent" refers to any student or student organization that is accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment, domestic violence, relationship violence, stalking, and acts of sexual violence for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

"Sexual misconduct hearing" refers to a full conduct review hearing before a university official for allegations of sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion, or that rise to the level of felony-level sexual misconduct.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Summary hearing" refers to a ((~~conduct~~)) brief review hearing before the conduct review officer.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or a designee of the university president.

"Vice president for student affairs" refers to the vice president for student affairs or their designated representative.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-070 Conduct review officials. (1) The director of SRR shall:

(a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;

(b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints ((~~of harassment or sexual misconduct involving students~~)) are promptly investigated and resolved as required by federal and state laws.

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president shall designate one or more conduct review officers. The director of ((~~OSRR~~)) SRR may be designated as a conduct review officer. The conduct review officer(s) shall((~~:~~

~~(a)~~)) preside over conduct review proceedings under this chapter((~~; and~~

~~(b) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives~~)). For sexual misconduct cases where the possible sanction may be suspension, expulsion, or involve felony-level sexual misconduct, the CRO also acts as the decision-maker as set forth in WAC 172-121-123.

As the presiding officer, the conduct review officer has authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Issue subpoenas pursuant to RCW 34.05.446;

(d) Rule on procedural matters, objections, and motions;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default;

(n) Hold prehearing conferences; and

(o) Take any other action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: The student disciplinary council hears cases of student conduct code violations that do not involve sexual misconduct as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the university president. Appointment of council pool members is as follows:

(i) Faculty ((~~members shall be selected by the faculty senate for three-year terms;~~

~~(ii) Staff members shall be appointed by the university president for three-year terms;~~

~~(iii) Students shall be appointed by the president of the ASEWU for one-year terms. Student appointments shall be made with the advice and consent of the associated students' legislature, as described in the constitution of the ASEWU. Students holding a position with any of the associated student courts, or who are in any way affiliated with any judicial, quasi-judicial, or advocacy position with the courts of the ASEWU, may not be appointed to the council pool;~~

~~(iv) Community members: One or more members of the local community may be appointed by the university president. Community members serve until either the community member or the university president elects to sever the appointment, up to a maximum appointment period of three years. Community members shall be considered school officials while acting in their capacities as community members on the student disciplinary council and shall sign statements indicating they will comply with the confidentiality requirements of the Family Education Rights and Privacy Act;~~

~~(v)~~)) and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote, except in the case of a tie;

(((~~(vi)~~)) (iii) Vacancies: Council pool vacancies shall be filled as needed ((~~by the designated appointing authority~~)) through presidential appointment.

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, ((~~council members shall be selected from the council pool as follows:~~

~~(i) Composition: A session council will typically consist of one nonvoting chair, two student members, and two faculty or staff members. The faculty/staff members may be both faculty, both staff, or one faculty and one staff member. The number of council members may vary, so long as quorum requirements are met. A community member may also serve on a session council, at the discretion of the director of SRR;~~

~~(ii) Selection:~~)) the director of SRR shall select available members from the council pool to serve as the session council((~~;~~

~~(iii) Quorum: A quorum consists of three voting members which must include at least one student and one faculty/staff member~~)). Each session council must include a quorum. A quorum is three voting members, which must include at least one student and one faculty/staff member.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigating, and otherwise processing complaints shall not have any conflict of interest in the process. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Anyone who serves as an investigator or advocate, or someone who is subject to the authority, direction, or discretion of such a person, may not serve as the conduct review officer for a full adjudicative hearing.

(3) Challenges to council membership. Members of the student disciplinary council and the conduct review officer shall not participate in any case in which they are the ((~~accused~~)) respondent, the complainant, a victim, or a witness; in which the respondent, complainant, victim, or a witness is a family member or friend; in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity.

(a) If a member has such a conflict, the person shall recuse ((~~themself~~)) him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's or the conduct review officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the conduct review officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies ((~~themself~~)) him/herself from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; ((~~and~~))

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council;

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; and

(x) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or conduct review officer communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the ((~~accused~~)) respondent may review the records relative to their case. The ((~~accused~~)) respondent shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the ((~~accused's~~)) respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants, victims, or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is ((~~accused of violating~~)) the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; or

(ii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is acting as the complainant, ((~~the director of SRR~~)) an EWU employee shall initiate the complaint.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of ((~~harassment,~~)) sexual misconduct((~~,~~)) and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the charges rise to the level of a felony under Washington criminal law; all such cases are referred to a council hearing under WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123.

(3) ((~~Special rules for complaints of harassment and/or sexual misconduct.~~)) Sexual misconduct hearings. Except where specifically stated, this section applies to all allegations the university receives of ((~~harassment and/or~~)) sexual misconduct. This section shall apply regardless of where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of ((~~harassment and/or~~)) sexual misconduct to the university Title IX coordinator within ((~~two business days~~)) twenty-four hours.

(b) Prompt resolution. The university shall investigate any complaint alleging ((~~harassment and/or~~)) sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of ((~~harassment and/or~~)) sexual misconduct shall be promptly investigated and resolved. For student conduct cases, the university uses the hearing processes set forth in this code as the means of investigating a complaint. In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant or victim wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant or victim wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of ((~~sexual harassment, gender-based harassment, stalking, or any form of~~)) sexual misconduct, it will notify the potential victim of their right to file a criminal complaint with campus or local law enforcement. If the victim in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the victim that he or she is not required to file a report with local law enforcement. The university will report allegations of ((~~harassment or~~)) sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR will evaluate the circumstances and recommend to the dean of students if any interim restriction action against the ((~~accused~~)) respondent is warranted or if any interim measures to assist or protect the complainant and/or victim during the conduct code process are needed. In cases of alleged ((~~harassment and/or~~)) sexual misconduct, the director of SRR shall, in conjunction with the dean of students and other appropriate university officials, take immediate steps to protect the complainant and/or victim from further harassment prior to completion of the investigation/resolution of the complaint. Appropriate steps may include separating the ((~~accused harasser~~)) respondent and the complainant/victim, providing counseling for the complainant/victim and/or harasser, and/or taking disciplinary action against the ((~~accused~~)) respondent.

(5) Inform complainant. As part of the complaint review process, the director of SRR will follow up with the complainant as described below.

(a) For cases other than ((~~harassment and/or~~)) sexual misconduct, the director of SRR will contact the complainant and provide them with the following information:

(i) The complainant's rights under the student conduct code;

(ii) The allegations which the complainant has against the ((~~accused~~)) respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging ((~~harassment or~~)) sexual misconduct, the director of SRR will, in addition to the information specified under (a) of this subsection, provide the complainant with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the respondent; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a preliminary conference.

(a) Dismiss the matter. If the director of SRR ((~~believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused~~)) determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is ((~~appropriate and feasible~~)) permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of ((~~harassment and/or~~)) sexual misconduct, the complainant/victim may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within ten days.

(b) Preliminary conference. If the director of ((~~OSRR~~)) SRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-105 Conduct review proceedings. (1) General provisions:

(a) ((~~All~~)) Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or do not involve allegations of felony level sexual misconduct are summary hearings and considered brief adjudicative proceedings in accordance with WAC 172-108-010(3), and shall be conducted in an informal manner. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct are council hearings or sexual misconduct hearings under this code and are considered full adjudicative proceedings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant, victim, and the ((~~accused~~)) respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant, victim, or the ((~~accused~~)) respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) ((~~The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may; however, speak quietly with their advisor during such proceedings; and~~

~~(d) If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding.~~)) The advisor must provide the conduct review officer with a FERPA release signed by the student they are assisting;

(d) If a complainant, victim, or the respondent is represented by an attorney, the attorney shall provide the conduct review officer and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding.

(4) Review of evidence:

((~~The accused~~)) (a) In summary hearings, the respondent, and, in cases of ((~~harassment and/or~~)) sexual misconduct, the complainant/victim may request to view material related to their case prior to a scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review

officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the conduct review officer. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the conduct review officer shall allow any other party to object to the request. The conduct review officer will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-110 Preliminary conference. (1) Scheduling. If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the ((~~accused~~)) respondent. In cases alleging ((~~harassment and/or~~)) sexual misconduct, the CRO assigned must have completed training on issues relating to ((~~harassment and~~)) sexual misconduct, ((~~including~~)) the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the ((~~accused~~)) charges to the respondent must:

(a) Be made in writing;

(b) Include a written list of charges against the ((~~accused~~)) respondent; and

(c) Include the name of the conduct review officer assigned to the case and the deadline for the ((~~accused~~)) respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the ((~~accused~~)) respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the ((~~accused~~)) respondent.

(2) Failure to respond: If the ((~~accused~~)) respondent fails to ((~~comply with the notification requirements~~)) respond to the notice of charges, the director of SRR shall schedule the preliminary conference and notify the ((~~accused~~)) respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with complainant/victim. In all cases alleging ((~~harassment and/or~~)) sexual misconduct or if there will be a council hearing, the CRO shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The CRO shall also follow up with the ((~~complainant(s)/victim(s) to determine whether~~)) complainant(s)/respondent(s) to inform them of the process of reporting any retaliation or new incidents ((~~of harassment have occurred~~)). If the complainant/victim has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant/victim from further harassment or retaliation.

(4) Appearance. ((~~Except for cases alleging harassment and/or sexual misconduct,~~))

(a) For summary hearings only the ((~~accused~~)) respondent and the ((~~accused's~~)) respondent's advisor may appear at the preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging ((~~harassment and/or~~)) sexual misconduct, the ((~~accused~~)) respondent and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.

(b) For council hearings and sexual misconduct hearings, both parties and their advisors may appear at the preliminary conference.

(5) Failure to appear. In cases where proper notice has been given but the ((~~accused~~)) respondent fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the ((~~accused's~~)) respondent's academic records as described in WAC 172-121-080.

(6) ((~~Proceedings.~~)) Preliminary conference. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. If both of the parties are not present, the CRO will refrain from discussing any nonprocedural matters. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the ((~~accused~~)) respondent;

(b) Inform the ((~~accused~~)) respondent who is bringing the complaint against them;

(c) Provide the ((~~accused~~)) respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the ((~~accused's~~)) respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the ((~~accused's~~)) respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(7) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct or schedule a summary hearing with the((~~accused~~)) respondent as described in WAC ((~~172-121-120;~~)) 172-121-121 for cases where the possible sanction is less than a suspension or the allegations do not involve felony level sexual misconduct; or

(b) ((~~Schedule a summary hearing with the accused as described in WAC 172-121-120; or~~

~~(c)~~)) Refer the case to either the student disciplinary council for a council hearing under WAC ((~~172-121-120~~)) 172-121-122 or a sexual misconduct hearing under WAC 172-121-123 for any cases where the possible sanction is a suspension, expulsion, or involves an allegation of felony level sexual misconduct.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-120 Hearing((s)) procedures. The provisions ((of subsections (1) through (8))) of this section apply to both summary hearings and to council hearings.

(1) General provisions.

(a) Hearing authority: The hearing authority, through the conduct review officers, exercises control over hearing proceedings. All procedural questions are subject to the final decision of the ((hearing authority)) conduct review officer.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the ((accused)) respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the ((accused's)) respondent's input.

(b) Complainant's appearance: The complainant will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the ((accused)) respondent student during the hearing. The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, ((so long as the complainant's identity can be reasonably established)) subject to the limits set forth below in (e) of this subsection.

(c) Advisors: The complainant and the ((accused)) respondent may be assisted by ((an)) one advisor during conduct review hearings as described in WAC ((172-121-090)) 172-121-105.

(d) Disruption of proceedings: Any person, including the ((accused)) respondent, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the ((hearing authority)) conduct review officer may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as determined by the conduct review officer.

(3) ((Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority. However, hearing authorities are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The accused, and, in cases of sexual harassment or sexual misconduct, the complainant and/or victim, have the right to view all material presented during the course of the hearing.

(4)) Standard of proof. The hearing authority shall determine whether the ((accused)) respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the ((accused)) respondent violated the student conduct code.

(((5))) (4) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearings authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed.

(((6) Witnesses.

(a) The complainant, victim, accused and hearing authority may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(7) Questioning:

(a) The complainant and the accused may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

(8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate.

(9) Summary hearing procedures.

(a) The conduct review officer may hold a summary hearing with the accused only if all of the following conditions are met:

(i) The accused waives his/her right to prior notice about a conduct review hearing;

(ii) The accused requests that the case be heard in a summary hearing with the conduct review officer; and

(iii) The conduct review officer agrees to conduct the summary hearing. The conduct review officer is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.

~~(b) Sexual misconduct cases. Allegations of sexual misconduct may not be resolved through a summary hearing but must be referred for a council hearing, unless the case has been otherwise resolved.~~

~~(c) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of harassment, a summary hearing cannot take place without first notifying the complainant/victim of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the accused and, in the case of harassment, the complainant/victim of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.~~

~~(d) If the accused fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the accused's academic records under WAC 172-121-080.~~

~~(e) Deliberation. After the hearing, the conduct review officer shall decide whether the accused violated the student conduct code based on a preponderance of the evidence.~~

~~(i) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.~~

~~(ii) If the conduct review officer determines that the accused violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.~~

~~(f) Notification. The conduct review officer shall serve the accused with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, or stalking, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:~~

~~(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or~~

~~(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).~~

~~(10) Council hearing procedures.~~

~~(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the accused with the date, time and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing. The council must receive at least seventy-two hours' notice as to the time and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.~~

~~(b) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the accused violated the student conduct code. If the council determines the accused violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session.~~

~~(c) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the accused with a brief written statement setting forth the council's decision and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, stalking, or any act of sexual misconduct, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment/sexual misconduct occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:~~

~~(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or~~

~~(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).~~))

NEW SECTION

WAC 172-121-121 Summary hearings. Summary hearing procedures.

(1) The conduct review officer may hold a summary hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct.

(2) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct, a summary hearing cannot take place without first notifying the complainant/respondent of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the respondent and, in the case of sexual misconduct, the complainant of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(3) If the respondent fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the respondent present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the respondent's academic records under WAC 172-121-080.

(4) Deliberation. After the hearing, the conduct review officer shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence.

(a) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(b) If the conduct review officer determines that the respondent violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

(5) Notification. The conduct review officer shall serve the respondent with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In a sexual misconduct, the victim shall be provided with written notice of:

(a) The university's determination as to whether such sexual misconduct occurred;

(b) The victim's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

NEW SECTION

WAC 172-121-122 Council hearing procedures. (1) Scheduling and notification. Council hearings are used for allegations other than sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the respondent with the date, time, and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the conduct review officer in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The conduct review officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The conduct review officer may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the conduct review officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent has the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The conduct review officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent and hearing authority may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. For purposes of a council hearing, an attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may ask questions of each other or of any witnesses, except the CRO may preclude any questions which he/she considers inappropriate, irrelevant, immaterial or unduly repetitious. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The CRO and any members of the council may ask their own questions of any witness called before them.

(8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the respondent violated the student conduct code. If the council determines the respondent violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session. The council shall issue a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. The findings shall be based exclusively on the evidence provided at the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

(10) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the council's decision and notice of the right to appeal.

Information regarding the discipline of the respondent will not be released unless:

(a) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(b) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by the ((~~accused~~)) respondent or the complainant. In cases of ((~~harassment and/or~~)) sexual misconduct, the victim may also file an appeal. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The ((~~accused~~)) respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority was based on the information presented and that ((~~that~~)) information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(2) Filing: Appeals may be filed following a summary hearing, conduct review hearing or sexual misconduct hearing, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten calendar days from service of the council's decision following a council hearing or the CRO's decision following a sexual misconduct hearing, and within twenty-one calendar days from service of a decision from a summary hearing, from service of the ((~~council's~~)) decision;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, appeals are determined by the student disciplinary council.

(b) For student disciplinary council hearings, appeals are determined by the ((~~dean of students~~)) vice president for student affairs.

(c) For sexual misconduct hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the ((~~accused~~)) respondent. When determining sanctions, the appeal authority may consider the complete record of the ((~~accused's~~)) respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the ((~~accused~~)) respondent, and, in cases of ((~~harassment or~~)) sexual misconduct, notify the complainant and victim, with a brief written statement setting forth the outcome of the appeal.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-140 Interim restriction. In situations where there is cause to believe that a student or a student organization ((~~endangers~~)) poses an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

(i) The health, safety or welfare of any part of the university community or public at large;

(ii) The student's own physical safety and well-being; or

(iii) Any property of the university community; or

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community((~~; or~~

~~(c) When a student is undergoing criminal proceedings for any felony charge~~)).

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access((~~,~~)) including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

(4) ((~~All interim restrictions that involve any type of restriction from any university premises will be accomplished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.~~

~~(5)~~)) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; ((~~and~~))

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) The date, time, and location for an emergency appeal hearing with the vice president for student affairs.

(((~~(6)~~))) (5) In cases alleging sexual ((~~harassment, sexual misconduct, domestic violence, relationship violence, and/or stalking~~)) misconduct, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant.

(((~~(7)~~))) (6) Emergency appeal((~~s~~)) hearing.

(a) ((~~In all cases, the student or student organization may appeal the interim restriction to the vice-president for student affairs.~~)) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal hearing with the vice president for student affairs, or designee, within ten business days after the interim suspension is served. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within ten business days after service of the interim restriction.

(b) The vice president for student affairs, or designee, will conduct an emergency appeals hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel.

(c) In cases alleging ((~~sexual harassment,~~)) sexual misconduct((~~, domestic violence, relationship violence, and stalking~~)), if an interim restriction is imposed, the student, the student organization, and the complainant may appeal the interim restriction using the process outlined in this subsection. Also, in such cases, if an appeal is filed, all parties shall be given notice of the appeal and shall be provided the opportunity to participate in the appeal proceeding.

(((~~(c) Appeals must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:~~

~~(i) The reliability of the information concerning the student's behavior; and~~

~~(ii) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.~~

~~(d) As a result of the appeal, the vice-president for student affairs will schedule a meeting with the accused.~~)) (d) The vice president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The ((~~accused~~)) respondent and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting ((~~so long as the name of that person is provided to the director of SRR at least two business days prior to the scheduled meeting~~)).

(e) During the ((~~appeal meeting~~)) emergency appeal hearing, the vice president for student affairs will review available materials and statements. After the meeting, the vice president for student affairs may uphold, modify, or terminate the interim restriction action.

(((~~(8)~~))) (f) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

(((~~(9)~~))) (g) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) Acts of social misconduct.

(a) Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Objectively hostile or offensive; and

(v) Creates an intimidating and/or threatening environment which produces a risk of psychological and/or physical harm.

(c) Domestic violence and relationship violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) Relationship violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(d) Harassment, gender-based harassment, and sexual harassment.

(i) Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(ii) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(iii) Sexual harassment is unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether any of the above-listed types of harassment are severe, pervasive, or persistent, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the victim; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(e) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

(f) Sexual misconduct. ((~~Sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion, are types of sexual misconduct.~~)) Sexual misconduct includes, but is not limited to, sexual violence; indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. ((~~Sexual misconduct also includes, but is not limited to, indecent liberties, indecent exposure, sexual exhibitionism, sex-based cyber harassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.~~))

(g) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(h) Unauthorized use of electronic or other devices: Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft of, damage to, or misuse of another person's or entity's property.

(4) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that

can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(5) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of ((~~marijuana, drug paraphernalia and/or~~)) illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(10) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

((~~(d) Demonstration. Participation in a campus demonstration which violates university regulations.~~))

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, or handbook provisions.

(13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other responsibilities:

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

(16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW. Expulsion is subject to the processes outlined in this chapter

except any expulsion must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

NEW SECTION

WAC 172-121-123 Sexual misconduct hearing procedures. (1) Scheduling and notification. Sexual misconduct hearings are used for sexual misconduct allegations which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion or would be considered felony-level sexual misconduct. Sexual misconduct hearings are conducted by a conduct review officer (CRO). The CRO shall schedule the hearing and notify the complainant/victim and respondent of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) Evidence.

(a) Evidence: Pertinent records exhibits and written statements may be accepted as information for consideration by the CRO in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent and the complainant/victim have the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The CRO, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive, or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent, and CRO may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the CRO. The CRO may ask such questions, but is not required to do so. The CRO may reject any question deemed inappropriate, irrelevant, immaterial or unduly repetitious. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) During a conduct review hearing, only the CRO may pose questions to persons appearing at the hearing. The CRO may question any parties and witnesses.

(8) The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the CRO will determine whether the respondent violated the student conduct code. If the CRO determines the respondent violated the student conduct code, the CRO shall then decide what sanctions shall be imposed. The CRO shall issue a decision including his/her findings, conclusions, and rationale. Such decision should be issued within seven business days from the sexual misconduct hearing. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

(10) Notification. The CRO shall forward his/her decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the CRO's decision and notice of the right to appeal. The victim shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct occurred;

(b) The victim's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

WSR 17-14-057
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed June 29, 2017, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-125.

Title of Rule and Other Identifying Information: Amending WAC 182-60-010 Definitions, 182-60-020 National certifying organizations, 182-60-025 Agency review process and certification and 182-60-030 Certification fees; and new WAC 182-60-027 Patient decision aid review advisory panel, 182-60-035 Patient decision aid topic selection, 182-60-040 Agency medical director certification, 182-60-045 Opportunity to remedy deficiencies, and 182-60-050 Public notices.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 8, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 9, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 8, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 4, 2017, email amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising the rules governing the certification process for patient decision aids to add more guidance and specificity.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Laura Pennington, P.O. Box 42710, Olympia, WA 98504-2710, (360) 725-1231.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

June 29, 2017
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-010 Definitions. When used in this chapter:

(1) **"Agency"** means the Washington state health care authority (HCA), created pursuant to chapter 41.05 RCW.

(2) **"Certification fee"** means a fee assessed by the agency to an individual or organization applicant requesting ((~~an independent review~~)) certification or recertification of a patient decision aid not already certified by an organization located in the United States or Canada and recognized by the agency's medical director.

(3) **"Certified patient decision aid"** means a patient decision aid, as defined in this section, for any medical condition or procedure, including abortion as defined in RCW 9.02.170, that:

(a) Is certified by one or more national certifying organizations recognized by the agency's medical director; or

(b) Has been evaluated based on the International Patient Decision Aid Standards (IPDAS) by an organization located in the United States or Canada and has current scores satisfactory to the agency's medical director in each of the following categories: Content criteria, development process criteria, and effectiveness criteria; or

(c) Is independently assessed and certified by the agency's medical director based on the International Patient Decision Aid Standards developed by the IPDAS Collaboration if a current evaluation is not available from an organization located in the United States or Canada.

(4) **"National certifying organization"** means a group, entity, or organization in the United States or Canada that is recognized by the agency's medical director to certify patient decision aids under this chapter.

(5) **"Patient decision aid"** means a written, audiovisual, or online tool that provides a balanced presentation of the condition and test or treatment options, benefits, and harms including, if appropriate, a discussion of the limits of scientific knowledge about outcomes ((~~and a means to acknowledge that the tool has been fully reviewed and understood~~)), for any medical condition or procedure.

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-020 National certifying organizations. The agency's medical director ((~~will~~)):

(1) Maintains a list of recognized national certifying organizations so that individuals or organizations seeking certification may identify organizations recognized by the agency's medical director.

(2) Considers organizations recommended by applicants for inclusion in the list.

(3) Updates the list as needed.

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-025 Agency review process and certification. (1) When independently reviewing decision aids under RCW 7.70.060 (4)(a)(ii), the agency's medical director

((~~considers the most current~~)) uses agency certification criteria, which are based on criteria developed by the International Patient Decision Aid Standards (IPDAS) ((~~developed by the IPDAS~~)) Collaboration, for evaluation of a patient decision aid.

(2) The agency's medical director may certify a patient decision aid ((~~may be certified~~)) if it is reviewed by a national certifying organization and has current scores satisfactory to the agency's medical director in each of the following categories: Content criteria, development process criteria, and effectiveness criteria.

(3) ((~~The~~)) An applicant requesting review and certification must provide written documentation of the basis for certification as provided in subsection (1) of this section, using the application materials developed by the agency.

(4) The agency's medical director may contract for an assessment of the patient decision aid.

(a) The contract will:

(i) Be with an evidence-based organization or other appropriate entity; and

(ii) ((~~Provide~~)) Require an assessment to evaluate the patient decision aid based on the ((~~most current International Patient Decision Aid Standards developed by the IPDAS Collaboration~~)) agency's IPDAS-based certification criteria using information provided by the applicant and the agency's medical director.

(b) The agency's medical director may use the results of the assessment in whole or part as the basis for a certification determination.

(5) The agency's medical director may establish minimum scores in each of the following ((~~criteria~~)) areas: Content criteria, development process criteria, and effectiveness criteria((~~, based on IPDAS Collaboration criteria, necessary to qualify as a certified patient decision aid~~)).

NEW SECTION

WAC 182-60-027 Patient decision aid review advisory panel. (1) The agency's medical director has the authority to establish one or more expert advisory panels to review patient decision aids using established criteria under WAC 182-60-025.

(2) The panel may include the following as necessary:

(a) Practicing physicians or other relevant licensed health professionals;

(b) Health literacy and numeracy experts;

(c) Experts in shared decision making; and

(d) Legal experts.

(3) The agency's medical director may contract with an evidence-based practice center or other appropriate expert to review and advise on the validity or presentation of evidence, other elements of the decision aid, or on developing and updating policies or practices.

(4) Advisory review panel members must meet conflict of interest and disclosure requirements. Each advisory panel member must:

(a) Complete an advisory panel member agreement, including a conflict of interest disclosure form, and keep disclosure statements current;

(b) Abide by confidentiality requirements and keep all proprietary information confidential; and

(c) Not use information gained as a result of advisory panel membership outside of advisory panel responsibilities, unless the information is publicly available.

(5) The agency's medical director makes the final determination on certification.

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-030 Certification fees. (((~~(1)~~))) The agency ((~~will charge a certification fee~~)) charges one or more fees to ((~~the~~)) an applicant to defray the costs of ((~~the assessment and certification under~~)) assessments, certifications, recertifications, and any opportunities to remedy deficiencies in the application, according to this chapter.

(((~~(a)~~))) (1) Fees ((~~will be~~)) are based on the reasonable projected or actual cost of ((~~obtaining an assessment~~)) the certification program.

(((~~(b) One~~))) (2) Except as otherwise provided in this chapter, a certification fee ((~~will apply~~)) applies to each review of a patient decision aid. An opportunity to remedy deficiencies as described in WAC 182-60-045 may require an additional fee.

(((~~(2) Applicants requesting review and certification of a patient decision aid must pay a fee established by the agency to defray the cost of review by a contracted review organization or group.~~)) (3) The agency may, at its discretion, waive or otherwise reduce applicable fees for patient decision aids publicly available at no cost.

NEW SECTION

WAC 182-60-035 Patient decision aid topic selection. (1) The agency may, at the medical director's discretion, give preference to certification of patient decision aids identified as priority topics for shared decision making by the Healthier Washington Initiative, the Robert Bree collaborative, or other topics that are important to state health care purchasing or policy objectives.

(2) Periodically throughout the year, the agency may issue a request for submission of specific patient decision aid topics that address state priorities.

(3) The agency may review additional decision aids that do not reflect the topics requested in its solicitation but may decline or defer review based on resource limitations or priorities for review.

NEW SECTION

WAC 182-60-040 Agency medical director certification. (1) Decisions.

(a) The agency's medical director, with input as determined necessary by an advisory review team, or contracted experts, or both, makes a written determination to:

(i) Certify the decision aid;

(ii) Notify the developer of areas of deficiency and provide an opportunity to remedy deficiencies as described in WAC 182-60-045; or

(iii) Decline to certify the decision aid.

(b) Upon certification, the agency adds the decision aid to a list of certified products posted on the agency web site.

(c) Certification determinations are final and not subject to appeal.

(2) Certification period. A certification under this chapter is valid for two years from the date of the written certification determination, except in the case of withdrawal or suspension under subsection (4) of this section.

(3) Recertification.

(a) The developer may request recertification by taking the following steps six months before the current certification expires:

(i) Request recertification;

(ii) Submit any needed updates or modifications using HCA 82-328 form; and

(iii) Pay the required certification fee.

(b) The agency's medical director may limit review to the updated elements of the application and the decision aid, together with associated evidence and may make the determinations described in subsection (1) of this section.

(c) Recertification is effective for two years from the date of the written recertification determination.

(4) Withdrawal or suspension of certification.

(a) Developers must notify the agency's medical director when they become aware of information that may materially change the content of an approved decision aid or supporting application materials on file.

(b) The agency's medical director may withdraw or suspend a certification:

(i) On the medical director's own initiative, if information becomes available that may materially change the decision aid's content or supporting application materials; or

(ii) In response to developer notification under (a) of this subsection.

(c) Within ten business days of the agency's withdrawal or suspension of a certification, the agency sends notification to the developer's address on file.

(d) The developer must submit its updated application materials to the agency's medical director within the time frame specified in the agency's notice. The agency charges the developer reasonable costs associated with the recertification.

(e) The agency's medical director may limit review to the updated elements of the decision aid and may make the determinations described in subsection (1) of this section.

(f) If a developer fails to submit updated application materials within the time frame in (d) of this subsection, the agency withdraws the certification.

(g) The agency posts withdrawal, suspension, and recertification decisions on the agency's web site.

(5) Effect of certification determination.

(a) Certification under this chapter provides the basis for heightened legal protections under RCW 7.70.065; and

(b) A certified patient decision aid used as part of a shared decision-making process may also be a requirement or preference in contract or arrangements for state-purchased health care.

NEW SECTION

WAC 182-60-045 Opportunity to remedy deficiencies. (1) The agency's medical director may suspend the certification or recertification process if the medical director determines there are deficiencies in an application, including the decision aid and supporting materials.

(2) The agency provides the developer with a written notice of deficiencies and gives an opportunity to provide additional information or materials. The developer must pay any additional fees related to the review of additional information.

(3) The developer must submit any additional materials within sixty calendar days of the date on the written notice.

(4) The medical director makes a final decision to certify or to decline to certify the decision aid within sixty calendar days of receipt of the developer's materials.

NEW SECTION

WAC 182-60-050 Public notices. The agency posts the following information on its web site:

(1) Priority certification topics and the timeline for application and consideration of submitted decision aids;

(2) Certification forms and criteria;

(3) A complete listing of certified decision aids and certification effective dates; and

(4) All notifications of certification expirations, withdrawals, and suspensions.

WSR 17-14-072
WITHDRAWL OF PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 29, 2017, 2:25 p.m.]

On Wednesday, June 21, 2017, at 10:10 a.m., the state superintendent of public instruction filed proposed rule-making form CR-102, WSR 17-13-122, concerning proposed rule making for WAC 392-343-515, 392-343-535, 392-344-085, and 392-347-023. At this time we are withdrawing the filed CR-102 (WSR 17-13-122) in order to make a correction to the statutory authority section of the form. A new proposed rule-making (CR-102) notice with a new hearing date and time will be filed in the near future.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

WSR 17-14-076
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 29, 2017, 3:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-115.

Title of Rule and Other Identifying Information: WAC 392-343-515 Modernization or new-in-lieu of modernization priority elements, 392-343-535 Existing building condition—Evaluation, 392-344-085 Construction and other documents—Submittal, and 392-347-023 State funding assistance in post 1993 buildings.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington Street, Olympia, WA 98501, on August 15, 2017, at 10:30 a.m.

Date of Intended Adoption: August 17, 2017.

Submit Written Comments to: Scott Black, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email school facilitiesrules@k12.wa.us, fax (360) 586-3946, by August 15, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy by August 1, 2017, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making amends OSPI's current school facilities funding rules to replace references to the building condition evaluation form (BCEF) with building condition assessment (BCA).

Reasons Supporting Proposal: BCA was adopted in 2009-2010 as the building condition assessment tool for the purposes of completing study and surveys and complying with asset preservation program requirements. Historically, BCEF has been used for the sole purpose of assessing the condition of school facilities as part of the required prioritization for state funding. This amendment would adopt the BCA condition assessment tool as the only tool OSPI uses whenever a BCA is required to comply with any OSPI school facilities funding requirement such as prioritization.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6268; and Enforcement: Randy Newman, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6265.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. No small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

June 29, 2017
Chris P. S. Reykdal
Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-515 Modernization or new-in-lieu of modernization priority elements. School district projects with secured funding assistance as of July 2018. The ((~~three~~)) two priority elements that are related to modernization or new-in-lieu projects are as follows:

(1) Health & safety - Twenty possible points. A maximum of ((~~sixteen~~)) twenty points are awarded based on the ((~~evaluation~~)) assessment contained in the ((~~Building Condition Evaluation Form (BCEF) (WAC 392-343-535) and are awarded as follows:~~

~~15 - 19 percent = 16 points, 20 - 24 percent = 15 points, 25 - 29 percent = 14 points, etc., until 95 percent at which no points are awarded.~~

~~The health and safety condition points are combined with an additional:~~

~~Two points if school does not meet seismic code requirements.~~

~~Two points if school is not asbestos free~~)) Health and Safety Assessment form (WAC 392-343-535). In cases where projects affect multiple buildings, the health and safety score is weighted by the proportion of gross square feet (GSF) affected.

(2) Condition of building - Thirty possible points. The ((~~score is~~)) total points are based on the building condition ((~~Evaluation Form (WAC 392-343-535) analysis for all categories other than access for persons with developmental disabilities~~)) assessment (BCA) as recorded in the superintendent of public instruction's information and condition of schools (ICOS) system (WAC 392-343-535). If the building condition score is thirty-one or less, ((~~then~~)) the maximum thirty points are awarded to the project. If the condition score is ninety-one or more, ((~~then~~)) no points are awarded. If the condition score is from thirty-two to ninety, the condition score is subtracted from ninety-one and multiplied by fifty percent to determine the points. In cases where projects affect multiple buildings, the ((~~BCEF~~)) BCA score is weighted by the proportion of gross square feet (GSF) affected.

(((~~(3) Cost/benefit factor - Ten minus points possible. If the proposed project is a modernization and the BCEF score is less than forty, one point is deducted for each point the BCEF score is less than forty up to a total possible deduction of ten points.~~

~~If the proposed project is a new-in-lieu of modernization and the BCEF score is greater than sixty, one point is deducted for each point the BCEF score is higher than sixty to a total possible deduction of ten points.~~))

The scores shall be determined at the time of project approval per WAC 392-341-045. These scores shall be carried until the district requests a redetermination.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-535 Existing building condition—((~~Evaluation~~)) Assessment. School district projects with secured funding assistance as of July 2018. Building condition assessment (BCA) and health and safety ((~~evaluations~~)) assessments for purposes of determining priority scores and completing building inventories shall be conducted and reported to the superintendent of public instruction((~~, utilizing an evaluation model~~)). Assessment scores shall be

recorded in the superintendent of public instruction's information and condition of schools (ICOS) system and on reporting forms for building type, history, equipage, condition, and health and safety factors, ((~~and portables on site~~)) that shall be adopted and subject to revision from time to time by the superintendent of public instruction. The information provided by the district on these forms shall be subject to review by the staff or agents of the superintendent of public instruction, or to audit by the state auditor. Compliance with this requirement for all schools in a district is a requirement for the receipt of any state construction funding assistance for projects approved after January 26, 1991.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-344-085 Construction and other documents—Submittal. School district projects with secured funding assistance as of July 2018. (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 WAC have been complied with prior to the opening of bids of any project to be financed with state funding assistance, the school district shall have on file with the superintendent of public instruction the following:

(a) One copy of the construction documents forwarded by others;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) School district board acceptance of a value engineering report and its implementation.

The report shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed building condition ((~~Evaluation Forms (BCEF)~~)) assessment (BCA) as required by WAC 392-343-535 for every school facility in the district.

(i) Completed health and safety assessment as required by WAC 392-343-535, on buildings for which state funding assistance is being requested.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC 392-344-025 which will result in an increase in state funding assistance, a new application must be submitted to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-347-023 State funding assistance in post 1993 facilities. As a condition precedent to receiving state funding assistance for modernization under WAC 392-347-015 or new-in-lieu of modernization under WAC 392-347-042, school districts that received state funding assistance for new and new-in-lieu school buildings and whose buildings were accepted as complete by school board of directors as of January 1, 1994, and later, shall adopt by board resolution and implement an asset preservation program (APP).

(1) Definitions: For purposes of this chapter:

(a) An asset preservation program is a systematic approach to ensure performance accountability; promote student health and safety by maintaining and operating building systems to their design capacity; maintain an encouraging learning environment; and extend building life, thus minimizing future capital needs.

(b) An asset preservation system is a system of tasks or projects that are active, reactive, or proactive in maintaining the day to day health, safety, and instructional quality of the school facility and tasks or projects that are proactive, predictive or preventative in maintaining the school facility over its thirty-year expected life cycle.

(c) A building condition ((~~evaluation~~)) assessment (BCA) is an ((~~evaluation~~)) assessment of the condition of building components and systems using a standardized scoring matrix, an element of the office of the superintendent of public instruction's information and condition of schools (ICOS) system.

(d) A building condition standard is a numeric scoring table with a scale identifying the expected condition score for each year of the building's expected life cycle.

(2) The office of the superintendent of public instruction shall establish and adopt a uniform program of specifications, standards, and requirements for implementing and maintaining the asset preservation program.

(3) School districts with affected buildings under this chapter are required to:

(a) Adopt or implement an asset preservation system;

(b) Annually perform a building condition ((~~evaluation and report the condition of such building~~)) assessment (BCA) which shall include recording assessments in the ICOS system and reporting the assessment scores to the school district's board of directors no later than April 1st of each year;

(c) Thereafter in six year intervals during the thirty-year expected life span of the building, have a certified evaluator, as approved by the office of the superintendent of public instruction, perform a building condition evaluation and report the condition to the school district's board of directors and to the office of the superintendent of public instruction no later than April 1st.

(4) A school district building affected under this chapter and that does not meet the minimum building condition standard score of ((~~forty~~)) sixty-two points at the end of the thirty years from the accepted date shall:

(a) Have its allowable cost per square foot used to determine the amount of state funding assistance in any modernization project reduced at a rate of two percent for each point below ((~~forty~~)) sixty-two points, not to exceed a total twenty percent reduction; or

(b) Be ineligible for state funding assistance when the building condition score is less than ((~~thirty~~)) forty points.

(((~~(5) The following schedule shall apply to school districts with buildings affected under this chapter, and the requirements set forth shall replace the former requirements of this section:~~

~~(a) Buildings accepted by the school board in 1994 must begin an asset preservation program in 2009, and shall fully implement the program within no more than one and one-half years;~~

~~(b) Buildings accepted by the school board in 1995 must begin an asset preservation program in 2010, and shall fully implement the program within no more than one year;~~

~~(c) Buildings accepted by the school board in 1996 through 2010 must begin an asset preservation program in 2011, and shall fully implement the program within no more than six months;~~

~~(d) Buildings accepted by the school board after December 31, 2010, must implement an asset preservation program within six months of facility acceptance.~~))

WSR 17-14-080
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed June 29, 2017, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-10-043.

Title of Rule and Other Identifying Information: The department of financial institutions (DFI) proposes to amend the rules in chapter 208-710 WAC in order to incorporate recent legislative amendments to the Washington small business retirement marketplace (codified at RCW 43.330.730 through 43.330.750, and 43.320.180). The marketplace is operated by the Washington department of commerce, but DFI is responsible for verifying that the retirement plans that apply to be listed on the marketplace meet the requirements set forth in RCW 43.330.732(7) and 43.330.735.

Hearing Location(s): DFI, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on August 9, 2017, at 11:00 a.m.

Date of Intended Adoption: August 10, 2017.

Submit Written Comments to: Jill Vallely, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, email jill.vallely@dfi.wa.gov, fax (360) 704-7035, by August 8, 2017.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments will update the rules in chapter 208-710 WAC to incorporate recent statutory amendments. Pursuant to RCW 43.330.735(11), retirement plans listed on the Washington small business retirement marketplace may not charge enrollees more than one hundred basis points in total annual fees. However, the statutory amendments now provide that financial services firms may charge de minimis fees for new and/or low balance accounts if such fees are negotiated and agreed upon by the Washington department of commerce and the financial services firm. The proposed rule amendments incorporate this update. In addition, the proposed rule amendments add a requirement that financial services firms that apply to DFI for verification must submit a summary of their retirement plan with their application materials. Finally, the proposed amendments include minor clarifications and plain English updates.

Reasons Supporting Proposal: The proposed rule amendments should be adopted because they incorporate recent statutory amendments that will facilitate the verification of retirement plans for the Washington small business retirement marketplace. The addition of the retirement plan summary to the application materials will assist DFI in reviewing applications for verification, and will help ensure that retirement plans to be listed on the marketplace comply with the statutory requirements.

Statutory Authority for Adoption: RCW 43.330.732, 43.330.735, 43.330.750, 43.320.180.

Statute Being Implemented: RCW 43.330.730 to 43.330.750, 43.320.180.

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

Name of Proponent: DFI, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Gloria Papiez, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Participation in the small business retirement marketplace is optional. The proposed rules will not impose more than minor costs on the financial services firms that elect to participate.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

June 29, 2017
Gloria Papiez
Director

AMENDATORY SECTION (Amending WSR 16-13-016, filed 6/3/16, effective 7/4/16)

WAC 208-710-010 Application of rules. The rules in this chapter implement the provisions of the Washington small business retirement marketplace, RCW 43.330.730 through 43.330.750, and 43.320.180, as they relate to the department of financial institutions.

The legislature created the Washington small business retirement marketplace in order to address the retirement savings access gap in Washington. The purpose of the Washington small business retirement marketplace is to educate small employers on retirement plan availability and promote qualified, low-cost, low-burden retirement savings vehicles and myRa accounts without mandating participation by either employers or employees.

The Washington department of commerce is responsible for the operation of the Washington small business retirement marketplace. The department of commerce will approve retirement plans for inclusion on the Washington small business retirement marketplace provided that the Washington department of financial institutions has verified that the retirement plan and the financial services firm offering it meet the requirements set forth in RCW 43.330.732(7) and 43.330.735.

Financial services firms seeking verification for their retirement plans from the department of financial institutions for the purpose of inclusion on the Washington small business retirement marketplace ((~~shall~~)) must follow the application procedures set forth in this chapter.

AMENDATORY SECTION (Amending WSR 16-13-016, filed 6/3/16, effective 7/4/16)

WAC 208-710-030 Verification process. (1) Financial services firms that are eligible under WAC 208-710-020 to apply for verification from the department of financial institutions may do so by submitting an application for verification as described in WAC 208-710-040, 208-710-060, ((~~and~~)) or 208-710-070.

(2) The department of financial institutions will review and process initial, renewal, and amendment applications for verification. The department of financial institutions will issue a verification letter for retirement plans that meet the requirements set forth in RCW 43.330.732(7) and 43.330.735. The verification letter will be effective for one year for initial and renewal applications. For amendment applications, the verification letter will be effective for the remainder of the current one-year verification period.

(3) Pursuant to RCW 43.330.735(11), a financial services firm may charge retirement plan enrollees a de minimis fee for new and/or low balance accounts in excess of one hundred basis points in total annual fees only if the department of commerce and the financial services firm negotiate and agree upon the amount of the de minimis fee prior to the issuance of the verification letter.

(4) A financial services firm may withdraw its application for verification at any time by submitting a written request to withdraw to the department of financial institutions.

AMENDATORY SECTION (Amending WSR 16-13-016, filed 6/3/16, effective 7/4/16)

WAC 208-710-040 Initial application requirements. Financial service firms that seek verification of retirement plans from the department of financial institutions for inclusion on the Washington small business retirement marketplace must submit a separate application for each retirement plan for which verification is sought. The following initial application materials ((~~shall~~)) must be submitted to the department of financial institutions:

(1) A completed application for verification form marked "initial ((~~application~~))";

(2) A copy of the retirement plan agreement;

(3) A copy of the materials routinely used to market the retirement plan to eligible employers;

(4) Any additional documents necessary to identify the funds and other investment products to be offered under the plan, specify the plan's fees and roll-over options, and disclose historical investment performance for the investment products in the plan; ((~~and~~))

(5) The prospectus for each balanced fund and target date fund or other similar fund offered under the retirement plan; and

(6) A summary of the retirement plan's investment options, fees, and other features. The summary should include, but not necessarily be limited to, the following:

(a) The type of retirement plan (e.g., SIMPLE IRA);

(b) The investment options available in the retirement plan;

(c) The fee structure applicable to the different investment options in the retirement plan (including fees payable to the financial services firm offering the retirement plan and any other service providers);

(d) The identity of the custodian of enrollee accounts;

(e) The rollover options for enrollees in the retirement plan;

(f) Whether the financial services firm offering the retirement plan will recommend investments to enrollees, and if so, how the firm will communicate to enrollees the option to select investments other than the recommended investments;

(g) A list of documents an employer must complete to establish the retirement plan and its business relationship with the financial services firm offering the plan;

(h) A list of the documents enrollees must complete to establish their retirement account and their relationship with the financial services firm offering the plan; and

(i) Disclosure of any other fees associated with the retirement plan.

AMENDATORY SECTION (Amending WSR 16-13-016, filed 6/3/16, effective 7/4/16)

WAC 208-710-050 Application review criteria. The department of financial institutions will review applications for verification to ensure that retirement plans meet the following criteria established by RCW 43.330.732(7) and 43.330.735:

(1) The financial services firm offering the retirement plan must be licensed or hold a certificate of authority and be

in good standing with the department of financial institutions, or be regulated by a federal agency with authority over banking, securities, or broker-dealer firms, and meet all federal laws and regulations to offer retirement plans;

(2) The retirement plan must offer a minimum of two product options:

(a) A target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement; and

(b) A balanced fund.

(3) The retirement plan must include the option for enrollees to roll pretax contributions into a different individual retirement account or another eligible retirement plan after the enrollees cease participation in the retirement plan offered on the Washington small business retirement marketplace;

(4) The financial services firm offering the retirement plan may not charge the participating employer an administrative fee and may not charge enrollees more than one hundred basis points in total annual fees, except that financial services firms may charge retirement plan enrollees a de minimis fee for new and/or low balance accounts in amounts negotiated and agreed upon by the department of commerce and the financial services firm;

(5) The financial services firm offering the retirement plan must provide information about the product's historical investment performance; and

(6) Participation in a retirement plan offered on the Washington small business retirement marketplace ((~~shall~~)) must be voluntary for both eligible employers and qualified employees.

AMENDATORY SECTION (Amending WSR 16-13-016, filed 6/3/16, effective 7/4/16)

WAC 208-710-060 Annual renewal application procedure. (1) To apply to renew the verification of a retirement plan for inclusion on the Washington small business retirement marketplace for a subsequent one-year period, the financial services firm offering the plan ((~~shall~~)) must submit the following to the department of financial institutions at least thirty days prior to the expiration of the current verification letter:

(a) A completed application for verification form marked "renewal";

(b) The most recently updated versions of the retirement plan, marketing materials, prospectuses, and other plan documents required by WAC 208-710-040 (2) through (((~~(5)~~))) (6); and

(c) A report indicating the number of eligible employers in Washington who established retirement plans under the financial service provider's approved plan in the last year. The report ((~~shall~~)) must include the total number of new retirement accounts opened in Washington by qualified employees as a result of the adoption of the approved plan by eligible employers in Washington.

(2) If the financial services firm previously negotiated a de minimis fee with respect to new and/or low balance accounts pursuant to RCW 43.330.735(11), the department of commerce and the financial services firm must negotiate and agree upon any changes to such fee prior to the submission of a renewal application.

(3) If the retirement plan meets the requirements set forth in RCW 43.330.732(7), 43.330.735, and WAC 208-710-050 for inclusion on the Washington small business retirement marketplace, the department of financial institutions will issue a renewal of the verification letter for the retirement plan. An application for verification will not be considered renewed until the department of financial institutions issues a new verification letter.

(((~~(3)~~))) (4) If the retirement plan no longer meets the requirements for inclusion on the Washington small business retirement marketplace, or the application is otherwise deficient, the department of financial institutions will issue a deficiency letter rather than renew the verification letter.

AMENDATORY SECTION (Amending WSR 16-13-016, filed 6/3/16, effective 7/4/16)

WAC 208-710-070 Amendment review procedure. (1) During the time period in which a retirement plan's verification letter is effective, the financial services firm offering the plan must amend its application for verification if material amendments to the retirement plan or its underlying investment options are proposed.

(2) To amend an application for verification, the financial services firm ((~~shall~~)) must submit the following to the department of financial institutions at least thirty days prior to the proposed amendment of the plan:

(a) A completed application for verification marked "amendment"; and

(b) The most recent versions of the retirement plan, marketing materials, prospectuses, and other plan documents required by WAC 208-710-040 (2) through (((~~(5)~~))) (6).

(3) If the financial services firm previously negotiated a de minimis fee with respect to new and/or low balance accounts pursuant to RCW 43.330.735(11), the department of commerce and the financial services firm must negotiate and agree upon any changes to such fee prior to the submission of an amended application.

(4) If the amended retirement plan meets the requirements set forth in RCW 43.330.732(7), 43.330.735, and WAC 208-710-050 for inclusion on the Washington small business retirement marketplace, the department of financial institutions will issue a verification letter for the amended retirement plan.

WSR 17-14-086
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed June 30, 2017, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-054.

Title of Rule and Other Identifying Information: WAC 192-310-010, regarding the requirements for employers to file quarterly tax and wage reports.

Hearing Location(s): Employment Security Department (ESD), Commissioner's Conference Room, 2nd Floor, 212 Maple Park Avenue, Olympia, WA, on August 9, 2017, at 9:30 a.m.

Date of Intended Adoption: August 11, 2017.

Submit Written Comments to: Christina Streuli, ESD, P.O. Box 9046, Olympia, WA 98507, email cstreuli@esd.wa.gov, fax (360) 902-9647, by August 8, 2017.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, by August 8, 2017, TTY 711 or (360) 902-9354.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule requires employers to file their tax and wage reports under their employees' Social Security number. The proposal will allow employers to utilize the employee's individual taxpayer identification number (ITIN) in situations where the employee does not have a Social Security number.

Reasons Supporting Proposal: The rule will permit employers to file timely and accurate wages for each employee, rather than reporting under a pseudo Social Security [number] or filing incomplete reports. This will avoid penalties being assessed against employers who file untimely or incomplete quarterly tax and wage reports.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.29.025.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, (360) 902-9587; Implementation and Enforcement: Brenda Westfall, Olympia, Washington, (360) 902-9554.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There [are] no anticipated costs for small business. However, a cost-benefit analysis was prepared because this proposed amendment reflects a change in policy.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Christina Streuli, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9647, fax (360) 902-9605, email cstreuli@esd.wa.gov.

June 30, 2017
Dale Peinecke
Commissioner

AMENDATORY SECTION (Amending WSR 13-23-008, filed 11/7/13, effective 12/8/13)

WAC 192-310-010 What reports are required from an employer? (1) **Business license application.** Every person or unit with one or more individuals performing services for it in the state of Washington must file a business license application with the department of revenue.

(2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within thirty days of registration, must pay a penalty of twenty-five dollars for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) **Quarterly tax and wage reports:**

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; ((~~and~~))

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030); and

(v) For the purposes of this section, if an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of employees' wages.

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of employer account management services (EAMS), UI*Fast*Tax, UI*Web*Tax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

WSR 17-14-087
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed June 30, 2017, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-055.

Title of Rule and Other Identifying Information: WAC 192-110-015, regarding granting standby status to workers who are temporarily laid off by their regular employment and have an anticipated return to work date within eight weeks.

Hearing Location(s): Employment Security Department (ESD), Commissioner's Conference Room, 2nd Floor, 212 Maple Park Avenue, Olympia, WA, on August 9, 2017, at 10:00 a.m.

Date of Intended Adoption: August 11, 2017.

Submit Written Comments to: Christina Streuli, ESD, P.O. Box 9046, Olympia, WA 98507, email cstreuli@esd.wa.gov, fax (360) 902-9647 by August 8, 2017.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, by August 8, 2017, TTY 711 or (360) 902-9354.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will allow employers to make the initial request for up to eight weeks of standby. The rule currently requires claimants to apply for up to four weeks of standby and, if approved, the employer may request an additional four weeks.

Reasons Supporting Proposal: The rule will permit employers whose workers will be temporarily laid off for more than four, but fewer than eight, weeks to initiate the request for standby for up to eight weeks. This will allow employers a better opportunity to retain a skilled workforce since claimants who are not on standby must look for work. It will also streamline agency workload by eliminating the need for a supplemental request when claimants have been approved for four or fewer weeks of standby and the employer anticipates the return date will be longer.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.010 (1)(c) and 50.20.240.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, Olympia, Washington, (360) 902-9665; Implementation and Enforcement: Neil Gorrell, Olympia, Washington, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under federal law, small and large businesses are subject to the same requirements. In the unlikely event there will be some additional costs for small business, these cannot be mitigated since the same rules must apply to all businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Christina Streuli, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9647, fax (360) 902-9605, email cstreuli@esd.wa.gov.

June 30, 2017
Dale Peinecke
Commissioner

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010. (1) **What is "standby?"**

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

(i) You expect to return to work with your regular employer within four weeks; or

(ii) You expect to begin full-time work with a new employer within two weeks; or

(iii) You are temporarily unemployed due to natural disaster.

(b) You do not have to register for work or look for other work while you are on standby.

(c) You must be available for all hours of work offered by your regular employer.

(2) **How long can I be on standby?**

(a) You can ask to be on standby for up to four weeks, beginning with the date of the request.

(b) We will ask your employer to verify that you are on standby ((~~and~~)), including your expected return to work date:

(i) If your employer does not reply, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby ((~~for up to four weeks or~~)) until the return to work date given by your employer, ((~~whichever is earlier~~)) subject to the limitations of (c) of this subsection;

(iii) If your employer replies that you are not on standby or do not have a return to work date within eight weeks, we will require you to immediately register for work and to look for work.

(c) Your regular employer may ask ((~~to extend your~~)) that you be placed on standby ((~~status for more than four, but no more than~~)) for a maximum of eight((~~,~~)) weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

(d) At his or her discretion, the commissioner may grant standby for more than eight weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within two weeks, which includes the week of the job offer and up to two additional weeks. If the standby request under this subsection is part of your initial claim, standby begins with the date of the request.

(f) The job, however, must be:

(i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and

(ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(3) **Are there conditions that apply to a request for standby?**

(a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

(d) Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum eight weeks of standby; and

(f) After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240.

WSR 17-14-102
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed July 3, 2017, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-01-046.

Title of Rule and Other Identifying Information: WAC 246-650-010 and 246-650-020, the Washington state board of health (SBOH) is proposing to amend the newborn screening rules to add X-linked adrenoleukodystrophy (X-ALD) to the list of mandatory conditions for newborn screening conducted by the department of health.

Hearing Location(s): Washington State Capitol Campus, Cherberg Building, Senate Hearing Room 3, 304 15th Avenue S.W., Olympia, WA 98501, on August 9, 2017, at 1:30 p.m.

Date of Intended Adoption: August 9, 2017.

Submit Written Comments to: Sierra Rotakhina, P.O. Box 47990, Olympia, WA 98504-7990, email https://fortress.wa.gov/doh/policyreview, fax (360) 236-4088, by July 26, 2017.

Assistance for Persons with Disabilities: Contact Sierra Rotakhina by July 26, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend WAC 246-650-010, and 246-650-020 to add X-ALD to the panel of disorders that every newborn must be tested for unless the parents or guardian object on the grounds that such tests conflict with their religious tenets and practices.

Reasons Supporting Proposal: X-ALD is a disabling and deadly disease that, when detected through newborn screening, can be treated with bone marrow transplants, adrenal hormone replacement, or other treatment before irreversible damage is caused by the disorder. The United States Department of Health and Human Services recommends X-ALD be included in all state's newborn screening programs. Careful review by a technical advisory committee concluded that X-ALD meets all of SBOH's criteria for inclusion on the screening panel. The board has reviewed and accepted the committee's recommendation.

Statutory Authority for Adoption: RCW 70.83.050.

Statute Being Implemented: RCW 70.83.020.

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

Comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Both the board of health and the department of health are in agreement with the intent and the language of the proposed changes to chapter 246-650 WAC.

Name of Proponent: Washington SBOH and department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Sierra Rotakhina, 101 Israel Road S.E., Tumwater, WA 98504-7990, (360) 236-4106; Implementation and Enforcement: John Thompson, 1610 N.E. 150th Street, Shoreline, WA 98155, (206) 418-5531.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sierra Rotakhina, SBOH, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4106, fax (360) 236-4088, email sierra.rotakhina@sboh.wa.gov.

July 3, 2017
Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 14-21-017, filed 10/2/14, effective 11/2/14)

WAC 246-650-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including mental retardation, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

(3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

(5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

(6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

(7) "Department" means the Washington state department of health.

(8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO_4 in the blood. If undetected and untreated, accumulated galactose-1-PO_4 may cause significant tissue and organ damage often leading to sepsis and death.

(10) "Hemoglobinopathies" means a group of hereditary blood disorders caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

(11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in any setting in the state of Washington.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "health care information" as used in chapter 70.02 RCW.

(14) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

(15) "Severe combined immunodeficiency (SCID)" means a group of congenital disorders characterized by profound deficiencies in T- and B- lymphocyte function. This results in very low or absent production of the body's primary infection fighting processes that, if left untreated, results in severe recurrent, and often life-threatening infections within the first year of life.

(16) "X-linked adrenoleukodystrophy (X-ALD)" means a peroxisomal disorder caused by mutations in the ABCD1 gene located on the X chromosome. If untreated this can lead to adrenocortical deficiency, damage to the nerve cells of the brain, paralysis of the lower limbs, mental decline, disability, or death.

AMENDATORY SECTION (Amending WSR 14-21-017, filed 10/2/14, effective 11/2/14)

WAC 246-650-020 Performance of screening tests. (1) Hospitals and other providers of birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders;

(ii) Disorders of concern as listed in WAC 246-650-020(2);

(iii) The requirement for newborn screening;

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020; and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn no later than forty-eight hours following birth.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory so that it will be received no later than seventy-two hours following collection of the specimen, excluding any day that the state laboratory is closed.

(2) Upon receipt of specimens, the department shall:

(a) Record the time and date of receipt;

(b) Perform appropriate screening tests for:

(i) Biotinidase deficiency;

(ii) Congenital hypothyroidism;

(iii) Congenital adrenal hyperplasia;

(iv) Galactosemia;

(v) Hemoglobinopathies;

(vi) Cystic fibrosis;

(vii) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria, maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR 1);

(viii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium chain acyl-coA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD);

(ix) The organic acid disorders: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP);

(x) Severe combined immunodeficiency (SCID);

(xi) X-linked adrenoleukodystrophy (X-ALD).

(c) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(d) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

(3) Once the department notifies the attending health care provider of significant screening test results, the attending health care provider shall notify the department of the date upon which the results were disclosed to the parent or guardian of the infant. This requirement expires January 1, 2020.

WSR 17-14-111
PROPOSED RULES
SHORELINE COMMUNITY COLLEGE

[Filed July 5, 2017, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-021.

Title of Rule and Other Identifying Information: Student conduct code (repealing chapter 132G-120 WAC to be replaced by chapter 132G-121 WAC).

Hearing Location(s): Shoreline Community College, Quiet Dining Room, Building 9000, on August 16, 2017, at 2 p.m. - 3 p.m.

Date of Intended Adoption: September 27, 2017.

Submit Written Comments to: Veronica Zura, 16101 Greenwood Avenue North, Shoreline, WA 98133, email SCCRULEMAKING@SHORELINE.EDU, fax (206) 546-5858, by August 16, 2017.

Assistance for Persons with Disabilities: Contact Derek Levy by August 6, 2017, TTY (206) 546-4520 or (206) 546-4544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college is proposing revisions to the student conduct code to incorporate new model language which implements best practices and enhance the college's compliance with federal law including Title IX and Violence Against Women Reauthorization Act (VAWA).

Reasons Supporting Proposal: **The student conduct code was last updated in 2001.** Current language reflected in WAC 132G-120 reflecting the college's rules regarding student conduct do not meet best practices for compliance with federal requirements related to Title IX and VAWA.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alison Stevens, Administration Building 1000, Room 1003, (206) 546-4652.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to these college rules.

June 30, 2017
Veronica Zura
Director of
Human Resources

Chapter 132G-121 WAC

STUDENT CONDUCT CODE

NEW SECTION

WAC 132G-121-005 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. The president has delegated the administration of the disciplinary procedures to the executive vice president for student learning and success. Unless otherwise specified, the student conduct officer or delegate shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132G-121-010 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132G-121-015 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also

includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, which interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and university trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; perceived or actual sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity or expression;

military or veteran status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted

means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132G-121-020 Disciplinary sanctions and terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action;

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action;

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college;

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken;

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation;

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct;

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

NEW SECTION

WAC 132G-121-025 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities; or

(c) Off campus and is conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 132G-121-030 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) **"Conduct review officer"** is the vice president of students, equity and success, or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(3) **"The president"** is the president of the college. The president is authorized to:

(a) Delegate any responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) **"Respondent"** is the student against whom disciplinary action is initiated.

(7) **"Service"** is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first-class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed or deposited in the mail.

(8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(11) **"Business day"** means a week day, excluding weekends, college holidays, or periods of closure.

(12) A **"complainant"** is an alleged victim of sexual misconduct.

(13) **"Sexual misconduct"** has the meaning ascribed to this term in WAC 132G-121-015(13).

NEW SECTION

WAC 132G-121-035 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing such respondent to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, 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.

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC 132G-121-020;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student 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 their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132G-121-040 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent who timely appeals a disciplinary action, or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth in subsection (9) of this section for the respondent:

(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.

(11) 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.

(12) Except as otherwise specified in this chapter, 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.

NEW SECTION

WAC 132G-121-045 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the 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. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a

disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132G-121-050 Brief adjudicative proceedings—Review of initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president shall not participate in any case in which the president is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the 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 complainant of their appeal rights.

NEW SECTION

WAC 132G-121-055 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

NEW SECTION

WAC 132G-121-060 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline or referral to the committee; and

(b) The notice of appeal or any response to referral by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and

any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. The respondent in all committee disciplinary appeals, or a complainant in a case involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at the person's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132G-121-065 Student conduct committee hearings—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that such chair selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in such chair's discretion shall pose the questions on the party's behalf.

NEW SECTION

WAC 132G-121-070 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the 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. Complainant may appeal the student conduct committee's initial decision to the president, subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132G-121-075 Appeal from student conduct committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged, and must contain argument why the

appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee, and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, 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.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132G-121-080 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension, and reference to the provisions of the student conduct code or the law(s) allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or officers who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132G-121-085 Sexual misconduct proceedings. 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 initial disciplinary decision-making process and to appeal any disciplinary decision.

NEW SECTION

WAC 132G-121-090 Brief adjudicative proceedings authorization. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

Student conduct appeals involving the following disciplinary actions:

(1) Suspensions of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

(4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(b) Issues a verbal warning to respondent.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132G-120-010	Student conduct code—Preamble.
WAC 132G-120-015	Grounds for discipline.
WAC 132G-120-030	Jurisdiction.
WAC 132G-120-040	The use of disciplinary authority.
WAC 132G-120-050	Student notification.
WAC 132G-120-060	Possible actions.
WAC 132G-120-061	Initiation of summary suspension proceedings.
WAC 132G-120-062	Permission to enter or remain on campus.
WAC 132G-120-063	Notice of summary suspension proceedings.
WAC 132G-120-064	Decision by the vice president for student services.
WAC 132G-120-065	Suspension for failure to appear.
WAC 132G-120-070	College discipline committee.
WAC 132G-120-080	Discipline committee procedural guidelines and safeguards.
WAC 132G-120-090	The president's review.
WAC 132G-120-100	Appeals.
WAC 132G-120-110	Disciplinary terms.
WAC 132G-120-130	Readmission after expulsion.
WAC 132G-120-140	Reporting, recording and maintenance of records.

WSR 17-14-113
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed July 5, 2017, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-082.

Title of Rule and Other Identifying Information: Rules implementing Initiative 1433, An Act Related to Fair Labor Standards - Paid Sick Leave and Retaliation; chapter 296-128 WAC, Minimum wages. Amending WAC 296-128-010 Records required, 296-128-055 Definition, 296-128-060 Application for certificate, 296-128-065 Conditions for granting certificate, 296-128-070 Issuance of certificate and 296-128-075 Terms of certificate; and new WAC 296-128-600 Definitions, 296-128-610 Requirements for a written policy—Duty of the department to provide sample policies, 296-128-620 Paid sick leave accrual, 296-128-630 Paid sick leave usage, 296-128-640 Variance from required increments of paid sick leave usage, 296-128-650 Reasonable notice, 296-128-660 Verification for absences exceeding three days, 296-128-670 Rate of pay for use of paid sick leave, 296-128-680 Payment of paid sick leave, 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire, 296-128-700 Paid time off (PTO) programs, 296-128-710 Shared leave, 296-128-720 Shift swapping, 296-128-730 Frontloading, 296-128-740 Third-party administrators, 296-128-750 Employee use of paid sick leave for unauthorized purposes, 296-128-760 Employer notification and reporting to employees, and 296-128-770 Retaliation.

Hearing Location(s): Department of Labor and Industries (L&I) Headquarters, Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501, on August 8, 2017, at 10:00 a.m.; at the Spokane CenterPlace, Auditorium, 2426 North Discovery Place, Spokane Valley, WA 99216, on August 16, 2017, at 10:00 a.m.; at Columbia Basin Community College, L102, Building L, 2600 North 20th Avenue, Pasco, WA 99301, on August 17, 2017, at 10:00 a.m.; and at the Xfinity Center, Edward D. Hansen Conference Center, Ballroom 3 South, 2000 Hewitt Avenue, Suite 200, Everett, WA 98201, on August 29, 2017, at 10:00 a.m.

Date of Intended Adoption: October 17, 2017.

Submit Written Comments to: Allison Drake, P.O. Box 44400, Olympia, WA 98504-4400, email i1433Rules@Lni.wa.gov, fax (360) 902-5300, by September 1, 2017, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by August 7, 2017, TTY (360) 902-5797 or (360) 902-5304.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is being proposed to implement Initiative 1433, An Act Relating to Fair Labor Standards, which requires employers provide paid sick leave to employees. These proposed rules will:

- Set parameters for the directives in chapter 49.46 RCW.
- Create definitions and descriptions for paid sick leave pertaining to: Written policies, accrual, usage, variance from required increments of use, reasonable notice, verification for absences exceeding three days, rate of pay, payment of paid sick leave, separation and reinstatement of accrued paid sick leave upon rehire, PTO programs, shared leave, shift swapping, frontloading, third party administrators, employee use of paid sick leave for unauthorized purposes, employer notification and reporting to employees, and retaliation.

In addition to the paid sick leave proposed rules, amendments are being proposed to rules updating outdated lan-

guage concerning people with disabilities to "People-first" language.

Enforcement of the retaliation and enforcement directives related to the implementation of Initiative 1433 are being addressed in a separate rule making.

Reasons Supporting Proposal: The department must implement the will of the people as passed by Initiative 1433.

Statutory Authority for Adoption: RCW 49.46.810.

Statute Being Implemented: RCW 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule language describes the specifics of the statutes directly, but several rules are department interpretations of the statutes. The department, in consultation with worker and employer representatives, will develop policy templates, along with policy examples employers may use to comply with the new rules.

Name of Proponent: Department of labor and industries, as directed by Initiative 1433, governmental.

Name of Agency Personnel Responsible for Drafting: Allison Drake, Tumwater, Washington, (360) 902-5304; Implementation: Elizabeth Smith, Tumwater, Washington, (360) 902-5933; and Enforcement: Ernie LaPalm, Tumwater, Washington, (360) 902-9140.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Rules implementing Initiative 1433, An Act Related to Fair Labor Standards - Paid Sick Leave and Retaliation, chapter 296-128 WAC, Minimum wages.

Date: July 5, 2017.

1. Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the amendments in this proposal that would impose new or additional costs on affected businesses, including small businesses.

In November 2016, Washington voters approved Initiative Measure No. 1433 (I-1433), a ballot measuring [measure] concerning labor standards. I-1433 was codified under chapter 49.46 RCW.

I-1433, in part, requires employers provide their employees paid sick leave, the purpose of which is to promote public health, family stability and economic security, balanced with the demands of the workplace. I-1433 includes: Provisions addressing the accrual and carry over of paid sick leave, defines what paid sick [leave] can be used for and when, and prohibits employers from retaliating against employees for exercising any rights provided by chapter 49.46 RCW.

I-1433 directed L&I to adopt and implement rules to carry out and enforce the initiative, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under chapter 49.46 RCW.

The changes in the proposed rules that impose new or additional costs on businesses are: Amendments to the recordkeeping requirements; requirements related to employee notification and reporting; and requirements related to the paid sick leave increments of use.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

The initiative applies to all businesses that have paid employee(s) in Washington state covered under chapter 49.46 RCW. The proposed rule is intended to implement requirements of the initiative. Therefore, all businesses with employees covered under chapter 49.46 RCW are required to comply with the proposed rule. Table 1 below shows the total number of establishments and employment by each industry (2016Q1, ESD). This data does not distinguish between employees covered under chapter 49.46 RCW and those currently not covered.

Table 1: Establishments and employment by industry (excluding nonemployers)

NAICS	Industry	# of establishments	Total employment
11	Agriculture, forestry, fishing and hunting	5,749	87,020
21	Mining	145	2,268
23	Construction	18,288	158,058
31, 32, 33	Manufacturing	6,908	299,917
22	Utilities	572	18,662
42	Wholesale trade	12,421	128,622
44, 45	Retail trade	18,842	352,976
48, 49	Transportation and warehousing	4,708	119,900
51	Information	3,630	121,833
52	Finance and insurance	8,010	92,114
53	Real estate and rental and leasing	7,314	49,989
54	Professional and technical services	20,465	193,301
55	Management of companies and enterprises	664	43,032
56	Administrative and waste services	9,803	156,907
61	Educational services	3,321	278,421
62	Health care and social assistance	48,152	449,342
71	Arts, entertainment and recreation	2,600	67,945
72	Accommodation and food services	15,240	253,471
81	Other services, except public administration	17,196	91,832
92	Public administration	1,938	157,734

3. Identify and analyze the probable costs to comply with the proposed rule.

The probable costs analyzed included both the following required and optional elements of the proposed rule. The pro-

posed rule changes determined to be exempt from the cost-benefit analysis (CBA) requirement were not considered[1].

[1] See Chapter 1 of CBA.

Require[d] elements of the proposed rule:

- **WAC 296-128-010 Recordkeeping.**
  Rule Overview: The existing recordkeeping requirements of chapter 49.46 RCW are amended to incorporate payroll or other records documenting sick leave accrued, used, and paid to employees. Employers must keep records that show, for each employee, paid sick leave accruals each month, and any unused paid sick leave available for use; paid sick leave reductions each month, and the date of the employee's commencement of employment.
  Costs to be Estimated: The costs associated with the recordkeeping requirements created by the initiative.
- **WAC 296-128-630 Paid sick leave usage.**
  Rule Overview: Employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. For example, if an employer's normal practice is to track increments of work for the purposes of compensation in fifteen-minute increments, then an employer must allow employees to use paid sick leave in fifteen minute increments.
  Costs to be Estimated: The administrative cost of processing leave usage in increments of one hour or less. When employees use paid sick leave, some employers may experience costs associated with covering the employee's absence. While L&I recognizes there are costs to employers, these costs are attributable to the initiative which created the employee's right to use paid sick leave and are not considered in this analysis. Additionally, many employers will not automatically cover an employee's absence by calling another employee to fill in. There are an array of options available to employers to cover an employee's absence while on paid sick leave that do not cause any increased cost, including, but not limited to rearranging rest and meal breaks, working with fewer employees, or filling in themselves. For purposes of estimating costs associated with the rule in general, it would be difficult to predict how employers will address this issue[2].

[2] According to a study of New York City's paid sick leave law, eighty-four percent of employers reported covering short absences of nonexempt employees taking sick leave by temporarily assigning work to other workers, allowing employees to swap shifts, putting the work on hold, or having some employees work from home while out sick. (Center Economic and Policy Research (2016), "No Big Deal: The Impact of New York City's Paid Sick Days Law on Employers," available at http://cepr.net/images/stories/reports/ nyc-paid-sick-days-2016-09.pdf).

During the rule development process, some employers commented that while they normally track work in small increments, including five minutes or less, allowing leave in those increments would be infeasible. Similarly, some employers commented one hour increments would be infeasible. To mitigate the costs in these situations, L&I added the variance provision in WAC 296-128-640.

- **WAC 296-128-760 Employer notification and reporting to employees.**
  Rule Overview: Employers must notify each employee of their entitlement to paid sick leave, the rate of accrual, the authorized purposes for use of paid sick leave, and that employers may not retaliate against employees for the lawful use of paid sick leave and other rights provided under chapter 49.46 RCW. Employers can decide whether the notification is written or electronic. A one time notification must be given to existing employees no later than March 1, 2018. New hires are notified on the date of commencement of their employment. Employers must report to employees about their leave balances each month, but only if they have worked since the prior notification.
  Costs to be Estimated: The administrative costs associated with providing initial notice to existing employees, providing notice to new hires, and satisfying the ongoing monthly reporting requirements.

Optional elements of the proposed rule:

- **WAC 296-128-640 Variance from required increments of paid sick leave usage.**
  Rule Overview: This rule permits L&I to grant a variance from the increment of use requirement if an employer can show "good cause" that providing paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour, is infeasible, and the variance does not affect the health, safety, or welfare of employees. Variances may be sought by submitting a written application. Affected employees are given notice of the employer's request for variance and have an opportunity to be heard. L&I will grant a variance if good cause is shown and will issue an order detailing the terms of the variance. Variance determinations are subject to reconsideration. L&I may issue temporary variances. The terms of any variance granted must be made readily available to employees.
  Costs to be Estimated: The administrative costs associated with completing the application for a variance, communicating with employees about the variance request and their right to participate in L&I's determination, and costs associated with presenting any additional information, if requested, as part of the process.
- **WAC 296-128-650 Reasonable notice.**
  Rule Overview: The initiative permits employers to require reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose. If the need for leave is foreseeable, the employer may, but is not required to, ask for advance notice from the employee. Employers may ask for less notice, but if the employer does not have a policy on the number of days for advance notice, an employee must provide at least ten days notice, or as early as practicable, to use paid sick leave.
  When the need for paid sick leave is unforeseeable, an employer may ask for notice as soon as possible before the scheduled start of a shift, unless it is not practicable to do so. Another person can provide notice to the employer on the employee's behalf. Notice requirements

must comply with the Domestic Violence Leave Act, must be part of a written policy or collective bargaining agreement, and must be provided to employees before notice is required for the use of paid sick leave.

Costs to be Estimated: Administrative costs associated with creating a written policy for employees to provide advance notice for the use of paid sick leave.

- **WAC 296-128-660 Verification for absences exceeding three days.**

Rule Overview: The rule allows, but does not require, employers to ask employees to verify any absence exceeding three days is for an authorized purpose. As part of the employer's verification requirement, an employer may require an employee to provide verification from a health care provider. If an employer has a notification policy, the policy must be in writing and provided to the employee in advance of requiring the employee to provide verification. If an employer creates a verification policy requiring an employee to provide verification from a health care provider, employers are prohibited from asking about the nature of the condition for which leave is used, and must keep any medical information obtained confidential.

Employer verification requirements may not result in an unreasonable burden or expense on employees. If an employee believes an employer's verification requirements result in an unreasonable burden or expense, employees must be allowed to provide an oral or written explanation to their employer asserting that the leave was for an authorized purpose and how the verification requirement results in an unreasonable burden or expense. An employer must consider the employee's explanation and make a reasonable effort to identify alternative methods for the employee to meet the employer's verification requirement, including mitigating any out-of-pocket expenses associated with meeting medical verification requirements or accepting the employee's oral or written explanation as a form of verification that meets the employer's requirements. If the employer and employee are unable to resolve a disagreement, either may consult with L&I, and the employee can file a complaint. If an employer does have a verification requirement, such employee verification must be provided within a ten day calendar period after the leave begins, and verification requirements must be in a written policy made readily available to employees before verification requirements are requested by employers. Verification requirements must be consistent with the Domestic Violence Leave Act and the Family and Medical Leave Act.

Costs to be Estimated: Administrative costs associated with creating a policy explaining notification requirements to employees, making the policy readily available to employees, and administering the policy.

- **WAC 296-128-700 Shared Leave.**

Rule Overview: This rule allows, but does not require, employers to establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a coworker. The employer must have a written policy or a collective bargaining agreement describing the shared leave program. The employer must notify employees of the policy and make the information readily available to employees.

Costs to be Estimated: Costs associated with developing a written program, notifying employees, and making the information available to employees.

- **WAC 296-128-730 Frontloading.**

Rule Overview: The rule allows, but does not require, employers to establish processes that provide employees to use paid sick leave before it has accrued. If an employer chooses to provide employees with paid sick leave to use before they have accrued it, the employer must have a written policy or collective bargaining agreement describing the program to employees and explaining how balances are administered before the employee can use the frontloaded leave. Employees must be notified about their paid sick leave available for use not less than monthly.

Costs to be Estimated: Costs associated with developing a written policy and creating processes to frontload leave and to notify employees about balances.

As detailed in Chapter 2 of L&I's CBA, the following is the summary of the annualized costs of the required and optional rule amendments.

Table 2: Summary of the annualized costs for small businesses and large businesses for each required and optional proposed rule element

Cost component	Required or optional	Small (1-49 employees)	10% of largest (250+ employees)
Costs of notification, monthly reporting and recordkeeping requirements.	Required	$37,625,242 - $43,023,370	$2,403 - $4,807
Costs of increment requirement for PSL usage and variance application.	Required	$6,747,607 - $7,416,332	$585,574 - $585,822
All Required		**$44,372,848 - $50,439,703**	
Costs of verification for absences exceeding three days.	Optional	$1,175,275 - $1,936,893	$108,090 - $177,753
Costs of creating and updating a comprehensive PSL written policy.	Optional	$10,838,895 - $27,853,718	$2,403 - $6,009
Recordkeeping costs for optional programs.	Optional	$373,052 - $1,492,207	10% of Largest (250+ employees)
All Optional		**$12,387,221 - $31,282,818**	

For more information, see Chapter 2 of the CBA, which includes our cost-impact analysis for the proposed rule.

The CBA is available on the L&I web site or it may be obtained by email i1433Rules@Lni.wa.gov, phone Allison Drake at (360) 902-5304.

4. Determine whether the proposed rule may impose a disproportionate impact on small businesses compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

Section 3 provides the details on the estimated total costs of each identified rule amendment. To determine whether or not the proposed rule may have a disproportionate impact on small businesses, L&I also is required to derive and compare the unit cost for small businesses (with fifty or fewer employees) and for largest businesses as well. Due to data limitations, we choose the group of businesses with one to forty-nine employees as a representative of small business, and those with two hundred fifty and more employees as a representative of largest businesses that are required to comply with the rule. In addition, cost-per-employee is most commonly used as the basis for this comparison. Employment data is readily available for each different firm size. For these reasons, this measure is also used here for comparison purpose[s].

Based on the total costs analyzed in the previous section for these two groups and their corresponding employment, L&I estimates that the per-employee cost for the required elements of the proposed rule for small businesses is approximately 6.6 to 7.6 times the unit cost for the ten percent of the largest businesses. For both the required and optional elements of the proposed rule, the per-employee cost for small businesses is approximately 6.5 to 10.3 times the unit cost for the ten percent of the largest businesses. Therefore, L&I concludes this proposed rule will impose disproportionate impact on small businesses.

Table 2: Cost comparison between small businesses and large businesses

Firm Size		Total costs per year	Per-employee cost per year
Small (1-49 employees) Number of businesses = 196,148 Total employment = 1,222,866	**Required costs**	**$44,372,848 - $50,439,703**	**$36.29 - $41.25**
	Total required and optional costs	$56,760,070 - $81,722,521	$46.42 - $66.83
10% of Largest (250+ employees) Number of businesses = 135 Total employment = 108,159	**Required costs**	**$587,978 - $590,629**	**$5.44 - $5.46**
	Total required and optional costs	$698,772 - $775,593	$6.46 - $7.17

5. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses.

L&I is taking the following steps to reduce the costs of the rule on small businesses:

5.1 As described below, L&I added language to the rule specifically to mitigate cost where possible.

- **WAC 296-128-630 Paid sick leave usage and 296-128-640 Variance from required increments of paid sick leave usage.**

Under the proposed rules, employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. For example, if an employer's normal practice is to track increments of work for the purposes of compensation in fifteen minute increments, then an employer must allow employees to use paid sick leave in fifteen minute increments. During the rule development process, some employers commented that while they normally track work in small increments, including five minutes or less, allowing leave in those increments would be infeasible. Similarly, some employers commented one hour increments would be infeasible. To mitigate the costs in situations, L&I added the variance provisions to address cost mitigation and provide a less burdensome alternative. Additionally, although the variance review process can take sixty days or more under limited circumstances, the process allows for the issuance of a temporary variance where immediate action is necessary. If granted, a temporary variance will remain valid until L&I makes a decision on the variance.

- **Multiple WAC, paid sick leave policies.**

The proposed rules do not require employers to have written policies unless employers choose to require employees to give reasonable notice before paid sick leave is used; choose to require employees to provide verification for use of paid sick leave; to establish a shared leave program, or to frontload paid sick leave. Since these are not required elements of the rule, written policies are need[ed] to ensure employees understand how the employer's administration of the optional features of the initiative and rules are carried out. To mitigate any potential costs the policy requirements may create, L&I proposed WAC 296-128-610, providing for sample policies that will meet its standard for compliance with these rules.

- **WAC 296-128-660 Verification for absences exceeding three days.**

The initiative states "[a]n employer's requirements for verification may not result in an unreasonable burden or expense on the employee …" Rather than automatically requiring an employer pay all or a part of the costs associated with obtaining medical verification when doing so places an unreasonable burden or expense on the employee, the proposed rule provides the employer and employee with flexibility to identify alternatives for the employee to meet the employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the employee. When an employer requires an employee to provide verification from a medical provider, and the employee asserts that such verification requirement results in an unreasonable burden or expense on the employee, one option an employer may consider is mitigating the employee's out-of-pocket expense.

5.2 L&I will be pursuing other steps to mitgate [mitigate] costs to small business, including:

- Developing and implementing a robust outreach and education program, small business[es] are informed about what they need to know to comply with the law.
- Developing a standard application form for employers to use to request a variance from required increments of paid sick leave usage.
- Developing a template letter to use for medical verification.
- Reach out to payroll software companies to help develop instructions on how to program the software for Washington's paid sick leave requirements.
- Consider other mitigation techniques including those suggested by small businesses or small business advocates.

6. Describe how small businesses were involved in the development of the proposed rule.

In order to have rules [in] place before the paid sick leave implementation date of January 1, 2018, L&I began a comprehensive rule-making development process with the public and with stakeholders, which began in January 2017. As part of the process, L&I set up an engagement web site that gave the public an opportunity to review and comment throughout, including small businesses.

An initial public meeting with stakeholders was held, and L&I asked stakeholders to provide feedback on key questions to be covered in the rules. A draft document containing stakeholder input was created and circulated, and stakeholders were able to provide comment on each other's contributions. An initial version of the proposed rules was circulated during April 2017, and a second public meeting was held to discuss the initial version and to obtain stakeholder comment. Thereafter, a second version of the rules was drafted and circulated during May 2017, and a third public meeting was held. Small business employers and organizations representing small businesses were involved in these processes.

7. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

L&I believes that potential job impact is mostly the result of the initiative, which granted employees [the] benefit of paid sick leave. L&I lacks credible information or data to come up with an estimate on how many jobs will be created or lost due to the proposed rule.

A copy of the statement may be obtained by contacting Allison Drake, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-5304, fax (360) 902-5300, email i1433 Rules@Lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allison Drake, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-5304, fax (360) 902-5300, email i1433Rules@Lni.wa.gov.

July 5, 2017
Joel Sacks
Director

AMENDATORY SECTION (Amending Regulation 294.7.001 (part), filed 12/30/60)

WAC 296-128-010 Records required. For all employees who are subject to RCW 49.46.020, employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every employee to whom said section of said act applies:

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;

(2) Home address;

(3) Occupation in which employed;

(4) Date of birth if under eighteen;

(5) Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees;

(6) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive twenty-four hours);

(7) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;

(8) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;

(9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;

(10) Total wages paid each pay period;

(11) Date of payment and the pay period covered by payment;

(12) Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;

(13) Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an employee, paid sick leave donated to a co-worker through a shared leave program, or paid sick leave not carried over to the following year ("year" as defined in WAC 296-128-620(6));

(14) The date of commencement of his or her employment, as defined in WAC 296-128-600(2);

(15) Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined.

NEW SECTION

WAC 296-128-600 Definitions. (1) "Absences exceeding three days" means absences exceeding three consecutive days an employee is scheduled to work. For example, assume an employee is scheduled to work on Mondays, Wednesdays, and Fridays, and then the employee uses paid sick leave for any portion of those three work days in a row. If the employee uses paid sick leave again on the following Monday, the employee would have absences exceeding three days.

(2) "Commencement of his or her employment" means no later than the beginning of the first day on which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(5) "Employee" has the same meaning as RCW 49.46.010(3).

(6) "Employer" has the same meaning as RCW 49.46.010(4).

(7) "Frontloading" means providing an employee with paid sick leave before it has accrued at the rate required by RCW 49.46.210 (1)(a).

(8) "Health-related reason" means a serious public health concern that could result in bodily injury or exposure to an infectious agent, biological toxin, or hazardous material. Health-related reason does not include closures for inclement weather.

(9) "Hours worked" shall be interpreted in the same manner as WAC 296-126-002(8).

(10) "Normal hourly compensation" means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate.

(11) "Regular and normal wage" has the same meaning as normal hourly compensation.

(12) "Separation" and "separates from employment" mean the end of the last day an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

(13) "Verification" means evidence that establishes or confirms that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b) and (c).

(14) "Workweek" means a fixed and regularly recurring period of one hundred sixty-eight hours, or seven consecutive twenty-four hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

NEW SECTION

WAC 296-128-610 Requirements for a written policy—Duty of the department to provide sample policies. Where these rules set forth requirements for an employer to have a written policy (WAC 296-128-650(3), 296-128-660(2), 296-128-710(2), and 296-128-730(4)), the department shall, in consultation with worker and employer representatives, develop sample policies which meet the department's standard for compliance with these rules. The department shall make such sample policies available on the department's web site.

NEW SECTION

WAC 296-128-620 Paid sick leave accrual. (1) Employees accrue paid sick leave for all hours worked. An employee must accrue at least one hour of paid sick leave for every forty hours worked as an employee. Employers may provide employees with a more generous paid sick leave accrual rate.

(2) Paid sick leave for employees who are employed on or before January 1, 2018, will accrue for all hours worked beginning on January 1, 2018. Employees hired after January 1, 2018, begin accruing paid sick leave upon the commencement of his or her employment.

(3) Employers are not required to allow employees to accrue paid sick leave for hours paid when not working. For example, employers are not required to allow employees to accrue paid sick leave during vacation, paid time off, or while using paid sick leave.

(4) Employers must allow employees to carry over at least forty hours of accrued, unused paid sick leave to the following year. If an employee carries over forty hours of unused paid sick leave to the following year, accrual of paid sick leave in the subsequent year would be in addition to the forty hours accrued in the previous year and carried over.

(5) Employers may cap carryover of accrued, unused paid sick leave to the following year at forty hours. Employers may allow for a more generous carryover of accrued, unused paid sick leave to the following year.

(6) "Year," for purposes of this section, means calendar year, fiscal year, benefit year, employment year, or any other fixed consecutive twelve-month period established by an employer policy or a collective bargaining agreement, and used in the ordinary course of the employer's business for the purpose of calculating wages and benefits. Unless otherwise established by the employer, the default definition of "year" is calendar year.

NEW SECTION

WAC 296-128-630 Paid sick leave usage. (1) An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210 (1)(b) and (c).

(2) An employee is entitled to use accrued, unused paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment. Employers may

allow employees to use accrued, unused paid sick leave prior to the ninetieth calendar day after the commencement of his or her employment.

(3) Beginning on the ninetieth calendar day after the commencement of his or her employment, employers must make accrued paid sick leave available to employees for use in a manner consistent with the employer's established payment interval or leave records management system, not to exceed one month after the date of accrual.

(4) Unless a greater increment is approved by a variance as provided by WAC 296-128-640, employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. For example, if an employer's normal practice is to track increments of work for the purposes of compensation in fifteen-minute increments, then an employer must allow employees to use paid sick leave in fifteen-minute increments.

NEW SECTION

WAC 296-128-640 Variance from required increments of paid sick leave usage. (1) The department may grant a variance from the increments required by WAC 296-128-630(4) for "good cause." Good cause means situations where an employer can establish that compliance with the requirements for increments of use are infeasible, and that granting a variance does not have a significant harmful effect on the health, safety, and welfare of the involved employees. The existence of a collective bargaining agreement which sets forth increments of use may be used as a factor in determining good cause for granting a variance from the increments required by WAC 296-128-630(4).

(2) An employer may seek a variance from the requirement to provide employees with paid sick leave in increments greater than the increments required by WAC 296-128-630(4) by submitting a written application to the department. The application must contain the following:

(a) A justification for the variance, which establishes good cause for providing paid sick leave in increments greater than the increments required by WAC 296-128-630(4);

(b) The paid sick leave increments of use being sought;

(c) The group of employees for whom the variance is sought; and

(d) Evidence that the employer provided to the involved employees and, if applicable, to their union representatives, the following:

(i) A copy of the written request for a variance;

(ii) Information about the right of the involved employees and, if applicable, their union representatives, to be heard by the department during the variance application review process;

(iii) Information about the process by which involved employees and, if applicable, their union representatives, may make a written request to the director for reconsideration, subject to the provisions outlined in subsection (7) of this section; and

(iv) The department's address and phone number, or other contact information.

(3) The department must allow the employer, any involved employees and, if applicable, their union representatives, the opportunity for oral or written presentation during the variance application review process whenever circumstances of the particular application warrant it.

(4) No later than sixty days after the date on which the department received the application for a variance, the department must issue a written decision either granting or denying the variance. The department may extend the sixty-day time period by providing advance written notice to the employer and, if applicable, the union representatives of any involved employees, setting forth a reasonable justification for an extension of the sixty-day time period, and specifying the duration of the extension. The employer must provide involved employees with notice about any such extension.

(5) Variances will be granted if the department determines that there is good cause for allowing an employer to provide paid sick leave in increments greater than the increments required by WAC 296-128-630(4). The variance order shall state the following:

(a) The paid sick leave increments of use approved in the variance;

(b) The basis for a finding of good cause;

(c) The group of employees impacted; and

(d) The period of time for which the variance will be valid, not to exceed three years from the date of issuance.

(6) Upon making a determination for issuance of a variance, the department must make notification in writing to the employer and, if applicable, the union representatives of any involved employees. If the variance is denied, the written notification will include a stated basis for the denial.

(7) An employer, involved employee and, if applicable, their union representative, may file with the director a request for reconsideration within fifteen days after receiving notice of the variance determination. The request for reconsideration must set forth the grounds upon which the reconsideration is being made. If reasonable grounds exist, the director may grant such review and, to the extent deemed appropriate, afford all interested parties an opportunity to be heard. If the director grants such review, the written decision of the department will remain in place until the reconsideration process is complete.

(8) Unless subject to the reconsideration process, the director may revoke or terminate the variance order at any time after giving the employer at least thirty days' notice before revoking or terminating the order.

(9) Where immediate action is necessary pending further review by the department, the department may issue a temporary variance. The temporary variance will remain valid until the department determines whether good cause exists for issuing a variance. An employer need not meet the requirement in subsection (2)(d) of this section in order to be granted a temporary variance.

(10) If an employer obtains a variance under these rules, the employer must provide the involved employees with information about the increments of use requirements that apply within fifteen days of receiving notification of such approval from the department. An employer must make this information readily available to all employees.

NEW SECTION

WAC 296-128-650 Reasonable notice. (1) An employer may require employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose under RCW 49.46.210 (1)(b). Employers may require employees to comply with the employer's notification policies, as long as such policies do not interfere with an employee's lawful use of paid sick leave.

(a) If the need for paid sick leave is foreseeable, the employer may require advance notice from the employee. Unless the employer allows less advance notice, the employee must provide notice at least ten days, or as early as practicable, in advance of the use of paid sick leave.

(b) If the need for paid sick leave is unforeseeable, the employer may require notice from the employee. The employee must provide notice to the employer as soon as possible before the scheduled start of their shift, unless it is not practicable to do so. In the event it is impracticable for an employee to provide notice to their employer, a person on the employee's behalf may provide notice to the employer.

(2) If an employer requires employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such reasonable notice requirements must comply with the provisions outlined in WAC 296-135-060.

(3) Employers must have a written policy or a collective bargaining agreement outlining any requirements of an employee to give reasonable notice for the use of paid sick leave, and must make notification of such policy or agreement, prior to requiring an employee to provide reasonable notice. An employer must make this information readily available to all employees. If an employer does not require an employee to give reasonable notice for the use of paid sick leave, a written policy is not required.

NEW SECTION

WAC 296-128-660 Verification for absences exceeding three days. (1) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b) and (c).

(2) If an employer requires verification for the use of paid sick leave under RCW 49.46.210 (1)(b) and (c), the employer must have a written policy or a collective bargaining agreement outlining any such requirements. The employer must notify the employee of such policy or agreement, including the employee's right to assert that the verification requirement results in an unreasonable burden or expense on the employee, prior to requiring the employee to provide verification. An employer must make this information readily available to all employees.

(3) If an employer requires an employee to provide verification from a health care provider identifying the need for use of paid sick leave for an authorized purpose under RCW 49.46.210 (1)(b) and (c), the employer must not require that the information provided explain the nature of the condition. If the employer obtains any health information about an employee or an employee's family member, the employer must treat such information in a confidential manner consistent with applicable privacy laws.

(4) Employer-required verification may not result in an unreasonable burden or expense on the employee.

(a) If an employer requires verification, and the employee anticipates that the requirement will result in an unreasonable burden or expense, the employee must be allowed to provide an oral or written explanation to their employer which asserts:

(i) That the employee's use of paid sick leave was for an authorized purpose under RCW 49.46.210 (1)(b) or (c); and

(ii) How the employer's verification requirement creates an unreasonable burden or expense on the employee.

(b) The employer must consider the employee's explanation. Within ten calendar days of the employee providing an explanation to their employer about the existence of an unreasonable burden or expense, the employer must make a reasonable effort to identify and provide alternatives for the employee to meet the employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the employee. A reasonable effort by the employer to identify and provide alternatives could include, but is not limited to:

(i) Accepting the oral or written explanation provided by the employee, as outlined in (a)(i) and (ii) of this subsection, as a form of verification which meets the employer's verification requirement; or

(ii) Mitigating the employee's out-of-pocket expenses associated with obtaining medical verification.

(c) If after the employer considers the employee's explanation, the employer and employee disagree that the employer's verification requirement results in an unreasonable burden or expense on the employee:

(i) The employer and employee may consult with the department regarding the verification requirement; and

(ii) The employee may file a complaint with the department.

(5) If an employer requires verification that the use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b), verification must be provided to the employer within a reasonable time period during or after the leave. For employee use of paid sick leave under RCW 49.46.210 (1)(b), "reasonable time period" is a period of time defined by a written policy or a collective bargaining agreement, but may not be less than ten calendar days following the first day upon which the employee uses paid sick leave.

(6) If an employer requires verification that the use of paid sick leave is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.

(7) For use of paid sick leave for purposes authorized under the federal Family and Medical Leave Act (FMLA), an employer may require verification from an employee that complies with the FMLA's certification requirements.

NEW SECTION

WAC 296-128-670 Rate of pay for use of paid sick leave. (1) For each hour of paid sick leave used, an employee

must be paid the greater of the minimum hourly wage rate established by RCW 49.46.020 or their normal hourly compensation.

(2) An employer must calculate an employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. Examples of reasonable calculations to determine normal hourly compensation include, but are not limited to:

(a) For an employee paid partially or wholly on a commission basis, dividing the total earnings by the total hours worked in the full pay periods in the prior ninety days of employment;

(b) For an employee paid partially or wholly on a piece rate basis, dividing the total earnings by the total hours worked in the most recent workweek in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave;

(c) For nonexempt employees paid a salary, dividing the annual salary by fifty-two to determine the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work;

(d) For an employee whose hourly rate of pay fluctuates:

(i) Where the employer can identify the hourly rates of pay for which the employee was scheduled to work, a calculation equal to the scheduled hourly rates of pay the employee would have earned during the period in which paid sick leave is used;

(ii) Where the employer cannot identify the hourly rates of pay for which the employee would have earned if the employee worked, a calculation based on the employee's average hourly rate of pay in the current or preceding thirty days, whichever yields the higher hourly rate.

(3) For employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement employee in the same shift, or similarly situated employees who worked that same or similar shift.

(4) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated employees.

NEW SECTION

WAC 296-128-680 Payment of paid sick leave. Unless verification for absences exceeding three days is required by an employer, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee. If verification is required by the employer, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

NEW SECTION

WAC 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire. (1) When an employee separates from employment and is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, the employer must comply with the provisions of RCW 49.46.-210 (1)(k). If an employee separates from employment, the employer is not required to provide financial or other reimbursement to the employee for accrued, unused paid sick leave at the time of separation.

(2) An employer may choose to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment.

(a) If an employer chooses to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the employer and the employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

(b) If an employee is rehired by the same employer, whether at the same or a different business location of the employer, within twelve months after the date the employee separates from employment, the employer must reinstate the employee's accrued, unused paid sick leave. An employer need not reinstate any hours of paid sick leave previously provided to the employee through financial or other reimbursement at the time of separation, as long as the value of the paid sick leave was established and paid at a rate that was at least equal to the employee's normal hourly compensation.

(3) When an employee separates from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, an employee who reached the ninetieth calendar day of employment prior to separation shall have their previously accrued, unused paid sick leave balance available for use upon rehire. If the employee did not reach the ninetieth calendar day of employment prior to separation, the previous period of employment must be counted for purposes of determining the date upon which the employee is entitled to use paid sick leave.

(4) Upon rehire, an employer must provide notification to the employee of the amount of accrued, unused paid sick leave available for use by the employee.

(5) If the period of time an employee separates from employment extends into the following year ("year" as defined at WAC 296-128-620(6)), the employer is not required to reinstate more than forty hours of the employee's accrued, unused paid sick leave.

NEW SECTION

WAC 296-128-700 Paid time off (PTO) programs. (1) Paid time off (PTO) provided to employees by an employer's PTO program (e.g., a program that combines vacation leave, sick leave, or other forms of leave into one pool), created by a written policy or a collective bargaining agreement, satisfies the requirement to provide paid sick leave if the PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules, including:

(a) Accrual of PTO leave at a rate of not less than one hour for every forty hours worked as an employee;

(b) Payment for PTO leave at the employee's normal hourly compensation;

(c) Carryover of at least forty hours of accrued, unused PTO leave to the following year ("year" as defined at WAC 296-128-620(6));

(d) Access to use PTO leave for all the purposes authorized under RCW 49.46.210 (1)(b) and (c); and

(e) Employer notification and recordkeeping requirements set forth in WAC 296-128-010 and 296-128-760.

(2) If an employee chooses to use their PTO leave for purposes other than those authorized under RCW 49.46.210 (1)(b) and (c), and the need for use of paid sick leave later arises when no additional PTO leave is available, the employer is not required to provide any additional PTO leave to the employee as long as the employer's PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.

NEW SECTION

WAC 296-128-710 Shared leave. (1) An employer may establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a co-worker.

(2) If an employer establishes a shared paid sick leave program, the employer must have a written policy or a collective bargaining agreement which specifies that an employee may donate accrued, unused paid sick leave to a co-worker for purposes authorized under RCW 49.46.210 (1)(b) and (c).

The employer must notify employees of such policy or agreement prior to allowing an employee to donate or use shared paid sick leave. An employer must make this information readily available to all employees.

NEW SECTION

WAC 296-128-720 Shift swapping. (1) An employer may not require, as a condition of an employee using paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick leave.

(2) Upon mutual agreement by the employer and employee(s) involved, an employee may work additional hours or shifts, or trade shifts with another employee, in lieu of using available paid sick leave for missed hours or shifts that qualify for the use of paid sick leave.

NEW SECTION

WAC 296-128-730 Frontloading. (1) An employer may, but is not required to, frontload paid sick leave to an employee in advance of accrual.

(2) If an employer frontloads paid sick leave, the employer must ensure that such frontloaded paid sick leave complies with the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.

(3) If an employer frontloads paid sick leave, the employer must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210 (1)(a), to determine the amount of paid sick leave the employee would be projected to accrue during the period of time for which paid sick leave is being frontloaded.

(a) If the employer calculates and frontloads, and an employee subsequently uses, an amount of paid sick leave which exceeds the paid sick leave the employee would have otherwise accrued absent frontloading, the employer shall not seek reimbursement from the employee for such paid sick leave used during the course of ongoing employment.

(b) If an employer frontloads paid sick leave to an employee, but such frontloaded paid sick leave is less than the amount the employee was entitled to accrue under RCW 49.46.210 (1)(a), the employer must make such additional amounts of paid sick leave available for use by the employee as soon as practicable, but no later than thirty days after identifying the discrepancy.

(4) The employer must have a written policy or a collective bargaining agreement which addresses the requirements for use of frontloaded paid sick leave. An employer must notify employees of such policy or agreement prior to frontloading an employee paid sick leave, and must make this information readily available to all employees.

(5) An employer may not make a deduction from an employee's final wages for frontloaded paid sick leave used prior to the accrual rate required by RCW 49.46.210 (1)(a), unless there is a specific agreement in place with the employee allowing for such a deduction. Such deductions must also meet the requirements set forth in RCW 49.48.010 and WAC 296-126-025.

NEW SECTION

WAC 296-128-740 Third-party administrators. (1) Employers may contract with a third-party administrator in order to administer the paid sick leave requirements under RCW 49.46.200 and 49.46.210, and all applicable rules.

(2) Employers are not relieved of their obligations under RCW 49.46.200 and 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer paid sick leave requirements. With the consent of employers, third-party administrators may pool an employee's accrued, unused paid sick leave from multiple employers as long as the accrual rate is at least equal to one hour of paid sick leave for every forty hours worked as an employee. For example, if a group of employers have employees who perform work for various employers at different times, the employers may choose to contract with a third-party administrator to track the hours worked and rate of accrual for paid sick leave for each employee, and pool such accrued, unused paid sick leave for use by the employee when the employee is working for any employers in the same third-party administrator network.

(3) A collective bargaining agreement may outline the provisions for an employer to use a third-party administrator as long as such provisions meet all paid sick leave requirements under RCW 49.46.200 and 49.46.210, and all applicable rules.

NEW SECTION

WAC 296-128-750 Employee use of paid sick leave for unauthorized purposes. (1) If an employer can demon-

strate that an employee's use of paid sick leave was for a purpose not authorized under RCW 49.46.210 (1)(b) and (c), the employer may withhold payment of paid sick leave for such hours, but may not subsequently deduct those hours from an employee's legitimately accrued, unused paid sick leave hours.

(2) If an employer withholds payment for the use of paid sick leave for purposes not authorized under RCW 49.46.210 (1)(b) and (c), the employer must provide notification to the employee. If the employee maintains that the use of paid sick leave was for an authorized purpose, the employee may file a complaint with the department.

NEW SECTION

WAC 296-128-760 Employer notification and reporting to employees. (1) Employers must notify each employee of their entitlement to paid sick leave, the rate at which the employee will accrue paid sick leave, the authorized purposes under which paid sick leave may be used, and that retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(a) Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.

(b) For employees hired on or after January 1, 2018, employers must notify each employee of such rights no later than the commencement of his or her employment. For existing employees as of January 1, 2018, the employer must notify each employee no later than March 1, 2018.

(2) Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued and the paid sick leave reductions since the last notification, and any unused paid sick leave available for use by the employee. Employers may satisfy the notification requirements by providing this information in regular payroll statements.

(a) Employers are not required to provide monthly notification to an employee if the employee has no hours worked since the last notification.

(b) If an employer chooses to frontload paid sick leave to an employee in advance of accrual:

(i) The employer must make written or electronic notification to an employee no later than the end of the period for which the frontloaded paid sick leave was intended to cover, establishing that the amount of paid sick leave frontloaded to the employee was at least equal to the accrual rate under RCW 49.46.210 (1)(a); and

(ii) The employer is not relieved of their obligation to provide notification, not less than monthly, of the paid sick leave available for use by the employee.

NEW SECTION

WAC 296-128-770 Retaliation. (1) It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.46 RCW. This means an employer may not use an employee's exercise of any of the rights provided under chapter 49.46 RCW as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under chapter 49.46 RCW.

(2) It is unlawful for an employer to adopt or enforce any policy that counts the use of paid sick leave for a purpose authorized under RCW 49.46.210 (1)(b) and (c) as an absence that may lead to or result in discipline by the employer against the employee.

(3) It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under chapter 49.46 RCW. Such rights include, but are not limited to: Filing an action, or instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW; exercising their right to paid sick leave, minimum wage, overtime, tips and gratuities; or testifying or intending to testify in any such proceeding related to any rights provided under chapter 49.46 RCW.

(4) Adverse action means any action taken or threatened by an employer against an employee for their exercise of chapter 49.46 RCW rights, which may include, but is not limited to:

(a) Denying use of, or delaying payment for, paid sick leave, minimum wages, overtime wages, all tips and gratuities, and all service charges, except those service charges itemized as not being payable to the employee or employees servicing the customer;

(b) Terminating, suspending, demoting, or denying a promotion;

(c) Reducing the number of work hours for which the employee is scheduled;

(d) Altering the employee's preexisting work schedule;

(e) Reducing the employee's rate of pay; and

(f) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.

((~~HANDICAPPED~~)) WORKERS WITH A DISABILITY

AMENDATORY SECTION (Amending § 2, Regulation 294.6.005, filed 12/30/60)

WAC 296-128-055 Definition. "((~~Handicapped~~)) Worker with a disability" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he or she is to perform.

AMENDATORY SECTION (Amending § 3, Regulation 294.6.005, filed 12/30/60)

WAC 296-128-060 Application for certificate. (1) Application for a certificate authorizing the employment of ((~~handicapped~~)) workers with a disability shall be made upon forms made available by the director or ((~~his~~)) authorized representatives.

(2) The application shall set forth, among other things, the nature of the disability, a description of the occupation at which the ((~~handicapped~~)) worker with a disability is to be employed, and the wage the employer proposes to pay the ((~~handicapped~~)) worker with a disability per hour. The nature of the disability must be set out in detail.

(3) The application shall be signed jointly by the employer and the ((~~handicapped~~)) worker with a disability for whom such application is being made, except as otherwise authorized by the director or ((~~his~~)) an authorized representative.

AMENDATORY SECTION (Amending § 4, Regulation 294.6.005, filed 12/30/60)

WAC 296-128-065 Conditions for granting a certificate. (1) If the application is in proper form and sets forth facts showing:

(a) A subminimum wage is necessary to prevent curtailment of the ((~~handicapped worker's~~)) worker with a disability's opportunities for employment;

(b) The ((~~handicap~~)) disability impairs the earning capacity of the worker for the work he or she is to perform, a certificate may be issued.

(2) The director or ((~~his~~)) an authorized representative may require the submission of additional information to that shown on the application and may require the ((~~handicapped~~)) worker with a disability to take a medical examination where it is deemed necessary in order to determine whether or not the issuance of a certificate is justified.

AMENDATORY SECTION (Amending § 5, Regulation 294.6.005, filed 12/30/60)

WAC 296-128-070 Issuance of certificate. If the application and other available information indicate that the requirements of this regulation are satisfied, the director or ((~~his~~)) an authorized representative shall issue a certificate. Otherwise ((~~he~~)) the director or an authorized representative shall deny a certificate. If issued, copies of the certificate shall be mailed to the employer and the ((~~handicapped~~)) worker with a disability and if denied, the employer and the ((~~handicapped~~)) worker with a disability shall be given written notice of the denial.

AMENDATORY SECTION (Amending § 6, Regulation 294.6.005, filed 12/30/60)

WAC 296-128-075 Terms of certificate. (1) A certificate shall specify, among other things, the name of the ((~~handicapped~~)) worker with a disability, the name of the employer, the occupation in which the ((~~handicapped~~)) worker with a disability is to be employed, the authorized subminimum wage rate and the period of time during which such wage rate may be paid.

(2) A certificate shall be effective for a period to be designated by the director or ((~~his~~)) an authorized representative and a ((~~handicapped~~)) worker with a disability employed under such certificate may be paid subminimum wages only during the effective period of the certificate.

(3) The wage rate set in the certificate shall be fixed at a figure designed to reflect adequately the ((~~handicapped worker's~~)) worker with a disability's earning capacity. No wage rate shall be fixed at less than seventy-five percent of the applicable minimum wage under RCW 49.46.020 unless, after investigation a lower rate appears to be clearly justified.

(4) Any money received by a ((~~handicapped~~)) worker with a disability by reason of any state or federal pension or compensation program for ((~~handicapped persons~~)) workers with a disability shall not be considered as offsetting any part of the wage or remuneration due the ((~~handicapped~~)) worker by the employer.

(5) The worker with a disability or trainee shall be paid not less than one and one-half times the regular rate for hours worked in excess of forty in the workweek or eight in the workday.

(6) The terms of any certificate, including the subminimum wage rate specified therein, may be amended by the director or ((~~his~~)) an authorized representative upon written notice to the parties concerned, if the facts justify such amendment.