

WSR 20-22-102
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed November 3, 2020, 3:57 p.m.]

Supplemental Notice to WSR 20-11-055.

Preproposal statement of inquiry was filed as WSR 19-03-148.

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements, amending the following sections: WAC 388-76-10510 Resident rights—Basic rights, 388-76-10515 Resident rights—Exercise of rights, 388-76-10522 Resident rights—Notice—Policy on accepting Medicaid as a payment source, 388-76-10525 Resident rights—Description, 388-76-10530 Resident rights—Notice of services, 388-76-10532 Resident rights—Standardized disclosure of services form, 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits, 388-76-10545 Resident rights—Admitting and keeping residents, 388-76-10550 Resident rights—Adult family home staffing—Notification required, 388-76-10560 Resident rights—Adult family home management of resident financial affairs, 388-76-10561 Resident rights—Resident security deposit account, 388-76-10585 Resident rights—Examination of inspection results, 388-76-10595 Resident rights—Advocacy access and visitation rights, 388-76-10600 Resident rights—Mail and telephone privacy, 388-76-10605 Resident rights—Personal property and storage space, 388-76-10615 Resident rights—Transfer and discharge, 388-76-10620 Resident rights—Quality of life—General, 388-76-10685 Bedrooms, 388-76-10715 Doors—Ability to open, 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring, 388-76-10725 Electronic monitoring equipment—Resident requested use, 388-76-10750 Safety and maintenance, 388-76-10765 Storage, 388-76-10770 Telephones, 388-76-10784 Water hazards—Fences, gates and alarms, 388-76-10795 Windows, 388-76-10800 Adult family home located outside of public fire protection, 388-76-10805 Automatic smoke detectors, 388-76-10810 Fire extinguishers, 388-76-10825 Space heaters, fireplaces, and stoves, 388-76-10830 Emergency and disaster plan—Required, 388-76-10840 Emergency food supply, 388-76-10850 Emergency medical supplies, 388-76-10865 Resident evacuation from adult family home, 388-76-10870 Resident evacuation capability levels—Identification required, 388-76-10885 Elements of emergency evacuation floor plan, 388-76-10890 Posting the emergency evacuation floor plan—Required, 388-76-10895 Emergency evacuation drills—Frequency and participation, 388-76-10900 Documentation of emergency evacuation drills—Required, and 388-76-10905 Emergency evacuation—Notification of department required.

The proposal would also repeal the following sections: WAC 388-76-10520 Resident rights—General notice, 388-76-10555 Resident rights—Financial affairs, 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs, and 388-76-10835 Elements of an emergency and disaster plan.

This proposal would also add a new section, WAC 388-76-10616 Resident rights—Transfer and discharge notice.

Hearing Location(s): On December 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than December 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update rules that are obsolete or require clarification. The department worked with internal and external stakeholders to identify rules that have been in place for a number of years and that are ambiguous or difficult to implement or enforce. We sought to clarify areas where a rule may have multiple interpretations. Some of the rules are being updated to reflect new or improved technology. Other rule changes are intended to improve resident safety. Because some of the regulations in the section outlining resident rights are closely related to the federal regulations under the home and community based settings program, we adapted the language to a closer alignment with those requirements. Similarly, adult family homes must meet the requirements of this chapter and the building code, so some of the changes here incorporate parts of the international residential code as adopted by Washington state into this chapter for easier use.

Reasons Supporting Proposal: The goal of this proposal is to update these rules to improve clarity and usability of the rules and compliance by adult family homes, and improve resident safety and quality of life. Addressing known barriers and increasing the clarity of the rules is intended to improve compliance. Reorganizing and strengthening these rules is intended to improve resident safety and quality of life, and make it easier for residents to exercise their rights. The department solicited feedback on the proposal from internal and external stakeholders and incorporated the suggestions received wherever possible.

This proposal was updated based on comments received during the previous public comment period. The supplemental rule filing is to allow the public to comment on the changes. This second supplemental filing reflects changes made on public comments.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: Chapters 70.128, 74.34 RCW.

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

Name of Proponent: [No information supplied], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, P.O. Box 45600, Olympia, WA 98504, 360-464-0487.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Libby Wagner, P.O. Box 45600, Olympia, WA 98504, phone 360-464-0487, fax 360-725-3224, email libby.wagner@dshs.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

The department completed a small business economic impact statement and cost-benefit analysis and determined that while most homes will face no costs or minimal costs, some homes may experience more-than-minor costs. However, the benefits to these changes outweigh the costs.

A copy of the statement may be obtained by contacting Libby Wagner, P.O. Box 45600, Olympia, WA 98504, phone 360-464-0487, fax 360-725-3224, email libby.wagner@dshs.wa.gov.

November 2, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10510 Resident rights—Basic rights. The adult family home must ensure that each resident:

- (1) Receives appropriate necessary services, as identified in the assessment and negotiated care plan;
- (2) Is treated with courtesy, dignity, and respect;
- (3) Continues to enjoy basic civil and legal rights;
- (4) Has the ~~((chance))~~ opportunity to exercise ~~((reasonable))~~ control over life decisions, such as ((choice)) making the resident's own choices about daily life, participation in services or activities, care, and privacy;
- (5) ~~((Is provided))~~ Has the opportunity to engage in religious, political, civic, recreational, and other social activities of their choice;
- (6) Is cared for in a manner ~~((and in an environment))~~ that ~~((promotes maintenance or enhancement of each))~~ enhances or maintains the resident's quality of life ((including a));
- (7) Is cared for in an environment that is safe, clean, comfortable, and homelike ((environment)); and
- ~~((7-Is allowed))~~ (8) Has the freedom to have and use ((his or her)) their personal belongings to the extent possible.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10515 Resident rights—Exercise of rights. The adult family home must:

(1) Protect each resident's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the home;

(2) Protect and promote the rights of each resident and assist the resident to exercise ~~((his or her))~~ the rights ((as)) of a resident of the home((, as a citizen or resident of the United States)) and the state of Washington.

(3) Be free of interference, coercion, discrimination, and ~~((reprisal))~~ retaliation from the home in exercising ~~((his or her))~~ the resident's rights; and

(4) Ensure the resident's right to choose a representative who may exercise the resident's rights to the extent provided by law.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10522 Resident rights—Notice—Policy on accepting medicaid as a payment source. The adult family home must fully disclose the home's policy on accepting medicaid ~~((payments))~~ or other public funds as a payment source. The policy must:

(1) Clearly state the circumstances under which the adult family home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language ~~((that))~~ the resident understands;

(3) Be provided to all prospective residents, before ~~((they are admitted))~~ admission to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be a written ~~((on a page))~~ document that is separate from other documents and ~~((be written in))~~ use a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and ~~((be))~~ kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10525 Resident rights—((Description)) Postings. The adult family home must ~~((give each resident a written description of resident's rights that includes a))~~ post the following in a common use area where they can be easily viewed by anyone in the home, including residents, resident representatives, the department, and visitors:

(1) ~~((Description of how the home will protect personal funds))~~ The name, address, and telephone number for the home's regional residential care services licensing office;

(2) ~~((Posting of names, addresses, and telephone numbers of the:~~

(a) State survey and certification agency;

(b) State licensing office;

(c) State ombuds program; and

~~((d) Protection and advocacy systems.))~~ The department's poster that includes the complaint resolution unit hotline and the telephone number for the state ombuds program; and

(3) ~~((Statement informing the resident that he or she may file a complaint with the appropriate state licensing agency~~

concerning alleged abandonment, abuse, neglect, or financial exploitation)) The poster from the agency designated as the protection and advocacy system for residents with disabilities.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10530 Resident rights—Notice of rights and services. (1) The adult family home must provide each resident ((notice in writing)) written notice of the resident's rights and services provided in the home in a language the resident understands and before ((admission, and)) the resident is admitted to the home. The notice must be reviewed at least once every twenty-four months ((after admission of)) from the date of the resident's admission and must include the following:

((1)) (a) Information regarding resident rights, including rights under chapter 70.129 RCW;

(b) A complete description of the services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;

((2)) (c) A complete description of the charges for those services, items, and activities, including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs; ((and

(3)) (d) The monthly or per diem rate charged to private pay residents to live in the home;

(e) Rules of the ((home's operations)) home, which must not violate resident rights in chapter 70.129 RCW;

(f) How the resident can file a complaint concerning alleged abandonment, abuse, neglect, or financial exploitation with the state hotline; and

(g) If the home will be managing the resident's funds, a description of how the home will protect the resident's funds.

(2) Upon receiving the notice of rights and services at admission and at least every twenty-four months, the home must ensure the resident and a representative of the home sign and date an acknowledgement stating that the resident has received the notice of rights and services as outlined in this section. The home must retain a signed and dated copy of both the notice of rights and services and the acknowledgement in the resident's record.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10532 Resident rights—Department standardized disclosure ((of services form)) forms. (1) The adult family home ((is required to)) must complete the department's standardized disclosure of services form.

((1)) The home must:

(a) List on the form the scope of care and services available in the home;

(b) Send the completed form to the department when applying for a license; and

(c) Provide an updated form to the department thirty days prior to changing services, except in emergencies, when the scope of care and services is changing.

(2) The ((form does not:

(a) Replace the notice of services required when a resident is admitted to the adult family home as directed in chapter 388-76-10530 WAC.

(b) Replace any other form or policy as required in chapter 388-76 WAC)) adult family home must complete the disclosure of charges form as provided by the department. The home must:

(a) Provide a copy to each resident prior to or upon admission to the home;

(b) Provide a copy upon resident request; and

(c) Keep a copy that has been signed and dated by the resident in the resident's record.

(3) These forms do not replace the notice of rights and services required when a resident is admitted to the adult family home as directed in WAC 388-76-10530.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10540 Resident rights—Disclosure of ((fees and)) charges—Notice requirements—Deposits. (1) ((The adult family home must complete the department's disclosure of charges form and provide a copy to each resident admitted to the home.

(2)) If the adult family home requires an admission fee, deposit, prepaid charges, or any other fees or charges, by or on behalf of a person seeking admission, the home must ((give the resident full)) include this information on the disclosure of charges form in writing in a language the resident understands prior to its receipt of any funds.

((3)) (2) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees, or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, transferred, or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges that the home will refund to the resident if the resident leaves the home.

((4) The home must ensure that the resident and home sign and date an acknowledgement in writing stating that the resident has received a disclosure required under subsection (2) of this section. The home must retain a copy of the disclosure and acknowledgement.

((5)) (3) If the home does not provide the disclosures in subsection ((3)) (1) of this section to the resident, the home must not keep the resident's security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

((6)) (4) If a resident dies, is hospitalized, or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges paid by the resident less the home's per diem rate for the days the resident actually resided, reserved, or retained a bed in the home

regardless of any minimum stay policy or discharge notice requirements;

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the home's admission agreement; and

(c) Must not require the resident to obtain a refund from a placement agency or person.

~~((7))~~ (5) The adult family home must not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

~~((8))~~ (6) The adult family home must provide the resident with any and all refunds due ~~((to him or her))~~ within thirty days from the resident's date of discharge from the home.

~~((9))~~ (7) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

~~((10))~~ (8) The home must ensure that ~~((any resident admission agreement))~~ the notice of rights and services is consistent with the requirements of this section, chapters 70.128, 70.129, and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10545 Resident rights—Admitting and keeping residents. The adult family home must:

(1) Only admit or keep individuals whose needs the home can safely ~~((serve in the home))~~ meet:

(a) With ~~((appropriate))~~ qualified available staff; and

(b) Through the provision of reasonable accommodations required by state and federal law~~((:))~~;

(2) Not admit an individual before obtaining ~~((a thorough))~~ a complete assessment of the ~~((resident's))~~ individual's needs and preferences, except in cases of a genuine emergency;

(3) Ensure that the admission of the individual does not negatively affect the ability of the home to meet the needs of or endangers the safety of other residents; and

(4) Comply with all applicable federal and state requirements regarding nondiscrimination.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required. The adult family home must provide the following information in writing to prospective residents before admission and current residents who were admitted before this requirement took effect:

(1) Information about the provider, entity representative, and resident manager, ~~((if there is a resident manager))~~ including:

(a) Availability in the home, including a general statement about how often ~~((he or she is))~~ they each are in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) ~~((His or her))~~ Primary responsibilities, including ~~((whether he or she makes daily))~~ which general care management decisions they will make and which will be made by the resident or their representative; and

(e) How to contact the provider, entity representative ~~((or)), and~~ resident manager when ~~((he or she is))~~ not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents, including:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) ~~((His or her))~~ Primary responsibilities~~((including whether he or she makes daily general care management decisions))~~;

(d) The nonroutine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make ~~((available))~~ the services of a licensed nurse available in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10560 Resident rights—Adult family home management of resident financial affairs. (1) Each resident has the right to manage their own financial affairs. The adult family home must not require any resident to deposit their personal funds with the home.

(2) If the adult family home agrees to manage a resident's personal funds, the home must ~~((do all of the following))~~:

~~((1) Hold, safeguard, manage, and account for the personal funds of the resident deposited with the home))~~;

~~((2))~~ (a) Have a written authorization from the resident;

(b) Develop and maintain a system that assures a full, complete, and separate accounting of each resident's personal funds given to the home on the resident's behalf;

(c) Ensure the resident's funds are not mixed with the home's funds or with the funds of any person other than another resident. If funds are pooled accounts, there must be a separate accounting for each resident's share;

~~((3))~~ (d) Deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing ~~((account or accounts))~~ account(s) separate from any of the home's operating accounts~~((:))~~ and that credits all interest earned on residents' funds to that account;

~~((4) If funds are pooled accounts, there must be a separate accounting for each resident's share; and))~~ (e) Ensure that the account or accounts are held in a financial institution as

defined in RCW 30A.22.040, and notify each resident in writing of the name, address, and location of the depository.

~~((5))~~ (f) Keep a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund; and

(g) Provide an individual financial record when requested by the resident or the resident's legal representative.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10561 Resident rights—Resident security deposit account. ~~((Any))~~ (1) Funds in excess of one hundred dollars that are paid to an adult family home as a security deposit or as prepayment for charges beyond the first month's residency

~~((+))~~ must be deposited by the adult family home in an interest bearing account that is separate from any of the home's operating accounts and that credits all interest earned on the resident's funds to that account.

(2) The adult family home must:

(a) ~~((Ensure that))~~ Provide a record of the account ~~((is available upon the request of))~~ when requested by the resident ~~((or their))~~, the resident's representative, or the department;

(b) ~~((Not commingle resident))~~ Ensure the resident's funds ~~((from these accounts))~~ are not mixed with the ~~((adult family))~~ home's funds or with the funds of any person other than another resident. If an account pools resident funds ~~((are commingled))~~, ~~((the home must provide each resident with))~~ there must be a separate accounting for ~~((their))~~ each resident's share;

(c) Ensure that the ~~((account or accounts))~~ account(s) are held, and remain until a resident refund occurs, in a financial institution as defined in ~~((RCW 30.22.041;))~~ RCW 30A.22.040; and

(d) Notify ~~((each))~~ the resident in writing of the name, address, and location of the depository.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10585 Resident rights—Examination of inspection results. (1) The adult family home must place a copy of the following documents ~~((in a visible location))~~ in a common use area where they can be ~~((examined))~~ easily viewed by residents, resident representatives, the department, and anyone interested without having to ask for them~~((:))~~:

(a) ~~((A copy of))~~ The most recent inspection report, any related follow-up reports, and related cover ~~((letter))~~ letters; and

(b) ~~((A copy of))~~ All complaint investigation reports, any related follow-up reports, and any related cover letters received since the most recent inspection or ~~((not less than))~~ within the last twelve months, whichever is longer.

(2) The adult family home must post a notice that the following documents are available for review if requested by the residents, resident representatives, the department, and anyone interested~~((:))~~:

(a) A copy of each inspection report and related cover letter received during the past three years; and

(b) A copy of any complaint investigation reports and related cover letters received during the past three years.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10595 Resident rights—Advocacy access and visitation rights. The adult family home must not interfere with each resident's right to have access to and from:

(1) Any representative of the state;

(2) The resident's own physician;

(3) The state long-term care ombuds ~~((program as established under chapter 43.190 RCW))~~ programs;

(4) The agency responsible for the protection and advocacy system for ~~((developmentally disabled individuals))~~ one or more of the following:

(a) Individuals with developmental disabilities as established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

~~((5))~~ The agency responsible for the protection and advocacy system for mentally ill individuals (b) Individuals with mental illness as established under the Protection and Advocacy for ~~((mentally ill))~~ Individuals with Mental Illness Act;

~~((6))~~ Immediate family or other relatives of (c) Individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law;

(5) Visitors who are visiting the resident ~~((and others who are visiting))~~ with the resident's consent ~~((of the resident, subject to reasonable limits))~~, which:

(a) The resident may withdraw at any time; and

(b) May only be limited when the limitation is to protect the rights or safety of the residents or others ~~((and to the resident's right to deny or withdraw consent at any time;))~~

~~((7))~~ The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law in the home and must be documented under WAC 388-76-10401; and

~~((8))~~ (6) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10600 Resident rights—Mail and telephone privacy. The adult family home must ensure each resident's right to privacy in communications, including the right to:

(1) Send and receive unopened mail without delay;

(2) Have writing paper, postage, and pens or pencils available that have been paid for by the resident; and

(3) ~~((Be able to use a telephone where calls can be made without being overheard))~~ Have twenty-four hour per day access to a telephone to make and receive confidential calls.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10605 Resident rights—Personal property and storage space. The adult family home must ensure each resident's right to keep and use personal possessions, including ~~((some))~~ furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home~~((s))~~ and not transfer or discharge the resident unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for ~~((his or her))~~ their stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must~~((:~~

~~((a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;~~

~~((b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;~~

~~((c) Record the reasons in the resident's record; and~~

~~((d) Include in the notice the items described in subsection (5) of this section.~~

~~((3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.~~

~~((4) The home may make the notice as soon as practicable before transfer or discharge when:~~

~~((a) The safety and health of the individuals in the home would be endangered;~~

~~((b) An immediate transfer or discharge is required by the resident's urgent medical needs; or~~

~~((c) A resident has not resided in the home for thirty days.~~

~~((5) The home must include the following in the written notice specified in subsection (2) of this section:~~

~~((a) The reason for transfer or discharge;~~

~~((b) The effective date of transfer or discharge;~~

~~((c) The location where the resident is transferred or discharged;~~

~~((d) The name, address, and telephone number of the state long-term care ombuds;~~

~~((e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and~~

~~((f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals))~~ first attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident.

~~((6))~~ (3) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

~~((7))~~ (4) If the home discharges a resident in violation of this section or WAC 388-76-10616, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

NEW SECTION

WAC 388-76-10616 Resident rights—Transfer and discharge notice. (1) Before a home transfers or discharges a resident, the home must give the resident and the resident's representative a written thirty day notification informing them of the transfer or discharge. The home must also make a reasonable effort to notify, if known, any interested family member. The written notification must be in a language and manner the resident understands and include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged if known at the time of the thirty-day discharge notice;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with a developmental disability; and

(f) For residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness.

(2) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) The resident has been absent from the home for thirty or more days.

(3) A copy of the written notification must be in the resident's records.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10620 Resident rights—Quality of life—General. (1) The adult family home must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) ~~((Within reasonable))~~ The home may design home rules ~~((designed to))~~ that protect the rights and quality of life of residents~~((;))~~. Within these rules, the home must ensure the resident's right to:

(a) Choose activities, schedules, and health care consistent with ~~((his or her))~~ the resident's interests, assessments, and negotiated care plan;

(b) Interact with members of the community both inside and outside the home;

(c) Make choices about aspects of ~~((his or her))~~ life in the home that are significant to the resident;

(d) Wear ~~((his or her))~~ the resident's own clothing and decide ~~((his or her))~~ their own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated to:

(i) Be informed in advance about recommended care and services and of any recommended changes in the care and services;

(ii) Participate in planning care and treatment or changes in care and treatment;

(iii) Direct ~~((his or her))~~ the resident's own service plan and changes in the service plan, or

(iv) Refuse any particular service so long as such refusal is documented in the record of the resident.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10685 Bedrooms. The adult family home must meet all of the following requirements:

(1) Ensure each resident's bedroom is an outside room~~((;))~~ which that allows entrance of natural light~~((;))~~;

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways, and corridors to common use areas and other rooms used for care and services including bathrooms~~((;))~~;

(4) ~~((Make separate bedrooms available for each sex))~~ When a bedroom will be shared by two residents, the home must:

(a) Document through the notice of rights and services that the resident's bedroom is a shared bedroom; and

(b) Allow residents to express their preference of roommate and allow residents who mutually consent to share a bedroom to live in a double occupancy bedroom together, unless this will pose a health or safety risk for any resident in the home;

(5) ~~((Make reasonable efforts to accommodate residents wanting to share the room;))~~

~~((6))~~ Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

~~((7))~~ (6) Give each resident the opportunity to have a lock on their bedroom door if they ~~((choose))~~ choose to unless having a locked door would be unsafe for the resident and this is documented ~~((in the resident's negotiated care plan))~~ according to WAC 388-76-10401.

~~((8))~~ (7) Ensure each bedroom has a closet or a wardrobe, armoire, or reasonable ~~((facsimile thereof))~~ storage space for clothes accessible to residents. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

~~((9))~~ (8) Ensure there are no more than two residents to a bedroom~~((;))~~;

~~((10))~~ (9) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or ~~((more wide))~~ wider with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((11))~~ (10) Do not use the upper bunk of double-deck beds for a resident's bed~~((;))~~;

~~((12))~~ (11) Provide each resident a call bell ~~((or inter-room system if))~~, or an alternative way of alerting staff in an emergency, that the resident can use, unless the ~~((provider, entity representative, resident manager or caregiver))~~ bedroom of an AFH staff member is ~~((not))~~ within hearing distance of ~~((each resident))~~ the resident's bedroom ~~((and the system is required by the department;))~~ and a staff member will be within hearing distance at all times.

~~((13))~~ (12) Ensure that members of the household~~((; other than residents;))~~ and staff do not share bedrooms with residents~~((; and))~~;

~~((14))~~ (13) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside; ~~((and))~~

(3) At least one door leading to the outside is designated as ~~((the primary egress and))~~ an emergency exit. In homes licensed after January 1, 2016, this door must have a lever door handle on both sides and hardware that allows residents to exit when the door is locked and ~~((reentry))~~ immediately reenter without a key, tool, or special knowledge or effort by residents~~((;))~~;

(4) Other ~~((external exit))~~ doors leading to the outside that are not designated as ~~((the primary egress;))~~ an emergency exit must open without any special skills or knowledge, and they must remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident~~((;))~~; and

(5) All internal and external doors comply with local jurisdictional requirements as well as the building code requirements in chapter 51-51 WAC.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-76-10725, the adult family home must not use the following in the home or on the premises:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.

(2) The home may video monitor and video record activities in the home, without an audio component, only in the following areas:

- (a) Entrances and exits if the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather((-);
- (b) Outdoor areas accessible to both residents and the public, such as, but not limited to, driveways or walkways, provided that the purpose of such monitoring is to prevent theft, property damage, or other crime on the premises;
- (c) Outdoor areas not commonly used by residents; and
- ~~((e))~~ (d) Designated smoking areas, subject to the following conditions:
 - (i) Residents are assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera ~~((is))~~ must be clearly visible;
 - (iv) The video monitor ~~((is))~~ must not be viewable by the general public; and
- ~~((v))~~ (3) The home ~~((notifies))~~ must notify all residents in writing of the video monitoring equipment. The home must:

- (a) Identify in the written notification each person or organization with access to electronic monitoring; and
- (b) Retain an acknowledgment that has been signed and dated by both the resident and the home that states in writing that the resident has received this notification.
- (4) The presence of cameras must not alter the obligation of the home to provide appropriate in-person assistance and monitoring due to individual physical or cognitive limitations.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10725 Electronic monitoring equipment—Resident requested use. (1) ~~((The adult family home must not use))~~ Audio or video monitoring equipment ((to monitor any resident unless:

- ~~((a) The resident has requested the monitoring; and~~
- ~~((b) The monitoring is only used in the sleeping room of the resident who requested the monitoring;-))~~ may not be installed in an adult family home to monitor any resident sleeping area unless the resident or the resident's representative has requested and consents to the monitoring;

(2) Electronic monitoring equipment must be installed in a manner that is safe for residents;

(3) An adult family home must not refuse to admit an individual, or discharge a resident, solely because of a request to conduct authorized electronic monitoring;

(4) A resident may limit consent for use of electronic monitoring devices in their bedrooms to specific times or situations, pointing the camera in a particular direction, or prohibiting the use of certain devices;

(5) The release of audio or video monitoring recordings by the facility is prohibited, except to authorized persons or as otherwise required by law;

(6) If the resident requests that the home conduct audio or video monitoring of their sleeping area, before any electronic monitoring occurs the home must ensure:

- (a) That the electronic monitoring does not violate chapter 9.73 RCW;
- (b) ~~((The resident has identified a threat to the resident's health, safety or personal property;~~
- ~~((e))~~ The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

~~((d))~~ (c) The resident and the home have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

- ~~((z))~~ (7) The home must:
 - (a) Reevaluate the ~~((need for))~~ use of the electronic monitoring with the resident at least quarterly; and
 - (b) Have each reevaluation in writing signed and dated by the resident.

~~((4))~~ (8) The home must immediately stop electronic monitoring if the:

- (a) Resident no longer wants electronic monitoring;
- (b) Roommate objects or withdraws the consent to the electronic monitoring, or
- (c) Resident becomes unable to give consent, unless consent has been provided by a resident's representative as described in this section.

~~((5))~~ (9) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's ~~((decision maker))~~ representative.

~~((6))~~ (10) For the purposes of consenting to audio electronic monitoring, the term "resident" includes only:

- (a) The resident residing in the home; or
- (b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

~~((7))~~ (11) If the resident's decision maker consents to audio electronic monitoring as specified in subsection ~~((6) above))~~ (10) of this section, the home must maintain a copy of the court order authorizing such consent in the resident's record.

(12) If the adult family home determines that a resident, resident's family, or other third party is electronically monitoring a resident's bedroom without complying with the requirements of this section, the home must disconnect or remove such equipment until the appropriate consent is obtained and notice given as required by this section.

(13) Nothing in this section prohibits or limits an adult family home from implementing electronic monitoring pur-

suant to a resident's negotiated care plan, including but not limited to motion sensor alerts, floor pressure sensors, or global positioning devices, where the monitoring does not entail the transmittal or recording of a human-viewable image, sound, or resident name.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10750 Safety and maintenance. The adult family home must:

(1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, and homelike environment that is free of hazards;

(2) Ensure that there is existing outdoor space that is safe and usable for residents;

(3) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;

(4) Ensure items and furnishings brought into the home by the resident for their use are clean, functioning, and safe;

(5) Provide safe and functioning systems for:

- (a) Heating;
- (b) Cooling, which may include air circulating fans;
- (c) Hot and cold water;
- (d) Electricity;
- (e) Plumbing;
- (f) Garbage disposal;
- (g) Sewage;
- (h) Cooking;
- (i) Laundry;
- (j) Artificial and natural light;
- (k) Ventilation; and
- (l) Any other feature of the home(;-);

~~((5))~~ (6) Ensure water temperature is at least one hundred five degrees and does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:

- (a) Tubs;
- (b) Showers; and
- (c) Sinks(;-);

~~((6) Provide storage for)~~ (7) Keep all toxic substances(;-poisons;) and ((other)) hazardous materials ((that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;)) in locked storage and in their original containers;

(8) Grant a resident access to and use of toxic substances and hazardous materials only with direct supervision, unless the resident has been assessed as safe to use the substance or material without direct supervision and if the use is documented in the negotiated care plan;

~~((7))~~ (9) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each resident;

~~((8))~~ (10) Keep all firearms locked and accessible only to authorized persons; and

~~((9))~~ (11) Keep the home free from:

- (a) Rodents;
- (b) Flies;
- (c) Cockroaches(;-); and

(d) Other vermin.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10765 Storage. The adult family home must:

(1) Supply each resident with adequate and reasonable storage space for:

- (a) Clothing;
- (b) Personal possessions; and
- (c) Upon request, a lockable container or storage space for small items, unless ((the)):

(i) The resident has a ((private)) single occupancy room with a lockable door; and

(ii) Only the resident ((room can be locked by the resident)) and appropriate staff have a key to the door.

~~((2) Provide locked storage for all prescribed and over-the-counter medications as per WAC 388-76-10485;))~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10770 Telephones. The adult family home must ((provide)):

(1) Have at least one working ((nonpay)) telephone in the home that does not cost residents money to use; and

(2) Allow residents privacy and reasonable access to the telephone(;-and

~~(3) Privacy for the resident when making or receiving)) to make and receive calls.~~

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10784 Water hazards—Fences, gates, and alarms. For any adult family home ((newly)) licensed after July 1, 2007 or any currently licensed adult family home that adds or modifies a new or existing water hazard after July 1, 2007 must ensure:

(1) ~~((Comply with this section and))~~ Pools, spas, and hot tubs are installed according to the requirements of the(;-

~~(a)) International Residential Code (IRC)((;-and~~

~~(b)) as adopted by the Washington state ((amendments to the International Residential Code (IRC)) building code council.~~

(2) ~~((Enclose))~~ Water hazards over twenty-four inches deep ((with)) are:

(a) Enclosed by fences and gates at least forty-eight inches high; ((and))

(b) Equipped with an audible ((alarms)) alarm that sounds when ((doors, screens, and gates)) any door, screen, or gate that directly ((lead)) leads to or ((surround)) surrounds the water hazard((;-are)) is opened; and

(c) Secured by locking any doors, screens, or gates that lead directly to or surround the water hazard.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10795 Windows. (1) The adult family home must ensure at least one window in each resident bedroom meets the following requirements:

(a) The sill height (of the bedroom window is) must not be more than forty-four inches above the finished floor.

((2)) For homes licensed after July 1, 2007, the department will not approve alternatives to the sill height requirement such as step(s), raised platform(s), or other devices placed by or under the window openings.

((3)) (b) The (bedroom window must have the following:

(a) A minimum opening area must be a minimum of 5.7 square feet, except (a) that the openings of windows in rooms at grade level (floor window openings) as defined by the International Residential Code may have a minimum clear opening of 5.0 square feet. The window must also have:

((b)) (i) A minimum opening height of twenty-four inches; (and)

((e)) (ii) A minimum opening width of twenty inches; and

((4)) (c) The home must ensure the bedroom window can be opened from inside the room without keys, tools, or special knowledge or effort to open.

((5)) (d) The window must be free from obstructions that might block or interfere with access for emergency escape or rescue.

(2) When resident bedroom windows are fitted with storm windows, the home must equip the storm windows with release mechanisms that:

(a) Easily open from the inside; and

(b) Do not require a key or special knowledge or effort to open.

((6)) (3) The home must ensure that each basement (and each resident bedroom) window (that meets the requirements of subsection (1), (2) and (3) of this section, are) is kept free from obstructions that might block or interfere with access for emergency escape or rescue.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10800 Adult family home located outside of public fire protection. (1) If the adult family home is located in an area without public fire protection, the home must have written verification of adequate fire protection from the fire authority.

(2) If the local fire authority requires the home to have additional protective measures such as a fire extinguisher with a rating other than that required under WAC 388-76-10810(1), the home must meet this requirement.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10805 Automatic smoke (detectors) alarms. (1) The adult family home must ensure approved

automatic smoke (detectors) alarms are(=) installed and maintained according to manufacturer instructions;

((1) Installed,) (2) At a minimum, smoke alarms must be located in the following (locations) areas:

(a) Every resident bedroom (used by a resident);

(b) In (proximity to the area where the) the immediate vicinity of resident (e) bedroom(s), and if applicable, the sleeping areas used by the adult family home staff (sleeps); and

(c) On every level of a multilevel home.

((2) Installed in a manner so that) (3) The home must ensure the (fire warning is heard) smoke alarms in all parts of the home (upon) are active and interconnected in such a manner that the activation of (a single detector, and) one alarm will activate them all. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm.

((3)) (4) Each smoke alarm must be kept in working condition at all times.

AMENDATORY SECTION (Amending WSR 08-09-028, filed 4/8/08, effective 5/9/08)

WAC 388-76-10810 Fire extinguishers. (1) The adult family home must have an approved five pound 2A:10B-C rated fire extinguisher on each floor of the home.

(2) The home must ensure (the) fire extinguishers are:

(a) (Installed according to manufacturer recommendations) Mounted or securely fastened in a stationary position at a minimum of four inches from the floor and a maximum of sixty inches from the floor;

(b) Inspected and serviced annually;

(c) In proper working order; (and)

(d) (Readily available for use) Accessible at all times(=

(3) If required by the local fire authority, the home must provide different fire extinguishers in place of the fire extinguishers required in subsection (1) of this section); and

(e) Not located behind a locked door.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10825 Space heaters, fireplaces, and stoves. (1) The adult family home must not use oil, gas, kerosene, or electric space heaters that ~~(do not)~~ have ~~((an underwriters laboratories (UL) rating))~~ not been certified by an organization listed as a nationally recognized testing laboratory.

(2) The adult family home must ensure that stoves and heaters do not block resident, staff, or household member escape routes.

(3) The adult family home must ensure that fireplaces (and), stoves, or heaters that get hot to the touch when in use have a stable, flame-resistant barrier that (prevents accidental resident contact. The adult family home is) does not (required to have a barrier if the fireplace and stove surfaces are not) get hot to the touch (when in use) and that prevents any contact by residents or any flammable materials.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10830 Emergency and disaster plan—Required. The adult family home must have a written emergency and disaster plan ~~((and procedures))~~ to meet the needs of each resident during emergencies and disasters. The plan must include:

- (1) Responding to natural and man-made emergencies and disasters that may reasonably occur at the home;
- (2) Actions to be taken by staff and residents during and after an emergency or disaster; and
- (3) The fire drill plan for evacuation of the home.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10840 Emergency food supply. (1) The adult family home must have an on-site emergency food supply ~~((that can be stored with other food in the home and))~~ that:

- ~~((1))~~ (a) Will last for a minimum of seventy-two hours for each resident and each household member;
- ~~((2))~~ (b) Meets the dietary needs of each resident, including any specific dietary restrictions ~~((any resident))~~ they may have;
- (c) Can be stored with other food in the home; and
- ~~((3))~~ (d) Is sufficient, safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10850 Emergency medical supplies. The adult family home must ~~((have emergency medical supplies that include))~~:

- (1) ~~((First aid))~~ Have emergency medical supplies on-hand for the application of basic first aid during an emergency or disaster in a sufficient amount for the number of residents living in the home;
- (2) Replenish the emergency medical supplies as they are used; and
- ~~((2))~~ (3) Have a first aid manual.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10865 Resident evacuation from adult family home. (1) The adult family home must be able to evacuate all residents from the home to a safe location outside the home in five minutes or less.

(2) The home must ensure that residents ~~((who require assistance))~~ are able to evacuate the home as follows:

- (a) Through ~~((the primary egress))~~ a door designated as an emergency exit;
- (b) Via a path from the resident's bedroom that does not go through other bedrooms; and
- (c) Without the resident having to use any of the following:
 - (i) ~~((Stairs;~~
 - ~~((ii))~~ Elevators;

~~((iii) Chairlift))~~ (ii) Chairlifts; or
~~((iv))~~ (iii) Platform ~~((lift))~~ lifts.

(3) Residents who require assistance with evacuation must have a path via an emergency exit to the designated safe location that does not require the use of stairs.

(4) Ramps for residents to enter, exit, or evacuate on homes licensed after November 1, 2016 must:

(a) Comply with ~~((WAC 51-51-0325))~~ chapter 51-51 WAC;

(b) Have a slope measuring no greater than eight and three-tenths percent in the direction of travel; and

(c) Have required landings at the top, bottom, and at any change of direction, with a slope measuring no greater than two percent in the direction of travel.

~~((4))~~ (5) Homes that serve residents who are not able to hear the fire alarm warning must install visual fire alarms.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10870 Resident evacuation capability levels—Identification required. The adult family home must ensure that each resident's assessment, preliminary service plan, and negotiated care plan identifies ~~((and each resident's preliminary care plan and negotiated care plan))~~ and describes the resident's ability to evacuate the home according to the following descriptions:

(1) Independent: Resident is physically and mentally capable of ~~((safely getting out of))~~ independently evacuating the home without the assistance of another individual or the use of mobility aids. The department will consider a resident independent if capable of getting out of the home after one ~~((verbal))~~ cue ~~((;))~~.

(2) Assistance required: Resident is not physically or mentally capable of ~~((getting out of))~~ evacuating the ~~((house))~~ home without assistance from another individual ~~((or))~~, mobility aids, or multiple cues.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10885 Elements of emergency evacuation floor plan. The adult family home must ~~((ensure the))~~ develop an emergency evacuation floor plan ~~((has))~~ for each level of the home that:

(1) ~~((An accurate floor plan of the home, including))~~ Is accurate and includes all rooms, hallways, and exits (such as doorways and windows) to the outside of the home;

(2) Illustrates the emergency evacuation ~~((routes showing the paths to take))~~ route(s) to exit the home, with the route to the emergency exit door being easily identifiable; and

(3) Identifies the designated safe location for the residents to meet outside the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10890 Posting the emergency evacuation floor plan—Required. The adult family home must display an emergency evacuation floor plan on each floor of the home ~~((it))~~ and the plan must:

(1) Be posted in a visible location ((in the home)) commonly used by residents, staff, and visitors alike; and

(2) ((Common areas normally used by residents, staff and visitors)) Illustrate the evacuation route from the rooms on that floor to the designated safe location outside the home.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. (1) There are two types of emergency evacuation drills:

(a) A full evacuation is evacuation from the home to the designated safe location; and

(b) A partial evacuation is evacuation to the designated emergency exit.

(2) The adult family home must ((ensure)) conduct:

((1)) (a) Partial emergency evacuation drills which occur during random staffing shifts at least every ((two months)) sixty days, with each resident participating in at least one each calendar year; ((and

((2) All residents take part in)) (b) A full emergency evacuation drill at least once each calendar year, with all residents participating in the drill together and at the same time ((at least one emergency evacuation drill each calendar year that includes full evacuation from the home to a safe location)); and

(c) Emergency evacuation drills even if there are no residents living in the home for the purpose of staff practice.

(3) The home must respect the resident's right to refuse to participate in emergency evacuation drills. However, the home must still demonstrate the ability to safely evacuate all residents doing the following:

(a) Documenting the resident's wish to refuse to participate in the negotiated care plan;

(b) Providing an estimate of the amount of time it would take to evacuate the resident and how they calculated this estimate in the negotiated care plan;

(c) Adding the estimated time to the time recorded on the emergency evacuation drill log after each drill to ensure the length of time to evacuate does not exceed five minutes; and

(d) Continuing to offer the resident a chance to participate in every evacuation drill.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10900 Documentation of emergency evacuation drills—Required. The adult family home must document ((in writing)) the following for all emergency evacuation drills ((which must include)):

(1) Names of each resident and staff involved in the drill;

(2) Name of the person conducting the drill;

(3) Date and time of the drill;

(4) Whether the drill was a full or partial emergency evacuation; and

((4)) (5) The length of time it took to ((evacuate all residents)) complete the evacuation.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10905 Emergency evacuation—Notification of department required. The adult family home must ((immediately call)) notify the department's complaint ((to a free complaint telephone number of)) resolution unit as soon as possible after resident safety is secure when:

(1) The home is on emergent stand-by for evacuation;

(2) There is any fire; or

((2) Emergency evacuation)) (3) Residents were evacuated from the home.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10520 Resident rights—General notice.

WAC 388-76-10555 Resident rights—Financial affairs.

WAC 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs.

WAC 388-76-10835 Elements of an emergency and disaster plan.

WSR 20-23-001

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

[Filed November 4, 2020, 2:06 p.m.]

This memo serves as notice that the department of health, occupational therapy practice board (board) is withdrawing CR-102, WSR 20-20-101, WAC 246-847-051, and 246-847-190 for enforcement of AIDS education and training rules, which was filed October 5, 2020, and published in WSR 20-20-101.

This CR-102 is being withdrawn because the board is not able to meet on December 18, 2020, the date established for the hearing. The board is filing a new CR-102 and is establishing a new hearing date for January 22, 2021.

Individuals requiring information on this rule should contact Kathy Weed, program manager, at 360-236-4883.

Tami M. Thompson
Regulatory Affairs Manager

WSR 20-23-017

PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 6, 2020, 1:51 p.m.]

Continuance of WSR 20-19-132 [20-22-038].

Preproposal statement of inquiry was filed as WSR 20-06-060.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Date of Intended Adoption: March 1, 2021.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-4988, by February 1, 2021, by 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by October 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is filing a continuance of the proposal to extend the written comment period from November 6, 2020, to February 1, 2021. This will allow stakeholders more time to provide comments on the proposal. We are anticipating an adoption date of March 1, 2021, with an effective date of April 1, 2021. Public hearings were held October 27 and 29, 2020.

Reasons Supporting Proposal: This proposal will ensure Department of Energy (DOE) contractors and subcontractors will be covered by the state fund for workers' compensation insurance while working at the DOE Hanford site. This new classification and rating system will ensure that appropriate levels of premium are collected to offset losses for this work.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Keith Bingham, Tumwater, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

November 6, 2020

Joel Sacks

Director

NEW SECTION

WAC 296-17-89510 Department of Energy rates. These rates apply to businesses contracting with the Department of Energy.

Effective January 1, 2021

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
7002	0.2303	0.0034	0.1340	0.1372	0.5049
7004	5.5371	0.0858	2.1073	0.1372	7.8674
7005	4.2295	0.0657	1.5088	0.1372	5.9412
7006	0.2322	0.0035	0.1071	0.1372	0.4800
7007	1.5358	0.0236	0.7287	0.1372	2.4253
7008	3.3528	0.0519	1.2354	0.1372	4.7773
7009	3.7630	0.0580	1.5417	0.1372	5.4999
7010	4.8838	0.0752	2.1108	0.1372	7.2070
7011	7.5947	0.1172	3.0774	0.1372	10.9265
7015	7.5947	0.1172	3.0774	0.1372	10.9265

Note: The premiums assessed using these rates are not subject to experience rating (WAC 296-17-855) or retrospective rating (chapter 296-17B WAC).

NEW SECTION

WAC 296-17-950 Department of Energy reporting. This rule applies to all work performed within the boundaries of the Hanford Site pursuant to a contract with the U.S. Department of Energy, whether directly or indirectly, that is

subject to the provisions of the Industrial Insurance Act under Title 51 RCW.

(1) **Reporting requirement.** Any employer with workers performing work within the scope of this rule shall report that work, and pay premiums on that work, according to this rule.

(2) **Premium basis.** The basis for calculation of premiums for all work within the scope of this rule shall be actual worker hours.

(3) **Risk classifications.** All work performed within the scope of this rule shall be reported in the following Hanford risk classifications:

(a) WAC 296-17A-7002 Classification 7002 Department of Energy Contractors - Administrative and professional employees;

(b) WAC 296-17A-7004 Classification 7004 Fire department;

(c) WAC 296-17A-7005 Classification 7005 Police and security;

(d) WAC 296-17A-7006 through 296-17A-7011 Department of Energy classifications based on groups of common composite rates; and

(e) WAC 296-17A-7015 Classification 7015 Department of Energy contractors - Vitrification plant.

(4) **Recordkeeping.** Any employer within the scope of this rule must create and maintain records of all work performed within the scope of this rule that are sufficient for the Department to determine the proper risk classification and premiums for such work. An employer that fails to create and maintain such records is required to report and pay premiums on the work in the risk class within the scope of this rule with the highest composite premium rate.

(5) **Division of hours.** Employers who maintain records sufficient to do so may report a worker's hours in more than one applicable Hanford risk classes. Employers who have workers who perform work both within and outside the scope of this rule may report a worker's hours in multiple risk classifications, provided the non-Hanford risk classifications do not prohibit reporting in multiple classifications.

(6) **Experience rating and retrospective rating.** Premiums for work within the scope of this rule will not be experience rated, and neither the premiums, nor any losses associated with work within the scope of this rule will be used in an employer's experience calculations. Premiums for work within the scope of this rule are not subject to retrospective rating, and neither the premiums nor losses within the scope of this rule will be used in retrospective rating calculations.

(7) **Retroactive adjustment of premium rates.** Notwithstanding any provisions of this chapter, the premium rates adopted for work within the scope of this rule are subject to retroactive adjustment by the Department for up to ten years. Periodically, the Department will review the premium reporting and loss experience, and may retroactively adjust premium rates if necessary to ensure that the rates for the risk classes within the scope of this rule are neither inadequate nor excessive. If the Department retroactively increases rates, the Department will recalculate each affected employer's premiums, provide each affected employer with notice of the additional premiums due, and give the employer sixty days to pay the additional premiums without penalty or interest. If the Department retroactively decreases rates, the Department will recalculate each affected employer's premiums, and refund the difference between the premiums paid and the adjusted premiums due.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7002 Classification 7002.

~~((7002-00 Department of Energy contract~~

~~Applies to establishments that have contracted with the department of energy at DOE's nuclear facilities within the state of Washington to operate, construct or service the nuclear site. At present, the only site covered by this contract is at Richland. These contractors can be identified by the assignment of account number 000,100-xx with each contractor given a separate subaccount. The coverage provided by this classification is usually for the possibility of workers being exposed to nuclear radiation although the coverage applies to any type of on-the-job injury. Benefits for injured workers covered under this contract are paid from a special fund which DOE pays into to cover all industrial insurance and medical aid payments made to or in behalf of the injured workers and/or their beneficiaries. The premium paid by the contractors to labor and industries is limited to the supplemental pension premium assessment.~~

~~**Special note:** This classification is used to administer the DOE contract and collect supplemental pension fund premiums.))~~

7002 Department of Energy contractors - Administrative and professional employees

Applies to contractors of the Department of Energy usually working in an office or professional environment performing clerical, administrative, and professional services such as, but not limited to:

- Accounting;
- Auditing;
- Benefits coordination;
- Classroom training;
- Computer systems analysis;
- Contract administration;
- Drafting;
- Human resources;
- Legal;
- Project management;
- Risk management; and
- Software engineering.

Excludes:

- Firefighters who are to be reported separately in classification 7004;
- Law enforcement officers who are to be reported separately in classification 7005; and
- Construction activities described in classifications 7006 through 7011 which are reported in the applicable DOE construction classification.

NEW SECTION

WAC 296-17A-7004 Classification 7004.

7004 Fire department

Applies to employees of contractors for the Department of Energy, who provide firefighting and fire prevention services.

Duties of firefighters include, but are not limited to:

- Administering first aid and artificial respiration to injured persons and those overcome by fire and smoke;
 - Controlling and extinguishing fires;
 - Inspecting buildings for fire hazards and compliance with fire prevention ordinances;
 - Issuing citations to building owners listing the fire regulation violations to be corrected;
 - Maintaining firefighting equipment;
 - Protecting lives and property; and
 - Responding to fire alarms and other emergencies.
- This classification includes paramedics employed by the fire department.

NEW SECTION**WAC 296-17A-7005 Classification 7005.****7005 Police and security**

Applies to employees of contractors for the Department of Energy, who provide law enforcement and security services.

Duties of law enforcement officers include, but are not limited to:

- Arresting violators;
- Conducting criminal investigations;
- Directing traffic;
- Giving first aid;
- Guarding persons detained at the police station;
- Investigating disturbances of the peace;
- Patrolling by motor vehicle, motorcycle, bicycle, or on foot or horseback;
- Preventing crimes; and
- Responding to burglar or fire alarms.

Special note: State fund workers' compensation is not provided to volunteer firefighters covered by chapter 41.24 RCW and emergency service workers covered by chapter 38.52 RCW.

NEW SECTION

WAC 296-17A-7006 Classification 7006. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7006-00 Classification 4900 Construction project or site superintendent/manager;
- 7006-01 Classification 4911 Construction estimator;
- 7006-02 Classification 4901 Consulting engineer and geologist;
- 7006-03 Classification 4903 Safety, building inspector;
- 7006-04 Classification 6109 Physicians and medical clinics;
- 7006-05 Classification 6406 Storekeeper;
- 7006-06 Classification 6909 Laboratory; and
- 7006-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7007 Classification 7007. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7007-00 Classification 0521 Painting: Buildings-interior work;
- 7007-01 Classification 0308 Lawn care maintenance;
- 7007-02 Classification 0606 Vending machine installation, service and repair;
- 7007-03 Classification 0601 Electrical wiring: Buildings and structures;
- 7007-04 Classification 5206 Construction/logging/trucking - Permanent yard;
- 7007-05 Classification 0608 Telephone and electrical alarm system installation;
- 7007-06 Classification 6602 Janitorial, commercial cleaning;
- 7007-07 Classification 1801 Lead smelting, rolling mills, metal recovery;
- 7007-08 Classification 3411 Auto repair shop;
- 7007-09 Classification 1007 Environmental surveyors, geophysical exploration, hygienist;
- 7007-10 Classification 4910 Property management;
- 7007-11 Classification 3402 Machine shops and machinery mfg;
- 7007-12 Classification 3404 Metal good mfg;
- 7007-13 Classification 3701 Chemical mixing and manufacturing; and
- 7007-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7008 Classification 7008. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7008-00 Classification 0219 Guardrails, street signs and traffic lights installation;
- 7008-01 Classification 1704 Quarries;
- 7008-02 Classification 0603 Machinery installation, service and repair;
- 7008-03 Classification 0306 Plumbing;
- 7008-04 Classification 0607 Appliance installation svc repair, store svcs contractor, and locksmiths;
- 7008-05 Classification 0112 Sand and gravel production including dealers;
- 7008-06 Classification 0602 Elevator installation, svcs and repair;
- 7008-07 Classification 1802 Aluminum smelting; and
- 7008-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7009 Classification 7009. Applies to work reportable under the Hanford special reporting rule, that

but-for this special reporting rule, would be reportable in the following risk classifications:

7009-00 Classification 0105 Fence erection and repair N.O.C.;

7009-01 Classification 0101 Excavation, road construction, land clearing N.O.C.;

7009-02 Classification 0107 Underground utility line const and pipelaying N.O.C.;

7009-03 Classification 0104 Dredging N.O.C.;

7009-04 Classification 0108 Sewer and septic system cons, undgrd tank install, repair, remove;

7009-05 Classification 0509 Overhead power and transmission line construction;

7009-06 Classification 0502 Floor and counter covering installation;

7009-07 Classification 1703 Open cut mines;

7009-08 Classification 3506 Mobile crane, hoisting services, and concrete pumping;

7009-09 Classification 0301 Landscape construction and renovation;

7009-10 Classification 0210 Asphalt paving - Highway, streets and roads;

7009-11 Classification 0307 HVAC systems - Installation, service and repair;

7009-12 Classification 0513 Inter finish carpentry;

7009-13 Classification 0212 Asphalt paving or surfacing N.O.C.; and

7009-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7010 Classification 7010. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

7010-00 Classification 0517 Factory-built home set-up by contractor/manufacturer;

7010-01 Classification 0403 Sign erection, repair, removal;

7010-02 Classification 0214 Concrete work-highways, streets, roads and sidewalks;

7010-03 Classification 0516 Building repair, remodeling and carpentry N.O.C.;

7010-04 Classification 1702 Underground mines;

7010-05 Classification 0511 Glass installation: Buildings;

7010-06 Classification 0103 Drilling and geophysical exploration N.O.C.;

7010-07 Classification 0519 Sheet metal siding, gutter and downspout installation;

7010-08 Classification 0508 Tower, tank, windmill and crane construction;

7010-11 Classification 0512 Insulation installation and asbestos abatement work;

7010-12 Classification 0514 Garage door installation, service, and repair;

7010-13 Classification 0518 Nonwood frame building construction;

7010-14 Classification 0217 Concrete work - Foundations and flatwork;

7010-15 Classification 0541 Wallboard taping - Discounted rate;

7010-16 Classification 1101 Delivery services;

7010-17 Classification 4305 Solid waste, landfill, hazardous waste and toxic material processing or handling N.O.C.; and

7010-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7011 Classification 7011. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

7011-00 Classification 0507 Roof work - Construction and repair;

7011-01 Classification 0540 Wallboard installation - Discounted rate;

7011-02 Classification 0106 Tree care and pruning services N.O.C.;

7011-03 Classification 0510 Wood frame building construction and alterations;

7011-04 Classification 0701 Dam construction;

7011-05 Classification 0201 Bridge, bulkhead and tunnel construction;

7011-06 Classification 0302 Masonry construction;

7011-07 Classification 0504 Painting: Building and structures - Exterior work;

7011-08 Classification 0202 Pile construction, wharf, pier and dock construction, diving operations;

7011-09 Classification 0303 Plastering, stuccoing and lathing: Buildings;

7011-10 Classification 1102 Trucking; and

7011-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7015 Classification 7015.

7015 Department of Energy contractors - Vitrification plant

Applies to contractors of the Department of Energy operating and maintaining the vitrification plant, also known as "Vit Plant," on the Hanford nuclear reservation. The vitrification process converts liquid radioactive and chemical waste into a solid, stable glass, eliminating environmental risks.

The vitrification process is performed by:

- Mixing waste with silica and other glass-forming materials at the low-activity waste facility;
- Sending the mixture to high-temperature melters where they are heated to 2,100 degrees Fahrenheit to form molten glass;
- Pouring molten glass into containment vessels where it cools to become solid glass; and

- Storing the stabilized waste safely at a federal repository.

Operations and work activities are performed in the following areas of the plant:

- Analytical laboratory;
- Pretreatment facility;
- High-level waste vitrification facility;
- Steam plant;
- Glass former facility;
- Chiller/compressor plant; and
- Low-activity waste vitrification facility.

Excludes:

- Construction activities described in classifications 7006 through 7011 which are reported in the applicable DOE construction classification.

**WSR 20-23-037
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2020-12—Filed November 10, 2020, 12:05 p.m.]

Supplemental Notice to WSR 20-20-123.

Preproposal statement of inquiry was filed as WSR 20-15-129.

Title of Rule and Other Identifying Information: Health coverage supplementing medicare Part D provided through a federally authorized employer group waiver plan.

Hearing Location(s): On January 4, 2021, at 10:00 a.m. Remote access information for public testimony will be made available at the web page <https://www.insurance.wa.gov/medicare-part-d-r-2020-12>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: January 5, 2021.

Submit Written Comments to: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by January 4, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241 or 360-725-7087, email MelanieW@oic.wa.gov, by January 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This supplemental filing will seek to define product requirements and filing submission requirements for these new plans.

Reasons Supporting Proposal: The legislature recently passed SSB 6051 that permits insurers to offer medicare Part D wraparound coverage, which is a new type of plan in the market.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030.

Statute Being Implemented: None.

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

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

Name of Agency Personnel Responsible for Drafting: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7041; Implementation: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7156; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7264.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7041, fax 360-586-2023, TTY 360-725-7087, email rulescoordinator@oic.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act (RFA) because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 34.05.310 (4)(e): WAC 284-58-030.

Explanation of exemptions: WAC 284-58-030 adopts the requirements as dictated by SSB 6051.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Section 1 - Background: An EGWP, or "Egg Whip" as it is called, is a form of medicare advantage (MA) plan offered by very large employers and allows their group retirees to receive their MA benefits through the group. Part of this EGWP will generally include the medicare Part D prescription drug component, which has a variety of cost-sharing limitations. The plans which are the subject of this rule making are stand-alone prescription drug plans which supplement this EGWP Part D coverage and pay for some or all of the remaining cost sharing. These plans are relatively rare in the marketplace.

Section 2 - Rule groups and their status relative to RFA analysis:

Rule Group	WAC	Exemption Category
(5) All stand-alone prescription drug plans which exclusively supplement a medicare Part D employer group waiver plan and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.	284-58-030	RCW 34.05.310 (4)(e) (Dictated by statute). This definition is necessary to implement the new law. RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit).

Section 3 - Cost of compliance/minor cost threshold: The insurers that are affected by this rule are not small businesses as defined in RCW 19.85.020(3). The office of insurance commissioner applied a default cost of compliance (**\$100**) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524113	Direct Life Insurance Carriers	25599.65	2,787	\$25,599.65 2018 Dataset pulled from USBLS	\$3,520.62 2018 Dataset pulled from DOR
524114	Direct Health and Medical Insurance Carriers	228929.41	6,777	\$88,030.57 2018 Dataset pulled from USBLS	\$228,929.41 2018 Dataset pulled from DOR
524126	Direct Property and Casualty Insurance Carriers	33951.09	6,393	\$33,951.09 2018 Dataset pulled from USBLS	\$2,571.20 2018 Dataset pulled from DOR
524127	Direct Title Insurance Carriers	21078.9	2,646	\$12,947.98 2018 Dataset pulled from USBLS	\$21,078.90 2018 Dataset pulled from DOR
524128	Other Direct Insurance (except Life; Health; and Medical) Carriers	6357.56	118	\$6,357.56 2018 Dataset pulled from ESD	\$5,264.55 2018 Dataset pulled from DOR
524130	Reinsurance Carriers	8724.18	94	\$8,724.18 2018 Dataset pulled from USBLS	\$5,532.67 2018 Dataset pulled from DOR
524210	Insurance Agencies and Brokerages	4879.47	15,498	\$4,879.47 2018 Dataset pulled from USBLS	\$2,407.22 2018 Dataset pulled from DOR
524291	Claims Adjusting	4302.81	530	\$4,302.81 2018 Dataset pulled from USBLS	\$2,779.17 2018 Dataset pulled from DOR
524292	Third Party Administration of Insurance and Pension Funds	23596.65	3,108	\$23,596.65 2018 Dataset pulled from ESD	\$15,044.80 2018 Dataset pulled from DOR
524298	All Other Insurance Related Activities	10871.62	1,243	\$10,871.62 2018 Dataset pulled from USBLS	\$4,340.77 2018 Dataset pulled from DOR

November 10, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-58-030 General form and rate filing rules.

(1) Each credit, life or disability insurance form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must be attached to the form schedule.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF

application and state specific filing instructions applicable to the particular filing, as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions*;

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;

(c) *Washington State SERFF Health and Disability Form Filing General Instructions*; and

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions").

(4) Filers must submit separate filings for each type of insurance. This section does not apply to:

(a) Credit insurance filings made under RCW 48.34.040;
or

(b) Group insurance where different types of insurance are incorporated into a single certificate.

(5) All stand-alone prescription drug plans which exclusively supplements a medicare Part D employer group waiver plan and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.

WSR 20-23-040
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 10, 2020, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-104.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-310-0350, WorkFirst—Other exemptions from mandatory participation.

Hearing Location(s): On December 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than December 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45440, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to WAC 388-310-0350 to expand exemption from mandatory participation to include Washington state residents who are unable to participate in WorkFirst activities due to a declared state of emergency.

Reasons Supporting Proposal: The proposed amendments are necessary to defer mandatory participation in times of a declared state of emergency that would prevent clients from participating in WorkFirst activities.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennie Fitzpatrick, P.O. Box 45470, Olympia, WA 98504, 360-725-4648.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents ..."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

November 10, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) A resident of Washington state during a declared state of emergency.

(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?

We accept medical evidence from the following sources when considering disability:

(a) For a physical impairment:

(i) A physician, which includes:

(A) Medical doctor (M.D.); and

(B) Doctor of osteopathy (D.O.);

(ii) An advanced registered nurse practitioner (ARNP) for physical impairments;

(iii) A physician's assistant (P.A.);

(iv) A doctor of optometry (O.D.) for visual acuity impairments; or

(v) Doctor of podiatry (D.P.) for foot disorders;

(b) For a mental impairment:

(i) A psychiatrist;

(ii) A psychologist;

(iii) An ARNP certified in psychiatric nursing;

(iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or

(v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

(3) Who reviews and approves an exemption from participation?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team

of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?

When you are exempt due to your severe and chronic disability, you may be required to:

(a) Pursue SSI or another type of federal disability benefit; and/or

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

(5) Can I participate in WorkFirst while I am exempt?

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(6) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

(7) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(8) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

Executive Director

WSR 20-23-041
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD
 [Filed November 12, 2020, 8:27 a.m.]

Original Notice.

Proposal is exempt under chapter 36.78 RCW.

Title of Rule and Other Identifying Information: Amendments to WAC 136-500-080 Payback terms, for the emergency loan program.

Hearing Location(s): On January 28, 2021, at 2:00 p.m., at 2404 Chandler Court S.W.

Date of Intended Adoption: January 28, 2021.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, email karen@crab.wa.gov, by January 22, 2021.

Assistance for Persons with Disabilities: Contact Karen Pendleton, phone 360-753-5989, TTY 800-833-6384, email karen@crab.wa.gov, by January 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed amendment to WAC 136-500-080 defines a county's payback terms of the emergency loan program.

Reasons Supporting Proposal: This proposed amendment to WAC 136-500-080 gives a county options in payback terms of the emergency loan program.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Statute Being Implemented: Not applicable.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Johnson, PE, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989; Implementation: Drew Woods, PE, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989; and Enforcement: John Koster, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

November 5, 2019 [2020]
John M. Koster

AMENDATORY SECTION (Amending WSR 20-04-076, filed 2/4/20, effective 3/6/20)

WAC 136-500-080 Payback terms. Any loan funded through this program shall have a term not to exceed twenty-four months. The county will be invoiced six months from the date of contract execution and quarterly thereafter until the end of the contract term. If a county desires a longer payback term, the county's legislative authority may request a revised payback term at the next regularly scheduled board meeting.

Simple interest on the amount of the loan shall be the monthly rate of return for the LGIP not to exceed three percent.

If a county pays the county road administration board the principle amount of the loan within six months of the date of contract execution, no interest will be charged and the contract will be closed. Should a county not pay the loan in full within six months of the date of contract execution, interest will be calculated from the date of contract execution to the date of final payment. A county may pay off any loan received through this program before the end of the term to reduce the amount of interest owed.

WSR 20-23-047
PROPOSED RULES
HEALTH CARE AUTHORITY
 [Filed November 12, 2020, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-107.

Title of Rule and Other Identifying Information: WAC 182-505-0215 Children's Washington apple health with premiums.

Hearing Location(s): On December 22, 2020, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held. To attend the virtual public hearing, you must register at the following link: <https://attendee.gotowebinar.com/register/1401671028006212364>, Webinar ID: 814-017-931. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than December 23, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 22, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by December 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is

amending WAC 182-505-0215 to expand the children's health insurance program to include coverage for eligible children of public employees.

Reasons Supporting Proposal: See purpose.

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: Health care authority (HCA), governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Shaunice McLeod, P.O. Box 45505, Olympia, WA 98504-5505, 360-725-1423.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

November 12, 2020

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-103, filed 10/16/19, effective 1/1/20)

WAC 182-505-0215 Children's Washington apple health with premiums. (1) A child is eligible for Washington apple health with premiums if the child:

(a) Meets the requirements in WAC 182-505-0210(1);

(b) Has countable income below the standard in WAC 182-505-0100 (6)(b); and

(c) Pays the required premium under WAC 182-505-0225, unless the child is exempt under WAC 182-505-0225 (2)(c).

(2) A child is not eligible for Washington apple health with premiums if the child:

(a) Is eligible for no-cost Washington apple health; or

(b) Has creditable health insurance coverage as defined in WAC 182-500-0020(~~;~~
(~~e~~)).

(3) A child with creditable health insurance coverage may be eligible for Washington apple health with premiums if the child:

(a) Is eligible for either:

(i) Public employees benefits board (PEBB) health insurance coverage based on a family member's employment with a Washington state agency, or a Washington state university, community college, or technical college; or

((d) Is eligible for) (ii) School employees benefits board (SEBB) health insurance coverage based on a family

member's employment with a Washington school district, charter school, or educational service district; and

(b) Meets the requirements in subsection (1) of this section.

WSR 20-23-050

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 12, 2020, 3:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-095.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-482-0005 How does being a student of higher education affect my eligibility for Washington basic food program?

Hearing Location(s): On December 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than December 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-482-0005 clarify language regarding student eligibility for basic food.

Reasons Supporting Proposal: These amendments more accurately align rule language with that of federal regulations related to student eligibility for the Supplemental Nutrition Assistance Program.

Statutory Authority for Adoption: RCW 43.20A.760, 74.04.500, 74.04.510, 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.5.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ivette Dones-Figueroa, P.O. Box 45470, Olympia, WA 98504-5770, 360-725-4651.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his sec-

tion does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses, they only impact DSHS clients.

November 12, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-047, filed 2/13/20, effective 3/15/20)

WAC 388-482-0005 How does being a student of higher education affect my eligibility for the Washington basic food program? (1) ~~((For basic food, we consider you a student of higher education))~~ If you are enrolled at least half-time in an institution of higher education, you are ineligible for basic food unless you qualify for an exemption in subsection (4) of this section.

(2) You are considered a student of higher education for basic food purposes if you are:

(a) ~~((Age eighteen through forty nine;~~

~~(b) Physically and mentally able to work (we determine if you are unable to work);~~

~~((e))~~ Enrolled in an institution of higher education at least half-time as defined by the institution; and

~~((d))~~ (b) Enrolled in coursework considered to be higher education.

~~((2))~~ (3) An institution of higher education is:

(a) Any educational institution that requires a high school diploma or high school equivalency certificate;

(b) A business, trade, or vocational school that requires a high school diploma or high school equivalency; or

(c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or high school equivalency.

~~((3))~~ (4) If you are a student of higher education, you must also meet at least one of the following ~~((conditions))~~ exemptions to be eligible for basic food:

(a) You are age seventeen or younger;

(b) You are age fifty or older;

(c) You are physically or mentally unable to work (we determine if you are unable to work);

(d) You have paid employment and work an average of at least twenty hours per week each month;

~~((b))~~ (e) You are self-employed, work, and earn at least the amount you would earn working an average of twenty hours per week at the federal minimum wage each month; or

~~((e))~~ (f) You were participating in a state or federal work study program during the regular school year.

(i) To qualify under this ~~((condition))~~ exemption, you must:

(A) Have approval for work study at the time of application for basic food;

(B) Have work study that is approved for the school term; and

(C) Anticipate actually working during that time.

(ii) The work study exemption begins:

(A) The month in which the school term starts; or

(B) The month work study is approved, whichever is later.

(iii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends; or

(B) We find out you refused a work study assignment.

~~((d))~~ (g) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

~~((e))~~ (h) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

~~((f))~~ (i) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

~~((g))~~ (j) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

~~((h))~~ (k) You participate in the WorkFirst program under WAC 388-310-0200;

~~((i))~~ (l) You receive TANF or SFA benefits;

~~((j))~~ (m) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The basic food employment and training program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

~~((4))~~ (5) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

~~((5))~~ (6) We do not consider you a student of higher education if you:

(a) Graduate;

(b) Are suspended or expelled;

(c) Drop out; or

(d) Do not intend to register for the next normal school term other than summer school.

WSR 20-23-058

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed November 13, 2020, 5:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-150.

Title of Rule and Other Identifying Information: The state board of education (SBOE) has proposed amendments to chapter 180-16 WAC regarding state support of public schools. SBOE is responding to emergent COVID-19 issues in the education system with this rule making on instructional hours, the school day, and basic education compliance reporting. The purpose of this rule making on chapter 180-16 WAC is to enable local education agencies to deliver instructional hours and school days during state and local public health response that could limit the ability to hold in-person instruction during the 2020-21 school year and other rule changes as necessary. The subject of rule making is to allow modalities other than in-person delivery of instruction to count as instructional hours for the 2020-21 school year.

Hearing Location(s): On January 5, 2021, at 2:30 p.m. Online using Zoom at <https://zoom.us/j/92436066608>. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://zoom.us/j/92436066608>; or on January 5, 2021, at 2:30 p.m., at Brouillet Room, Fourth Floor, Old Capitol, 600 Washington Street S.E., Olympia, WA 98504. This will be the site for the in-person hearing. The presiding officer of the hearing will follow applicable state, local, and building health requirements regarding COVID-19 at the time of the hearing. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://zoom.us/j/92436066608>.

Date of Intended Adoption: January 14, 2021.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by January 5, 2021.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-742-4037, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBOE is responding to emergent COVID-19 issues in the education system with clarifications on counting modalities of instruction other than in-person instruction as instructional hours during the 2020-21 school year. SBOE proposes changes to chapter 180-16 WAC to align rule to current policy or practice, improve readability of the rule, or make other changes identified during the review of the WAC chapter.

These proposed permanent rules were filed as emergency rules that went into effect immediately on November 13, 2020.

The following proposed rules are applicable to the 2020-21 school year.

- Local education agencies shall submit a copy of the reopening schools, plan to SBOE and superintendent of public instruction (OSPI) two weeks before school begins and no later than September 15, 2020;
- "Instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count instructional hours towards the minimum district-wide annual average those hours students are provided the opportunity to engage in

educational activity planned by and under the supervision of school district staff that are delivered through learning modalities that include but are not limited to distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic;

- The allowance to count instructional hours through modalities other than in-person instruction does not preclude local education agencies from applicable funding allocation requirements as required by the legislature or OSPI;
- Days in which instructional hours are offered to all students under this allowance shall count as school days for the purpose of meeting the minimum one hundred eighty day school year requirement;
- Local education agencies must implement a system to track student engagement, consistent with OSPI attendance rules, in instructional activities delivered through remote learning modalities; and
- SBOE will revisit this rule no later than its regularly scheduled July 2021 board meeting.

Reasons Supporting Proposal: RCW 28A.150.220(7) states that SBOE shall adopt rules to implement and ensure compliance with program requirements of basic education. Due to the dynamic nature of the COVID-19 epidemic, local education agencies need to be responsive to state and local public health measures such as social distancing, school closures, limiting capacity of buildings, and other suggested ways of limiting community spread of COVID-19. To ensure that basic education can be delivered during the emergency state and local public health response to COVID-19, SBOE is proposing rule making that clarifies that districts can count modalities of delivering instruction other than in-person delivery as instructional hours for the 2020-21 school year. The proposed permanent rules are in effect as emergency rules and this proposal is to make permanent rule as necessary.

Statutory Authority for Adoption: RCW 28A.150.220(7).

Statute Being Implemented: RCW 28A.150.220(7).

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

Name of Proponent: SBOE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

State Board of Education Proposed Rule Change SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR 18-24-090.

Title of Rule: Instructional hours and school re-opening plans.

Agency: SDF - School District Fiscal Impact - SPI.

Part I: Estimates: No fiscal impact.

Estimated Cash Receipts to: No estimated cash receipts.

Estimated Expenditures From: No estimated expenditures.

Estimated Capital Impact: No estimated capital impact.

Agency Preparation: T.J. Kelly, phone 360-725-6301, September 11, 2019.

Agency Approval: T.J. Kelly, phone 360-725-6301, September 11, 2019.

Part II: Narrative Explanation:

II. A - Brief Description Of What the Measure Does That Has Fiscal Impact:

II. B - Cash Receipts Impact: None.

II. C - Expenditures:

Part III: Expenditure Detail:

III. A - Expenditures by Object or Purpose: None.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Mr. Thomas Kelly, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6301, fax 360-586-2357, TTY 360-664-3631, email Thomas.Kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

November 13, 2020
Randy Spaulding
Executive Director

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form distributed by the state board of education. The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. For the 2020-21 school year, local education agencies shall submit a copy of the reopening schools plan to the state board of education and superintendent of public instruction two weeks before school begins and no later than September 15, 2020. The form shall be submitted electronically and signed by:

- (a) The school board president or chairperson, and
 - (b) The superintendent of the school district.
- (2) **State board staff review.**

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site visits of selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies.

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

(3) Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board.

(d) Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, may recommend withholding of funds or may enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the non-compliance(s).

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline may result, at the state board of education's or its designee's discretion, in the recommendation to the superintendent of public instruction of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(g) In the event a school district fails to sign a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction withholding state funds for the basic education allocation until program compliance is assured.

(h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section or completion of the compliance agreement.

(4) The provisions of subsection (3)(g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

WAC 180-16-200 Total instructional hour requirement. (1) Kindergarten total instructional hour requirement - Four hundred fifty hours annual minimum, increased to an annual minimum one thousand instructional hours according to an implementation schedule under RCW 28A.150.315.

(2) Grades 1-12 total instructional hour requirement - District-wide annual average of one thousand hours, increased beginning in the 2015-16 school year to:

(a) At least a district-wide average of one thousand eighty instructional hours for students enrolled in grades nine through twelve and a district-wide annual average of one thousand instructional hours in grades one through eight; or

(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve.

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

(4) For the 2020-21 school year, "instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include, but are not limited to, distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic. The following are applicable to the 2020-21 school year:

(a) Nothing in this section supersedes applicable statutory or office of superintendent of public instruction funding allocation requirements;

(b) Days in which instructional hours are offered shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;

(c) Local education agencies must implement a system consistent with OSPI attendance rules; and

(d) The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.

WSR 20-23-061

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 16, 2020, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-063.

Title of Rule and Other Identifying Information: WAC 260-70-570 All horses subject to inspection.

Hearing Location(s): On January 8, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov on Monday, January 4, 2021.

Date of Intended Adoption: January 8, 2021.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prohibits the practice of "icing" a horse's legs prior to a scheduled veterinarian inspection.

Reasons Supporting Proposal: "Icing" prior to a veterinarian inspection can inhibit the ability to detect preexisting injuries placing the horse and riders at risk.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 16, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-07-020, filed 3/9/18, effective 4/9/18)

WAC 260-70-570 All horses are subject to inspection. All horses at locations under the jurisdiction of the commission are subject to inspections at the discretion of the stewards or an official veterinarian.

(1) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by an official veterinarian.

(a) The inspection shall be conducted by an official veterinarian.

(b) The horse shall be in the trainers assigned stable area unless the official veterinarian is notified prior to the time of inspections.

(c) Every horse to be inspected shall have its legs cleaned of any poultice or other topical applications.

(d) The horse must be free of bandages, or wearing bandages that are easily removed.

(e) The horse must not have been subjected to freezing, icing, or prolonged hosing with cold water, or any other means of reducing the temperature of the legs ~~((within one hour of the inspection))~~ on the day it is scheduled to be inspected until the inspection has been completed.

(2) The assessment of a horse's racing condition will be based on the recommendations of the American Association of Equine Practitioners and may include:

(a) Proper identification of the horse;

(b) Observation of each horse in motion;

(c) Manual palpation when indicated;

(d) Close observation in the paddock and saddling area, during the parade to post and at the starting gate; and

(e) Any other inspection deemed necessary by an official veterinarian.

(3) An official veterinarian will maintain a continuing health and racing soundness record of each horse inspected.

WSR 20-23-062
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 16, 2020, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-015.

Title of Rule and Other Identifying Information: WAC 260-40-090 Registration certificate.

Hearing Location(s): On January 8, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov on Monday, January 4, 2021.

Date of Intended Adoption: January 8, 2021.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Removes the requirement that a horse's registration certificate be on file in the racing office. Adds the requirement that the registration certificate be on file in a recognized racing jurisdiction's race office and made available on request.

Reasons Supporting Proposal: Registration papers are being transitioned to digital format and changes may encourage horses from other tracks to compete in Washington state. Horses must be able to be properly identified prior to racing.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 16, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 19-03-074, filed 1/14/19, effective 2/14/19)

WAC 260-40-090 Registration certificate. No horse may be allowed to start unless a Jockey Club registration certificate, American Quarter Horse Association certificate of registration, or other applicable breed certificate of registration is on file in the office of ~~((the racing secretary, except that the stewards may waive this requirement, if))~~ an official recognized race office and the racing association in which the horse is entered has an agreement with that race office to maintain the papers in accordance with the rules.

(1) The horse ((is otherwise)) must be properly identified ((and the horse is not entered for a claiming price, with the exception of those horses whose registration certificate is on file in electronic form)) with a facsimile copy or electronic copy of the registration certificate.

(2) Horses for which the registration certificate is issued in electronic form are required to transfer control of the certificate to the racing association in which the horse is entered.

WSR 20-23-063
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 16, 2020, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-016.

Title of Rule and Other Identifying Information: WAC 260-24-550 Official veterinarian(s).

Hearing Location(s): On January 8, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov on Monday, January 4, 2021.

Date of Intended Adoption: January 8, 2021.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove language that requires an official veterinarian employed by the Washington horse racing commission possess a Washington state veterinarian license.

Reasons Supporting Proposal: RCW 18.92.060 allows for the exemption of the requirement that a veterinarian employed by the state hold a state license.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 16, 2020

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-24-550 Official veterinarian(s). The official veterinarian(s) will be employed by the commission, and be a graduate veterinarian, licensed to practice veterinary medicine in ~~((the state of Washington))~~ a recognized jurisdic-

tion approved by the executive secretary. An official veterinarian is exempt from Washington state licensure per RCW 18.92.060. The official veterinarian(s) will perform the following duties:

(1) Recommend to the board of stewards any horse the official veterinarian believes is unsafe to be raced, or a horse that it would be inhumane to allow to race;

(2) Place and remove horses from the veterinarian's list;

(3) Place and remove horses from the bleeder list;

(4) Supervise the test barn;

(5) Supervise the collection of all specimens for testing;

(6) Provide proper safeguards in the handling of all collected specimens to prevent tampering, confusion or contamination;

(7) Provide the stewards a written report regarding the nature, seriousness, and meaning of concentration levels, if any, for all laboratory reports of prohibited substances in equine samples;

(8) Have jurisdiction over all licensed veterinarians on the grounds for the purpose of these rules;

(9) Report to the commission the names of all horses humanely destroyed or that die on the grounds at the race meet. This report will include the reason a horse was destroyed;

(10) Maintain records of postmortem examinations performed on horses that have died on association grounds;

(11) Be available to the stewards prior to scratch time each race day to inspect any horses and report on their condition;

(12) Be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

(13) Inspect any horse when there is a question as to its physical condition or soundness;

(14) Recommend to the stewards a horse be scratched if the horse is physically incapable of exerting its best effort to win;

(15) Inspect any horse that appears in physical distress during the race or at the finish of the race and report their findings to the stewards;

(16) Work with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

(17) Periodically review horse registration certificates to ensure that all required test and health certificates are current and properly filed in accordance with these rules; and

(18) Humanely destroy any horse so seriously injured that it is in the best interests of the horse to act.

WSR 20-23-065
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 16, 2020, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-085.

Title of Rule and Other Identifying Information: WAC 260-28-085 License and fingerprint fees.

Hearing Location(s): On January 8, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov on Monday, January 4, 2021.

Date of Intended Adoption: January 8, 2021.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds the category of "Stable manager" to the license fee structure.

Reasons Supporting Proposal: A stable manager was created to perform all duties associated with multiple partnership groups using a unique stable name.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 16, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 19-23-034, filed 11/12/19, effective 12/13/19)

WAC 260-36-085 License and fingerprint fees. (1)

The following are the license fees for any person actively participating in racing activities:

Apprentice jockey	\$96.00
Assistant trainer	\$46.00
Association employee - Management	\$31.00
Association employee - Hourly/seasonal	\$20.00
Association volunteer nonpaid	No fee
Authorized agent	\$31.00
Clocker	\$31.00
Exercise rider - Farm	\$96.00
Exercise rider - Track	\$96.00
Groom	\$31.00
Honorary licensee	\$20.00
Jockey agent	\$96.00
Jockey	\$96.00

Other	\$31.00
Owner	\$96.00
Pony rider - Farm	\$96.00
Pony rider - Track	\$96.00
Service employee	\$31.00
<u>Stable manager</u>	<u>\$96.00</u>
Spouse groom	\$31.00
Stable license	\$59.00
Trainer	\$96.00
Vendor	\$146.00
Veterinarian	\$146.00

(2) Exercise and pony riders.

(a) A person receiving an exercise rider - track license must first obtain an exercise rider - farm license if that person works off the grounds of a Washington race track. A person receiving a second exercise rider's license will not be charged an additional license fee for that second license.

(b) A person receiving a pony rider - track license must first obtain a pony rider - farm license if that person works off the grounds of a Washington race track. A person receiving a second pony rider's license will not be charged an additional license fee for that second license.

(3) In other cases, the license fee for multiple licenses may not exceed \$146.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer (\$96.00), exercise rider (\$96.00), and pony rider (\$96.00). The total license fee for these multiple licenses would only be \$146.00.

Example two - A person applies for the following licenses: Owner (\$96.00), trainer (\$96.00) and exercise rider (\$96.00). The total cost of the trainer and exercise rider license would be \$146.00. The cost of the owner license (\$96.00) would be added to the maximum cost of multiple licenses (\$146.00) for a total license fee of \$242.00.

Example three - A person applies for the following licenses: Owner (\$96.00), vendor (\$146.00), and exercise rider (\$96.00). The license fees for owner (\$96.00) and vendor (\$146.00) are both added to the license fee for exercise rider (\$96.00) for a total license fee of \$338.00.

In addition to the above fees, except for association volunteers (nonpaid) at Class C race meets and those excluded as listed in WAC 260-36-100, a \$10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

WSR 20-23-066
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 16, 2020, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-050.

Title of Rule and Other Identifying Information: WAC 260-28-020 Registration fees and restrictions.

Hearing Location(s): On January 8, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov on Monday, January 4, 2021.

Date of Intended Adoption: January 8, 2021.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows for multiple unique ownership groups to race under on [one] individual stable name.

Reasons Supporting Proposal: Streamlines the licensing process of the popular "syndicate" style ownership groups and allows a stable manager to oversee the duties of multiple ownership groups under racing under on [one] name.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 16, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 14-03-057, filed 1/13/14, effective 2/13/14)

WAC 260-28-020 Stable names—Registration fees and restrictions. Licensed owners and lessees may adopt a stable name subject to the approval of the stewards.

(1) Four or more owners are required to race under a stable name.

(2) The applicant must identify all persons using the stable name. Changes must be reported immediately to the commission.

(3) Application for a stable name must include a designation of a managing owner and an address. Receipt of any cor-

respondence, notice or order at such address will constitute official notice to all persons involved in the ownership of such horse.

(4) A single stable name may be used for more than one unique ownership group under the following conditions:

(a) An individual must be designated as the "stable manager" who will be responsible for all actions of the stable. The "stable manager" must obtain an authorized agents license with the authority that allows them to act in all duties of the stable;

(b) The stable manager must report to the commission each individual owner and percentage owned of all horses listed by the stable;

(c) The stable manager will be responsible to ensure all expenses and bills are paid by the stable and to disperse any purse money, bonuses, or other funds awarded the stable; and

(d) The horseman's bookkeeper will provide any owner that requests a copy of activity of the stable account but is not required to separate the stable account by unique ownership groups.

(5) All persons with an ownership interest in the stable name must comply with all rules regarding licensing of owners.

~~((5))~~ (6) A person who has registered a stable name may cancel it upon written notice to the commission.

~~((6))~~ (7) The stewards will not approve a stable name that has been registered by any other person with any association conducting a recognized race meeting.

~~((7))~~ (8) When applying for a stable name that may be deemed as being used for advertising purposes, the requestor may be required to provide documentation from the business or other entity that they have permission to use said name.

~~((8))~~ (9) A stable name must be clearly distinguishable from other stable names.

WSR 20-23-067
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 16, 2020, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-014.

Title of Rule and Other Identifying Information: WAC 260-36-120 Denial, suspension, and revocation—Grounds.

Hearing Location(s): On January 8, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov on Monday, January 4, 2021.

Date of Intended Adoption: January 8, 2021.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies language to allow commissioners to amend prior orders issued.

Reasons Supporting Proposal: Ensure current practices cannot be challenged based on interpretation of current language.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 16, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

WAC 260-36-120 Denial, suspension, and revocation—Grounds. (1) The commission, executive secretary, or board of stewards may refuse to issue or may deny a license to an applicant, may modify or place conditions upon a license, may suspend or revoke a license issued, may order disciplinary measures, or may ban a person from all facilities under the commission's jurisdiction, if the applicant licensee, or other person:

- (a) Has been convicted of any felony or gross misdemeanor crime;
- (b) Is subject of current prosecution of any felony crime;
- (c) Has any felony conviction under appeal;
- (d) Has pending criminal charges;
- (e) Has failed to meet the minimum qualifications required for the license for which they are applying;
- (f) Has failed to disclose or states falsely any information required in the application;
- (g) Has been found in violation of statutes or rules governing racing in this state or other jurisdictions;
- (h) Has a proceeding pending to determine whether the applicant or licensee has violated the rules of racing in this state or other racing jurisdiction;
- (i) Has been or is currently excluded from a racetrack at which parimutuel wagering on horse racing is conducted by a recognized racing jurisdiction;
- (j) Has had a license denied by any racing jurisdiction;
- (k) Is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or who may interfere or has interfered with the orderly conduct of a race meeting;
- (l) Demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;
- (m) Has violated any of the alcohol or substance abuse provisions outlined in chapter 260-34 WAC;

(n) Has violated any of the provisions of chapter 67.16 RCW;

(o) Has violated any provisions of Title 260 WAC;

(p) Has association with persons of known disreputable character;

(q) Has not established the necessary skills or expertise to be qualified for a license as required by WAC 260-36-060; or

(r) Has committed any act with the outcome or intent of defrauding the industrial insurance benefits provided under the horse industry account.

(2) The ((~~commission~~)) executive secretary or board of stewards must deny the application for license or suspend or revoke an existing license if the applicant or licensee:

(a) Is certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order;

(b) Has any outstanding arrest warrants; or

(c) Is currently suspended or revoked in Washington by a commission order, or by another recognized racing jurisdiction.

(3) A license suspension or revocation will be reported in writing to the applicant or licensee and electronically to the Association of Racing Commissioners International, Inc.

WSR 20-23-069

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 16, 2020, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-100.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-0010 What definitions apply to this chapter?, 388-106-0130 How does the department determine the number of hours I may receive for in-home care?, 388-106-0055 What is the purpose of an assessment?, 388-71-0515 What are the responsibilities of an individual provider when providing services to a client?, and 388-71-0516 What are the responsibilities of home care agency when providing care to a client?

Hearing Location(s): On January 5, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than January 6, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 5, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being proposed to eliminate shared benefits as a status and as a basis to reduce a client's monthly benefit for in-home personal care, and to require a written agreement for a family or household individual provider (IP) to be assessed as a source of informal support. The rule change will eliminate adjustments to base hours, add-on hours, or any other in-home personal care services benefit that a client would otherwise receive because the IP shares in the benefit of an activities of daily living (ADL) or instrumental activities of daily living (IADL) provided to the client by the IP, and on the basis that two or more clients in a multi-client household benefit from the same ADL or IADL task(s) being performed. Any current rule that uses the phrase "shared benefit" or a similar phrase will be amended to remove the phrase and the definition of "informal support" will be amended.

Reasons Supporting Proposal: This rule change is being effectuated as part of a settlement agreement with SEIU 775. SEIU 775 challenged DSHS rules that adjusted client benefits for shared benefits and informal supports under the Administrative Procedure Act on the grounds that the adjustments violate the federal Fair Labor Standards Act and the state Minimum Wage Act. The department believes that assessing for shared benefit and informal support on an individualized basis is lawful, but such litigation is costly, and subjects the department to ongoing risks should the rules be held invalid by a court.

Additionally, assessment for shared benefit is often confusing for assessors and may result in inconsistent implementation statewide. While adjudicative hearings are available to ensure that shared benefits are not assessed incorrectly to the detriment of clients, such hearings impose costs on the department and clients.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520

Statute Being Implemented: RCW 74.08.090, 74.09.520

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rachelle Ames, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2353.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule pursuant to RCW 34.05.328 (5)(b)(vii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

November 12, 2020
Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0515 What are the responsibilities of an individual provider when providing services to a client? An individual provider (IP) must:

(1) Take direction from the client, who is the IP's employer, or when appropriate, from the client's legal representative;

(2) Understand the client's plan of care that has been signed by the client or legal representative, which may be translated or interpreted, as necessary, and as requested by the client;

(3) Provide the services as outlined on the client's plan of care, as described in WAC 388-106-0010, according to the client's direction, supervision, and prioritization of tasks within the number of hours authorized;

(4) Accommodate the client's individual preferences and unique needs in providing care;

(5) Contact the client, client's representative and case manager when there are changes that affect the personal care and other tasks listed on the plan of care;

(6) Observe and consult with the client or client's representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(7) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(8) Notify the case manager immediately in the event of the client's death;

(9) Notify the department or AAA immediately when unable to staff/serve the client;

(10) Notify the department/AAA when the individual provider will no longer provide services. The individual provider must:

(a) Give at least two weeks' notice, and

(b) Notify the client or the client's representative in writing: and

(c) Notify the client's case manager.

(11) Complete and keep accurate time sheets of authorized/paid hours that are accessible to the social worker/case manager; under WAC 388-106-0130, the department does not pay for ((shared benefit(s) or)) informal support provided to the client by anyone, including the IP; and

(12) Comply with all applicable laws, regulations, and the individual provider contract.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client? In providing care to a client, a home care agency must:

(1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be translated or interpreted, as necessary for the client;

(2) Provide tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and unique needs in providing care;

(4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;

(5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately in the event of the client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client;

(9) Notify the department or AAA when the home care agency will no longer provide services and the home care agency must:

(a) Give at least two weeks' notice; and

(b) Notify the client or the client's representative in writing; and

(c) Notify the case manager.

(10) Comply with time keeping requirements, and keep accurate time sheets of authorized/paid hours that are accessible to the appropriate department or designee staff; under WAC 388-106-0130, the department does not pay for (~~shared benefit(s) or~~) voluntary informal support that may be provided to the client by anyone, including providers; and

(11) Comply with all applicable laws and regulations.

AMENDATORY SECTION (Amending WSR 18-16-004, filed 7/19/18, effective 8/19/18)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you made yourself understood to those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

((~~+~~)) (1) Understood: You expressed ideas clearly;

((~~+~~)) (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;

((~~+~~)) (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

((~~+~~)) (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

((~~+~~)) (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

((~~+~~)) (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

((~~+~~)) (2) Bed mobility: How you moved to and from a lying position turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.

((~~+~~)) (3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

((~~+~~)) (4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you received, e.g. bringing food to you or cutting it up in smaller pieces.

((~~+~~)) (5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.

((~~+~~)) (6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

((~~+~~)) (7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

((~~+~~)) (8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

((~~+~~)) (9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy or catheter bag. This type of set up assistance is considered under the definition of support provided.

((~~+~~)) (10) Transfer: How you moved between surfaces, e.g., to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in/out of a vehicle.

((~~+~~)) (11) Personal hygiene: How you maintain personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional

disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

~~((a))~~ Partially met due to availability of other informal support ~~((a))~~ ~~(b) Shared benefit~~). The department determines the amount of the assistance available using one of four categories:

- ~~((i))~~ (1) Less than one-fourth of the time;
- ~~((ii))~~ (2) One-fourth to one-half of the time;
- ~~((iii))~~ (3) Over one-half of the time to three-fourths of the time; or
- ~~((iv))~~ (4) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

- ~~((a))~~ (1) Application of ointment or lotions;
- ~~((b))~~ (2) Trimming of toenails;
- ~~((c))~~ (3) Dry bandage changes; or
- ~~((d))~~ (4) Passive range of motion treatment.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

"Body care" means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized demen-

tia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- ~~((a))~~ (1) Foot care if you are diabetic or have poor circulation; or
- ~~((b))~~ (2) Changing bandages or dressings when sterile procedures are required.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Health action plan" means an individual plan, which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- ~~((a))~~ (1) Whether the behavior is easily altered or not easily altered; and
- ~~((b))~~ (2) The frequency of the behavior.

"Decision making" means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks of activities of daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

~~((a))~~ (1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values.

~~((b))~~ (2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.

~~((c))~~ (3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.

~~((d))~~ (4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions.

~~((e))~~ (5) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- ~~((a))~~ (1) No difficulty in performing the IADL;

~~((b))~~ (2) Some difficulty in performing the IADL (e.g., you need some help, are very slow, or fatigue easily); or

~~((e))~~ (3) Great difficulty in performing the IADL (e.g., little or no involvement in the IADL is possible).

"**Disability**" is described under WAC 182-500-0025.

"**Disabling condition**" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"**Estate recovery**" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"**Home health agency**" means a licensed:

~~((a))~~ (1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

~~((b))~~ (2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

~~((+))~~ (a) Private duty nursing; or

~~((+))~~ (b) Skilled nursing services under an approved medicaid waiver program.

"**Income**" means income as defined under WAC 182-509-0001.

"**Individual provider**" under RCW 74.39A.240 means a person contracted with the department to provide personal care or respite services.

"**Informal support**" means:

~~((a))~~ (1) Assistance that will be provided with the client's agreement as expressed in the assessment process without home and community based services funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs.

(2) The department will not consider an individual provider to be a source of informal support unless:

(a) The individual provider is also a family member or a household member who had a relationship with the client that existed before the individual provider entered into a contract with the department; and

(b) The individual provider signs a written agreement that states:

(i) The individual provider understands that the provision of unpaid informal support is voluntary;

(ii) The individual provider understands that if they decline to provide unpaid informal support that the client's benefit could increase and that the client could choose to assign those increased hours to the individual provider;

(iii) If there is a collective bargaining representative that represents the individual provider for the purposes of collective bargaining, the individual provider is informed as to the collective bargaining representative's opinion, if any, about whether the individual provider should agree to provide unpaid informal supports;

(iv) The individual provider understands that the individual provider may stop providing unpaid informal support at any time by informing the case manager that the individual

provider wishes to stop providing unpaid informal support; and

(v) The individual provider understands that if the individual provider is a family member or had a household relationship with the client prior to becoming the client's individual provider that they may provide unpaid care to a client above and beyond the individual provider authorization regardless of whether they are providing informal support.

~~((b))~~ (3) Adult day health is coded in the assessment as a source of informal support, regardless of funding source;

~~((e))~~ (4) Informal support does not include ~~((shared benefit or))~~ age appropriate functioning.

"**Institution**" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"**Instrumental activities of daily living (IADL)**" means routine activities performed around the home or in the community in thirty days prior to the assessment and includes the following:

~~((a))~~ (1) Meal preparation: How meals were prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

~~((b))~~ (2) Ordinary housework: How ordinary work around the house was performed (e.g., doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

~~((e))~~ (3) Essential shopping: How shopping was completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

~~((+))~~ (4) Wood supply: How wood or pellets were supplied (e.g., splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating and/or cooking.

~~((e))~~ (5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving vehicle yourself or traveling as a passenger in a car, bus, or taxi.

~~((+))~~ (6) Managing finances: How bills were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

~~((g))~~ (7) Telephone use: How telephone calls were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).

"**Long-term care services**" means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

"**MAGI**" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"**Medicaid**" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFC DS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

((a)) (1) The design, delivery and evaluation of services and supports;

((b)) (2) Exercising control of decisions and resources, and making their own decisions about health and well-being;

((c)) (3) Determining how to meet their own needs;

((d)) (4) Determining how and by whom these needs should be met; and

((e)) (5) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

((a)) (1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

((b)) (2) In a building that you own;

((c)) (3) In a relative's established residence; or

((d)) (4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

((a)) (1) Having a signed department contract to provide long-term care client services; and

((b)) (2) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self-performance for ADLs" means what you actually did in the last seven days before your assessment, not what you might be capable of doing. Self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADLs does not include physical assistance that occurred less than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

((a)) (1) Independent, if you received no help or oversight, or if you needed help or oversight only once or twice;

((b)) (2) Supervision, if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

((c)) (3) Limited assistance, if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs on three or more occasions.

((d)) (4) Extensive assistance, if you performed part of the ADL, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the ADL, but not all, of the ADL.

((e)) (5) Total dependence, if you received full caregiver performance every time the ADL and all subtasks are completed during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

((f)) (6) ADL did not occur, if you or others did not perform an ADL over the last seven days before your assessment. The ADL may not have occurred because:

((i)) (a) You were not able (e.g., walking, if paralyzed);

((ii)) (b) No provider was available to assist; or

((iii)) (c) You declined assistance with the task.

"Self-administration of medication" means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

((a)) (1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

((b)) (2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance

required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

((e)) (3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

((d)) (4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Self-performance for bathing" means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven day look back period, or set-up help. Your self performance level is scored as:

((a)) (1) Independent, if you received no help or oversight to complete the ADL of bathing.

((b)) (2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

((c)) (3) Physical help transfer only, if in order to bathe you had help to transfer only.

((d)) (4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

((e)) (5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical non-participation by you in all aspects of bathing; or the ADL:

((f)) (6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

((g)) (a) You were not able (e.g., you may be paralyzed);

((h)) (b) No provider was available to assist; or

((i)) (c) You declined because you chose not to perform the ADL.

"Self-performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing or how well you performed the ADL. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self performance is scored as:

((a)) (1) Independent, if you received no help, set-up help, or supervision;

((b)) (2) Assistance, if you received any help with the task, including cueing or monitoring in the last thirty days;

((c)) (3) Total assistance, if you are a child and needed the ADL fully performed by others and you are functioning outside of typical developmental milestones; or

((d)) (4) ADL did not occur, if you or others did not perform the ADL in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a provider schedule, identified referrals/information, and dates and agreement to the outlined services.

("Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.)

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

((a)) (1) That will be provided by informal supports; or

((b) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multi-client household; or

((c)) (2) That will be provided to a child primarily due to his or her age.

(3) The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) (~~Shared benefit, which means:~~

(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household will benefit from the same IADL task(s) being performed.

((e)) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

((f)) (e) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

~~((a))~~ (1) No set-up or physical help provided by others;
~~((b))~~ (2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

~~((c))~~ (3) One-person physical assist provided;

~~((d))~~ (4) Two- or more person physical assist provided;

or

~~((e))~~ (5) ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional, and cognitive abilities;
- (5) Determine availability of informal supports(~~(-shared benefits,))~~ and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.
- (11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will adjust base hours to account for informal supports(~~(-shared benefit,))~~ and age appropriate functioning (as those terms are defined in WAC 388-106-0010), and other paid services that meet some of an individual's need for personal care services:

(a) The CARE tool determines the adjustment for informal supports(~~(-shared benefit,))~~ and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLs based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

Meds	Status	Assistance Available	Numeric Value	
Medication Management The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL	Unmet	N/A	1	
	Met	N/A	0	
	Decline	N/A	0	
	Age appropriate functioning	N/A	0	
	Partially met	<1/4 time		.9
		1/4 to 1/2 time		.7
		1/2 to 3/4 time		.5
>3/4 time			.3	

Unscheduled ADLs	Status	Assistance Available	Value
Bed mobility, transfer, walk in room, eating, toilet use The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Scheduled ADLs	Status	Assistance Available	Value
Dressing, personal hygiene, bathing The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.75
		1/4 to 1/2 time	.55
		1/2 to 3/4 time	.35
		>3/4 time	.15

IADLs	Status	Assistance Available	Value
Meal preparation, Ordinary housework, Essential shopping The rules to the right apply for all Self Performance codes except independent is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met ((or Shared benefit))	<1/4 time	.3
		1/4 to 1/2 time	.2
		1/2 to 3/4 time	.1
		>3/4 time	.05

IADLs	Status	Assistance Available	Value
Travel to medical The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Key: > means greater than; < means less than

(b) To determine the amount adjusted for informal support (~~(shared benefit and/or)~~) or age appropriate functioning, the numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the

result is the number of adjusted in-home hours. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

(3) Effective July 1, 2012, after adjustments are made to your base hours, as described in subsection (2), the department may add on hours based on off-site laundry, living more than forty-five minutes from essential services, and wood supply, as follows:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. The status used for the rules to the right is for housekeeping.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met ((or Shared benefit)):	<1/4 time	
between 1/4 to 1/2 time			6
between 1/2 to 3/4 time			4
>3/4 time			2
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Unmet	N/A	5
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met ((or Shared benefit)):	<1/4 time	
between 1/4 to 1/2 time			4
between 1/2 to 3/4 time			3
>3/4 time			2
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met ((or Shared benefit)):	<1/4 time	
between 1/4 to 1/2 time			6
between 1/2 to 3/4 time			4
>3/4 time			2

(4) In the case of New Freedom consumer directed services (NFCDS), the department determines the monthly budget available as described in WAC 388-106-1445.

(5) The result of adjustments under subsections (2) and (3) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(6) If you are eligible, your hours may be used to authorize the following services:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-106-1010 or 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide

informal support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department will code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Medication Management	Independent Self-Directed Assistance Required	Child under 18 years of age
	Must Be Administered	Child under 12 years of age
Locomotion in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age
Locomotion Outside Room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age
	Total	Child under 25 months of age
Walk in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 19 months of age
Bed Mobility	Independent Supervision Limited	Child under 37 months of age
	Extensive	Child under 25 months of age
	Total	Child under 19 months of age
Transfers	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 19 months of age

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Toilet Use	Independent Supervision Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age
Eating	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 13 months of age
Bathing	Independent Supervision	Child under 12 years of age
	Physical help/Transfer only	Child under 5 years of age
	Physical help/part of bathing	Child under 6 years of age
	Total	Child under 37 months of age
Dressing	Independent Supervision	Child under 12 years of age
	Limited	Child under 8 years of age
	Extensive	Child under 7 years of age
	Total	Child under 25 months of age
Personal Hygiene	Independent Supervision	Child under 12 years of age
	Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living		
IADL	Self-Performance	Developmental Age Range
Finances Telephone Wood Supply	Independent Supervision Limited Extensive Total	Child under 18

Developmental Milestones for Instrumental Activities of Daily Living		
IADL	Self-Performance	Developmental Age Range
Transportation	Independent Supervision	Child under 18
	Limited Extensive	
	Total	Child under 16
Essential Shopping Housework Meal Prep	Independent Supervision	Child under 18
	Limited Extensive	
	Total	Child under 12

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for comprehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision making, memory and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) below.

(k)

Additional Developmental Milestones coding within CARE			
Name of CARE panel	Question in CARE Panel	Developmental Milestone coding selection	Developmental Age Range
Speech/Hearing: Comprehension	"By others client is"	Child under 3	Child under 3
Psych Social: MMSE	"Can MMSE be administered?"	= No	Child under 18
Psych Social: Memory/ Short Term	"Recent memory"	Child under 12	Child under 12
Psych Social: Memory/ Long Term	"Long Term memory"	Child under 12	Child under 12
Psych Social: Depression	"Interview"	Unable to obtain	Child under 12
Psych Social: Decision Making	"Rate how client makes decision"	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/Bowel Control" is which of the following:		
	Continent Usually Continent Occasionally Incontinent	Age appropriate	Child under 12
	Frequently Incontinent	Age appropriate	Child under 9
	Incontinent all or most of the time	Age appropriate	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty Training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any informal supports ((or shared benefit)) available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide informal support to them.

(a) The department will code status for an ADL or IADL as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) When you are living with your legally responsible parent(s), the department will presume that you have infor-

mal supports available to assist you with your ADL and IADLs over three-fourths but not all the time. Legally responsible parents include natural parents, step parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you. You may rebut the department's presumption by providing specific information during your assessment to indicate why you do not have informal supports available at least three-fourths of time to assist you with a particular ADL or IADL.

WSR 20-23-074
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 16, 2020, 3:28 p.m.]

Maren Johnson
 Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-026.

Title of Rule and Other Identifying Information: WAC 181-79A-118, this rule change would allow educators with permits expiring through June 30, 2021, to be issued one additional one-year permit.

Hearing Location(s): On January 21, 2020, at 8 a.m., virtual Zoom meeting.

Date of Intended Adoption: January 21, 2021.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb@k12.wa.us, by January 14, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change would allow educators with permits expiring through June 30, 2021, to be issued one additional one-year permit.

Reasons Supporting Proposal: Educators are issued permits when they come in from out of state, and have met all certificate requirements with the exception of assessments.

Permits allows educators to serve while they complete assessments.

Testing centers are open, but they are operating at reduced capacity to allow for social distancing. This makes it challenging for educators to get an appointment date.

This permit extension would provide additional flexibility for educators in completing their assessment requirements during COVID-19 closures.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

November 16, 2020

AMENDATORY SECTION (Amending WSR 20-16-032, filed 7/25/20, effective 8/25/20)

WAC 181-79A-118 Expiration and lapse dates of certificates. (1) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, excluding residency certificates that are subject to reissuance, are scheduled to expire or lapse June 30, 2021.

(2) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, may have already been renewed. For these renewed certificates, the expiration or lapse date will be calculated as if the certificate expiring June 30, 2020, had an expiration or lapse date of June 30, 2021.

(3) Applications for renewal of certificates scheduled to expire June 30, 2021, may be submitted at any point prior to the June 30, 2021, expiration date.

(4) Limited certificates under WAC 181-79A-231, 181-77-014, and 181-77-081 expire as described in those sections.

(5) Permits under WAC 181-01-001, 181-02-001, 181-79A-128, and 181-79A-224 expire as described in those sections. Permits for candidates eligible under those sections which expired beginning July 1, 2019, and before (~~December 31, 2020~~) June 30, 2021, may be reissued once for one additional year.

WSR 20-23-075
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 16, 2020, 3:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-107.

Title of Rule and Other Identifying Information: The department is proposing adoption of new WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency?, and 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency?

Hearing Location(s): On December 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than December 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules will mitigate impacts to ABD and HEN referral program clients and their medical providers during the coronavirus (COVID-19) pandemic and future states of emergency.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.09.530, 74.08A.100.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nicholas Swiatkowski, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4638.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

November 16, 2020
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your HEN referral program eligibility beyond the twelve month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of WAC 388-447-0005, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond ninety days of the date of application or incapacity review, or otherwise waive the requirement of WAC 388-447-0010 (3)(c) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for referral to the HEN program.

(5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for referral to the HEN program.

NEW SECTION

WAC 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency? During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your ABD cash eligibility beyond the twenty-four month period required in WAC 388-449-0150. The postponement of this review may occur retroactively to the date the governor declares the state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of WAC 388-449-0010, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond ninety days of the date of application or forty-five days before the month of disability review, or otherwise waive the requirement of WAC 388-449-0015 (3)(e) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for the ABD program.

(5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for the ABD program.

WSR 20-23-081
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed November 17, 2020, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-120.

Title of Rule and Other Identifying Information: The state board of education (SBOE) has proposed amendments to chapter 180-19 WAC regarding charter schools. The subject of the rule making is to remove the requirement for notice of intent in the charter authorizer application process, to revise the authorizer fee structure to a performance-based system, to change reporting dates, and to make other changes as identified during the review of this chapter of rule.

Hearing Location(s): On January 5, 2021, at 1:00 p.m., online using Zoom at <https://zoom.us/j/92436066608>. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://zoom.us/j/92436066608>; or on January 5, 2021, at 1:00 p.m., at the Brouillet Room, Fourth Floor, Old Capitol, 600 Washington Street S.E., Olympia, WA 98504. This will

be the site for the in-person hearing. The presiding officer of the hearing will follow applicable state, local, and building health requirements regarding COVID-19 at the time of the hearing. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://zoom.us/j/92436066608>.

Date of Intended Adoption: January 14, 2021.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by January 5, 2021.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-742-4037, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by January 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBOE is reviewing chapter 180-19 WAC, Charter schools, to make changes as necessary to align rule to current policy or practice, correct references to law, improve readability of the rule, align rule to the SBOE's recommendations in the annual charter school report, or make other changes identified during the review.

Changes consist of the following:

- Streamline the authorizer application process by removing the requirement for a notice of intent and making other changes in the application requirements.
- Revise the authorizer fee structure to a performance-based model that takes into consideration enrollment, district needs, and performance indicators.
- Change to reporting dates to align with revisions in the law adopted last session.
- Other alignment of rule to current policy or practice, including a correction in the email address and giving the board discretion regarding the need for an interview with the district prior to approval.

Reasons Supporting Proposal: Charter school authorizers have indicated that the requirement of notice of intent was creating an unnecessary challenge for districts to potentially apply to become charter school authorizers. They also stated that the authorizer fee structure should transition to a performance-based model to better suit their financial needs and those of the school. The changes to reporting dates with revisions improve the ability of SBOE and charter authorizers to report on charter school performance and other required reporting. Other changes are made as necessary to align rule to current policy or practice, correct references to law, improve readability of the rule, align rule to the SBOE's recommendations in the annual charter school report, or make other changes identified during the review.

Statutory Authority for Adoption: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.150; chapter 28A.710 RCW.

Statute Being Implemented: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.150; chapter 28A.710 RCW.

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

Name of Proponent: SBOE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600

Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

Title of Rule: Charter schools and charter school authorizers.

Agency: SDF - School District Fiscal Impact - SPI.

Part I: Estimates: No fiscal impact.

Estimated Cash Receipts to: No estimated cash receipts.

Estimated Expenditures From: No estimated expenditures.

Estimated Capital Impact: No estimated capital impact.

Agency Preparation: T.J. Kelly, phone 360-725-6301, November 16, 2020.

Agency Approval: T.J. Kelly, phone 360-725-6301, November 16, 2020.

Part II: Narrative Explanation.

II. A - Brief Description Of What the Measure Does That Has Fiscal Impact: None.

II. B - Cash Receipts Impact: None.

II. C - Expenditures: Part III: Expenditure Detail.

III. A - Expenditures by Object or Purpose: None.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Mr. Thomas Kelly, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6301, fax 360-586-2357, TTY 360-664-3631, email Thomas.Kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: This rule is related to public charter schools and their public charter school authorizers. Thus, it does not impact small businesses.

November 17, 2020

Randy Spaulding

Executive Director

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-030 Submission of authorizer application. (1) The state board of education shall develop and make available on its website, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by October 15th of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted ~~((via electronic mail to sbe@k12.wa.us))~~ according to instructions posted by the ((date specified in this section)) board with the application. The board shall post on its website each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; ~~the ((characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the))~~ educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW; and

(ii) ~~((Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education; English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and~~

~~((iii)))~~ An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes,** consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710

RCW, in such areas as budgeting, personnel and instructional programming and design;

(d) Ensure that any contract it may execute with the charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

(e) Include in any charter contract it may execute with the charter school board of an approved charter school, in accordance with RCW 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-040 Evaluation and approval or denial of authorizer applications. (1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by February 1st of each year.

(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public website rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board (~~shall~~) may require an (~~in-person~~) interview with district leadership for the purpose of reviewing and evaluating the application. The (~~in-person~~) interview (~~will~~) may be used to supplement or clarify information provided by the district in the written application. The information received in the (~~in-person~~) interview (~~shall~~) may be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public website the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public website.

AMENDATORY SECTION (Amending WSR 13-12-055, filed 6/1/13, effective 7/2/13)

WAC 180-19-060 Authorizer oversight fee. (1) The statewide formula for the authorizer oversight fee transmitted to an authorizer by the superintendent of public instruction, as provided for in RCW 28A.710.110, shall be calculated (~~as~~) as a rate not to exceed four percent of (~~the~~) state operating funding allocated under RCW 28A.710.220 (~~with the fee decreasing to three percent of the state operating funding after an authorizer has authorized ten charter schools.~~

~~(2) The board shall periodically review). The rate shall be determined annually by the state board of education in consultation with the authorizer. The determination of the~~

rate shall take into consideration the performance of schools under the authorizer's oversight including, but not limited to, enrollment, financial stability, performance challenges, and other situations as identified by the authorizer or the board. Rates must be determined and reported to authorizers and the office of the superintendent of public instruction by May 15th for the subsequent school year.

(2) Authorizers shall report on the adequacy and efficiency of the authorizer oversight fee ((for the purpose of determining)) in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4). The board shall consider this information to determine whether the formula should be adjusted in order to ensure fulfilling the purposes of chapter 28A.710 RCW. ((In conducting the review, the board shall utilize the information on authorizers' operating costs and expenses included in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4).))

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-080 Charter school applications—Submission, approval, or denial. (1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school by May 1st of the year in which approval is sought. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than June 1st of the year in which the applicant seeks approval.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than September 1st of the year in which the application is received.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to ((sbe@k-12.wa.us)) sbe@k12.wa.us.

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-210 Annual report by authorizer. (1) Each authorizer must, no later than ((November 1st)) January 21st of each year starting in ((2014)) 2021, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its website by September 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to sbe@k12.wa.us and shall be posted on the board's website.

(2) The report must include:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;

(f) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values

and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) The authorizer's assessment of the adequacy of the authorizer oversight fee, operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-19-020 Notice of intent to submit an authorizer application.

WSR 20-23-083

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 17, 2020, 1:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-074.

Title of Rule and Other Identifying Information: Adding new WAC 308-29-085 Remote work requirements; and amending WAC 308-29-010 Definitions.

Hearing Location(s): On January 5, 2020, at 11:00 a.m., telephonic public hearing call-in number 360-407-3780, Conference PIN code 804766#. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of licensing (DOL) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may call-in using the information provided for the telephonic public hearing.

Date of Intended Adoption: January 6, 2021.

Submit Written Comments to: Julie Konnersman, Department of Licensing, Washington State Board for Architects, P.O. Box 9020, Olympia, WA 98507-9020, email

jkonnorsma@dol.wa.gov, fax 360-570-7098, by January 5, 2021.

Assistance for Persons with Disabilities: Contact Kim Hall, phone 360-972-0109, fax 360-570-7098, TTY 711, email khall@dol.wa.gov, by January 4, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To codify into permanent rule the option for collection agencies to offer licensees and their employees the ability to remotely work. This would allow them to continue to offer the public their necessary services. This would also outline detailed and necessary security measures and data storage requirements; and detailed definitions and requirements of remote work.

Reasons Supporting Proposal: As per the governor's proclamations to keep Washington residents safe and healthy during the COVID-19 pandemic; consistent with other business and professions in this state that are able to perform work from home, it was identified that rule language was needed to allow the option for collection agency licensees and their employees to work remotely. It is necessary to offer licensees the option to remotely work to support the return of commerce in all business sectors.

Statutory Authority for Adoption: RCW 19.16.351.

Statute Being Implemented: Not applicable.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rick Storvick, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1387.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The implementation of this rule and its definitions have created an option to licensees and their employees to remotely work. Because it is optional and not required to remotely work, there is no required cost applied to the licensee[s] and their businesses.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

November 17, 2020

Damon Monroe

Rules Coordinator

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

WAC 308-29-010 Definitions. (1) Words and terms used in these rules have the same meaning as each has under chapter 19.16 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Branch office" is any location physically separated from the principal place of business of a licensee where the licensee conducts any activity meeting the criteria of a collec-

tion agency or out-of-state collection agency as defined in RCW 19.16.100.

(3) "Business office" is the licensed principal place of business or certified branch office from which the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect debts pursuant to chapter 19.16 RCW.

(5) "Employee" is a natural person employed by a licensee and shall not be deemed a "collection agency" or a "branch office" as defined in RCW 19.16.100 (5)(a) so need not have an additional license or certificate to perform collection activities on behalf of the licensee whether working from a business office or from the employee's virtual office.

(6) "Repossession services" conducted by any person shall not be deemed a collection agency as defined in RCW 19.16.100, unless such person is repossessing or is attempting to repossess property for a third party and is authorized to accept cash or any other thing of value from the debtor in lieu of actual repossession.

~~((4))~~ (7) "Managing employee" is an individual who has the general power to exercise judgment and discretion in acting on behalf of the licensee on an overall or partial basis and who does not act in an inferior capacity under close supervision or direction of a superior authority (as distinguished from a nonmanaging employee who is told what to do and has no discretion about what he or she can and cannot do and who is responsible to an immediate superior).

(8) "Remote work" occurs when an employee performs collection activity for a licensee from the employee's "virtual office" as defined herein and more particularly described in WAC 308-29-085. Work performed by a licensed attorney litigating claims on behalf of a licensee is not remote work subject to WAC 308-29-085.

(9) "Virtual office," for purposes of chapters 19.16 and 18.235 RCW and chapter 308-29 WAC, is a virtual extension of the licensee's business office, which is fully connected via electronic means and telecommunications to the business office and its employees and from which an individual employee may perform the same collection activities and be similarly monitored as if located in the business office and as more particularly described in WAC 308-29-085.

NEW SECTION

WAC 308-29-085 Remote work requirements. A licensee may allow qualified employees to perform collection activities from virtual offices if the following requirements are met:

(1) **Employee list.** A licensee must keep a record of employees who are permitted to perform collection activities from a virtual office. The list must be kept current, and must include the employee's name, telephone number and email address, and the virtual office location address.

(2) **Equipment list.** A licensee must maintain a current record of licensee equipment supplied to an employee for use in their virtual office.

(3) **Employee remote work agreement.** A licensee must provide the employee a written agreement or checklist signed by the employee that indicates the employee has reviewed and agrees to the following requirements:

(a) While working remotely, the employee must agree to maintain confidentiality of consumer data, must maintain all collection agency data electronically and may not print hard copies or otherwise reproduce copies of collection agency data.

(b) The employee must read and agree to comply with the licensee's IT security policy and any updates.

(c) Employee must agree to maintain the safety and security of licensee's equipment at all times as more particularly described by the licensee.

(d) An employee must review a description of the specific type of collection work the employee or class of employee is allowed to perform while working from their virtual office.

(e) The employee must agree not to disclose or convey to the consumer that the employee is working from a virtual office or that the virtual office is a place of business.

(f) An employee must be advised that the employee's collection agency activities are subject to review and calls to and from the virtual office will be monitored and recorded.

(4) **Virtual office requirements.** An individual employee's virtual office is an extension of the licensee's business office and must meet the following requirements:

(a) It must have full connectivity with the licensee's business office systems including computer networks and phone system and must provide the licensee the same level of oversight and monitoring capacity as if the employee were performing their activities in the business office.

(b) It must have the capability to record calls made to and from the virtual office and to monitor virtual office calls in real time.

(c) It must be located within the United States and, within one hundred miles of the licensee's business office.

(d) It must be in a private location where the employee can maintain consumer confidentiality during the performance of their collection activities.

(e) It must meet all security requirements of this section and contain the equipment necessary to conduct the licensee's work safely and efficiently.

(f) Each employee shall be connected to the business office via a virtual office that requires unique credentialing for access by each employee.

(g) No more than one employee may work from a virtual office from the same physical location, except that cohabitating employees may each maintain a virtual office from their shared residence.

(h) Employees may not print or store physical records in the employee's virtual office.

(5) **Employee requirements.** The licensee is responsible for ensuring that an employee working from a virtual office meets all of the following requirements:

(a) To become eligible to work from a virtual office, the employee must have completed a training program at the

licensee's business office, which covers topics including compliance, privacy, confidentiality, monitoring and security, and other issues that apply particularly to working remotely from a virtual office.

(b) In addition, an employee must complete a minimum of forty-five days of direct oversight and mentoring in the licensee's business office prior to working from a virtual office. This requirement may be waived by the board under emergency circumstances that the board has determined makes it impossible to perform.

(c) Once an employee begins to work from a virtual office, they must be subject to the same levels of communication, management, oversight and monitoring via telecommunications and computer monitoring as they would if working in the business office.

(d) While working remotely the employee must comply with all applicable laws and regulations as outlined in chapters 19.16 and 18.235 RCW and chapter 308-29 WAC.

(6) **IT security requirements.** Licensees are responsible for developing and following a written IT security policy for virtual offices that outlines the security protocols in place safeguarding the company and consumer data. Consumer data in the form of an electronic record must have the appropriate protections against unauthorized or accidental disclosure, access, use, modification, duplication, or destruction.

The IT security policy shall include the following additional requirements:

(a) Virtual office access to the collection agency's secure system must be through the use of a virtual private network "VPN" or other system that requires usernames and passwords, frequent password changes, authorization, multifactor authentication, data encryption, and/or account lockout implementation.

(b) The immediate installation or implementation of any system updates or repairs in order to keep information and devices secure.

(c) The provision of safe and secure storage with expandable capacity for all electronic data including consumer and licensee data.

(d) Virtual offices must contain computers and/or other electronic devices that have secure computer configurations and reasonable security measures such as updated antivirus software and firewalls.

(e) Access to licensee's systems must occur on company-issued computers and electronic devices whose use is restricted to authorized employees while working at their virtual office, and an employee's use of devices must be limited to employment related activities on behalf of licensee.

(f) Consumer data is accessed securely through the use of encryption or other secure transmission sources.

(g) An action plan has been developed and communicated with relevant employees on how to handle a data breach arising from remote access devices in accordance with applicable laws, which shall include any required disclosures of such breach.

(h) A disaster recovery plan has been developed and communicated with relevant employees on how to respond to emergencies (e.g., fire, natural disaster, etc.) that have the potential to impact the use and storage of licensee's data.

(i) The secure and timely disposal of licensee's data as required by applicable laws and contractual requirements.

(j) An annual internal or external risk assessment is performed on the collection agency's protection of licensee's data from reasonably foreseeable internal or external risks. Based on the results of the annual risk assessment, the collection agency shall make adjustments to its data security policy if warranted.

(k) The licensee can stop the virtual office's connectivity with the network and remotely disable or wipe company issued computers and electronic devices that contain or have access to licensee's information and data when an employee no longer has an employment relationship with the company.

(7) **Call recording and monitoring.** Licensees must consistently record and monitor calls in which employees are performing collection activities. Call recordings must be maintained for a minimum of four years and call monitoring must be regularly performed, a portion of which must be in real time. Recording and monitoring calls from virtual offices must meet industry standards for collection agencies and ensure that virtual office calls comply with chapter 19.16 RCW and more particularly with RCW 19.16.250 (13)(c), (18), and (19) and also chapter 9.73 RCW.

(8) **Nondisclosure.** Neither the employee nor the licensee shall represent to debtors or any other party that the employee is working independently from licensee in a virtual office. Such acts include, but are not limited to:

(a) Advertising in any form, including business cards and social media, an unlicensed address or personal telephone or facsimile number associated to an unlicensed location.

(b) Meeting consumers at, or having consumers come to the employee's virtual office.

(c) Holding out in any manner, directly or indirectly, by the employee or licensee, an address that would suggest or convey to a consumer that the virtual office is a licensed collection agency location or "branch office," including receiving licensee's mail, or storing books or records at the virtual office.

It shall not be considered a violation of this section if, in response to an inquiry about the remote worker's location, a remote worker responds that the worker is working remotely or working from a virtual office, or words to that effect.

(9) **Data breach.** Should a licensee or virtual office experience a data breach as defined under chapter 19.255 RCW, the licensee must comply with the requirements of chapter 19.255 RCW.

(10) **Evaluation.** The board will review and evaluate the adequacy of this section at least annually and will make amendments, as the board deems necessary.

WSR 20-23-088

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 17, 2020, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-082.

Title of Rule and Other Identifying Information: Chapter 392-122 WAC, Finance—Categorical apportionment; WAC 392-140-916 through 392-140-939, finance special allocations (K-3 funding).

Hearing Location(s): On January 7, 2021, at 10:00 a.m., online webinar via Zoom (call-in option available). Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by online webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit the office of superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: January 12, 2021.

Submit Written Comments to: Dierk Meierbachtol, OSPI, P.O. Box 47200, Olympia, WA 98504, email Dierk.meierbachtol@k12.wa.us, by January 7, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by December 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rule amendments is to make housekeeping and other technical changes to chapter 392-122 WAC, Finance—Categorical apportionment, and WAC 392-140-916 through 392-140-939. The amendments would update the chapter to align with state and federal statutes, simplify the language for clarity and readability, and make other technical revisions. OSPI does not anticipate that these proposed changes would have any material substantive effect.

Reasons Supporting Proposal: OSPI has identified a need to update these rules to align them with state and federal law and simplify them for clarity and readability.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.040(5).

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

Name of Agency Personnel Responsible for Drafting: Dierk Meierbachtol, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6004; and Implementation: T.J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

November 17, 2020

Chris P. S. Reykdal
State Superintendent
of Public Instruction

PURPOSE AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-005 Authority. The authority for this chapter is RCW 28A.150.290, which authorizes the superintendent of public instruction to adopt rules and regulations for the implementation of chapter 28A.150 RCW. This chapter is further authorized under RCW 28A.710.040(5), which provides that ((public)) charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-010 Purpose. The purpose of this chapter is to establish policies and procedures for the distribution of state moneys to school districts and charter schools for ~~((programs authorized by RCW 28A.150.370 other than basic education apportionment, special allocations pursuant to chapter 392-140 WAC, and transportation allocations))~~ the state special education program, the institutional education program, K-3 class size, the learning assistance program, the transitional bilingual program, and the highly capable students education program.

NEW SECTION

WAC 392-122-015 Definitions. The following terms apply in this chapter:

(1) "Charter school" means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

(2) "School day" means the same as defined in WAC 392-121-033.

(3) "School year" means the same as defined in WAC 392-121-031.

(4) "Student eligible for special education services" means the same as defined in WAC 392-172A-01035.

(5) "Tribal compact school" means a school operated according to the terms of a state-tribe education compact authorized under chapter 28A.710 RCW.

STATE SPECIAL EDUCATION PROGRAM

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-106 ((Definition—Form P-223H.))
State special education program—Enrollment reporting.
~~(("Form P-223H" means the report of))~~ (1) School districts and charter schools must submit monthly special education headcount enrollment reports for ~~((eligible special education~~

students as defined in WAC 392-122-135 submitted monthly by the school districts and charter schools)) students eligible for special education services to the superintendent of public instruction for the school year on Form P-223H for the purpose of calculating the special education program allocations.

~~((H))~~ (2) The count dates for ~~((special education student))~~ the enrollment of students eligible for special education services shall be the same as specified in WAC 392-121-122.

~~((Z))~~ (3) This report shall indicate the ~~((special education))~~ enrollment of students eligible for special education services by resident school district and serving school district.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-140 State special education program—Home and/or hospital care. State special education program moneys shall be allocated to school districts and charter schools for students eligible for home/hospital instruction under WAC 392-172A-02100 ~~((temporarily requiring home and/or hospital care))~~ at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing home and/or hospital care allocations.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

WAC 392-122-145 State special education program—Home and/or hospital care—Extended absences. Students eligible under WAC 392-172A-02100 ~~((temporarily requiring home and/or hospital care))~~ for home/hospital instruction shall be counted as enrolled students pursuant to WAC 392-121-106 as follows:

(1) ~~((Students not deemed eligible special education students pursuant to WAC 392-122-135 whose absence from the regular attendance continues through two consecutive monthly enrollment report days shall be dropped from the rolls and shall not be counted as an enrolled student on the next monthly enrollment report day unless attendance has resumed. Such students shall only be eligible for home and/or hospital care allocations until attendance in the regular program is resumed.))~~ A student who began the school year participating in classroom instruction but who has been absent and receiving home/hospital instruction may be claimed for basic education funding on Form P-223 for up to two months pursuant to WAC 392-121-108 (1)(a), provided the student returns to school prior to the end of the school year.

(2) A student (s deemed) eligible for special education ((students pursuant to WAC 392-122-135 shall be reported as enrolled students for the duration of the home and/or hospital care)) services who receives home/hospital instruction on or before the monthly count date may be reported as an enrolled student on Form P-223H. The student may be claimed for funding for the duration of the receipt of home/hospital instruction, provided the student remains eligible for special education services.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-150 State special education program—Hospital educational program. (1) State special education program moneys shall be allocated by the superintendent of public instruction to school districts and charter schools operating a hospital educational program for the exclusive purpose of maintaining and operating the hospital educational program.

(2) School districts and charter schools shall be allocated funds for hospital educational programs at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing hospital educational program allocations.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-155 State special education program—Board and room cost. (1) State special education program moneys shall be allocated to school districts and charter schools for the cost of approved board and room for students eligible ((handicapped students served and requiring board and room;)) for special education services who are deemed in need of board and room by the superintendent of public instruction but not eligible under programs of the department of social and health services ~~((but deemed in need of the board and room by the superintendent of public instruction))~~.

(2) These moneys are in lieu of transportation costs.

(3) School districts and charter schools shall be allocated moneys for board and room of students eligible ((special education students)) for special education services at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing board and room allocations.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-160 State special education program—Reporting. (1)(a) At such times as are designated by the superintendent of public instruction, each school district and charter school shall report the number of students eligible ((special education students receiving special education)) for special education services according to instructions provided by the superintendent of public instruction.

(b) The ~~((disability condition shall))~~ reported eligibility categories must be one of ((such conditions)) the categories identified in WAC ((392-122-135. The age for the purpose of determining the special education program allocation calculated in WAC 392-122-105 shall be the age of the student on the monthly enrollment count date as defined by WAC 392-121-119. The age reported by the school district or charter school shall be for apportionment purposes only and not for determination of a child's eligibility for access to a special education program)) 392-172A-01035.

(2) Each school district and charter school shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and sub-

stantiate the school district's or charter school's allocation of state special education moneys.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-165 State special education program—Apportionment of state special education program moneys. (1) From moneys appropriated by the legislature, the superintendent of public instruction shall apportion state special education program moneys to each school district and charter school based on the criteria cited in the State Operating Appropriations Act for the respective school year for state special education program allocation and on the provisions of ~~((WAC 392-122-100 through 392-122-166))~~ this chapter.

(2) The superintendent of public instruction shall make payments of state special education program moneys in the same manner as provided in WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-166 State special education program allocation. (1) The board of directors of a school district or charter school may request the superintendent of public instruction to pay a portion of the district's or charter school's special education allocation to another school district, charter school, or an educational service district.

(2) The request must be submitted on Form 1295 and must state the dollar amount of the transfer. The board ~~((can))~~ may modify the dollar amount of the transfer by submitting another Form 1295 to the superintendent of public instruction.

(3) Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

STATE INSTITUTIONAL EDUCATION PROGRAM

AMENDATORY SECTION (Amending WSR 10-20-055 and 10-20-127, filed 9/27/10 and 10/5/10, effective 10/28/10 and 11/5/10)

WAC 392-122-205 State institutional education program—Eligible programs. Programs supported as state institutional education programs include those provided in the following facilities:

(1) ~~State operated ((group homes — i.e.,))~~ community facilities. State operated community facilities are group home facilities maintained by the division of juvenile rehabilitation of the department of ((social and health services)) children, youth, and families to house adjudicated youth twenty-four hours a day((;)).

(2) ~~County juvenile detention centers((— i.e., facilities meeting the definition of)).~~ A county juvenile detention center is a "detention facility" as defined in RCW 13.40.020.

(3) ~~((Institutions for juvenile delinquents — i.e.,))~~ State long-term juvenile institution. State operated long-term juvenile institutions are facilities maintained by the divi-

sion of juvenile rehabilitation of the department of ~~((social and health services))~~ children, youth, and families for the diagnosis, confinement, and rehabilitation of juveniles committed by the courts.

(4) ~~Residential habilitation centers((— i.e.,)).~~ Residential habilitation centers are facilities maintained by the ((division of)) developmental disabilities administration of the department of social and health services for care and treatment of persons with exceptional needs by reason of ((mental and/or physical deficiency)) intellectual and developmental disabilities.

Programs providing educational services to youth in a residential ~~((rehabilitation))~~ habilitation center may include services provided at facilities controlled and operated by the school district providing those services.

(5) ~~Adult jails and correctional facilities housing juveniles((— i.e.,)).~~ Adult correctional facilities housing juveniles are facilities maintained by the state department of corrections for ((juvenile)) inmates under eighteen years of age. Adult jail facilities housing juveniles are any jail operated under the authority of chapter 70.48 RCW in which inmates under eighteen years of age are incarcerated.

AMENDATORY SECTION (Amending WSR 92-03-045, filed 1/10/92, effective 2/10/92)

WAC 392-122-211 ((Definition—))State institutional education program—Institution enrollment count dates. ~~(())~~ Institution enrollment count dates((—"means")) are the fourth school day of September and the first school day of each of the ten subsequent months of the school year.

AMENDATORY SECTION (Amending WSR 07-23-022, filed 11/9/07, effective 12/10/07)

WAC 392-122-212 ((Definition—))State institutional education program—Educational activity. ~~((As used in WAC 392-122-200 through 392-122-275, "))~~ (1) State institutional education program educational activity((—"means")) must consist of the following teaching/learning experiences provided by a school district or other education provider:

~~((+))~~ (a) Instruction, testing, counseling, supervision, advising, and other services provided directly by certificated staff or by classified staff who are supervised by certificated staff.

~~((+))~~ (b) Up to one hour per day of scheduled study time if the study is in conjunction with other educational activity and if the study is monitored by educational staff who are present during the study.

~~((+))~~ (c) Up to two hours per day of individual study conducted by a student when educational staff are not present if all of the following conditions are met:

~~((+))~~ (i) The study is in pursuit of high school graduation credit; or the study is in a department of corrections facility and is in pursuit of a certificate of educational competence pursuant to RCW 28B.50.536 and chapter 131-48 WAC;

~~((+))~~ (ii) The study is part of a program of instruction defined by a certificated employee who evaluates the student's progress in that program;

~~((+))~~ (iii) The student is making progress in the program;

~~((4))~~ (iv) The study is not counted as work training experience pursuant to ~~((subsection (4)))~~ (d) of this ~~((section))~~ subsection; and

~~((5))~~ (v) Combined individual study time and scheduled study time pursuant to ~~((subsection (2)))~~ (b) of this ~~((section))~~ subsection claimed in determining the student's full-time equivalent pursuant to WAC 392-122-225 do not exceed two hours per day.

~~((4))~~ (d) Work based learning meeting the requirements of WAC 392-410-315: Provided, That for work based learning provided pursuant to WAC 392-410-315, a student's full-time equivalent shall be determined pursuant to WAC 392-121-124.

(2) Other education providers under this section must be:

(a) An educational service district, institution of higher education, private contractor (including charter school), or any combination thereof providing an institutional education program in an adult correctional facility operated by the department of corrections under contract with the superintendent of public instruction and the department of corrections; or

(b) An educational service district providing an institutional education program pursuant to a contract with a school district in a state operated community facility, state long-term juvenile institution, residential habilitation center, or county juvenile detention center.

AMENDATORY SECTION (Amending WSR 01-24-002, filed 11/21/01, effective 12/22/01)

WAC 392-122-220 ((Definition—))State institutional education program—Enrolled institutional education program student. (~~("Enrolled institutional education program student" means a person who:)~~) A student may be counted as an enrolled institutional education program student under the following conditions:

(1)(a) The student is in a program in a department of corrections facility and is either:

(i) Under eighteen years of age; or ~~((is))~~

(ii) Eighteen years of age and is continuing in the institutional education program with the permission of the department of corrections and the education provider; or

(b) The student is under twenty-one years of age at the beginning of the school year and is either:

(i) In a residential school as defined in RCW 28A.190.020; or

(ii) Confined in a county juvenile detention center within the meaning of confinement provided in RCW 13.40.020;

(2) The student is scheduled to engage in educational activity in the institutional education program during the current week under WAC 392-122-212;

(3) During the current school year, the student has engaged in educational activity in the institutional education program provided or supervised by educational certificated staff under WAC 392-122-212; and

(4) The student does not qualify for any of the enrollment exclusions in WAC 392-122-221.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-221 ((Definition—))State institutional education program—Enrollment exclusions. (1) The following may not be counted as an enrolled institutional education program student:

~~((1))~~ (a) A person whose educational activity under WAC 392-122-212 has terminated.

~~((2))~~ (b) A person who has transferred to another institution, school district, or charter school.

~~((3))~~ ~~An institution student who:~~

~~((a))~~ (c) A person residing in a state institution who:

(i) Has not engaged in educational activity under WAC 392-122-212 in the past five school days, excluding days of excused absence;

~~((b))~~ (ii) Has not engaged in educational activity in the past ten school days under WAC 392-122-212, including days of excused absence; or

~~((c))~~ (iii) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support pursuant to chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month.

(2) When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.

(3) As used in this section, "excused absence" means an absence from scheduled educational activity which certificated staff determine to be due to one or more of the following:

(a) Illness;

(b) Attendance in court; or

(c) Meeting with a lawyer, case worker, counselor, physician, dentist, nurse, or other professional service provider.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-122-225 ((Definition—))State institutional education program—Institutional education full-time equivalent (FTE) students. (~~("Institutional education full-time equivalent (FTE) students" means)~~) The sum of institutional education full-time equivalent (FTE) students on an enrollment count date shall be determined as follows:

(1) ~~((Prior to the 2018-19 school year, FTE shall be calculated as follows:~~

~~((a))~~ ~~An enrolled institutional education program student who is three to eight years of age and scheduled to engage in a minimum of twenty hours of educational activity per week shall be counted as one FTE.~~

~~((b))~~ ~~An enrolled institutional education program student who is nine years of age or older and scheduled to engage in a minimum of twenty-five hours of educational activity per week shall be counted as one FTE.~~

~~((2))~~ ~~Beginning with the 2018-19 school year,)~~ An enrolled institutional education program student scheduled to engage in a minimum of twenty-seven hours and forty-five minutes of educational activity per week shall be counted as one FTE.

~~((3))~~ (2) An enrolled institutional education program student who is scheduled to engage in less than the minimum hours for one FTE shall be counted as a partial FTE, determined by dividing the scheduled hours of educational activity by the minimum hours for one FTE.

~~((4))~~ (3) In determining a student's FTE, educational activity under WAC 392-122-212 may include up to ten minutes of class transition time between classes but shall not include time for meals.

~~((5))~~ (4) No student shall be counted as more than one FTE.

(5) The school district's annual average full-time equivalent for institutional education students shall be the average of institutional education FTE students on the eleven institution enrollment count dates of the school year.

AMENDATORY SECTION (Amending WSR 10-20-055 and 10-20-127, filed 9/27/10 and 10/5/10, effective 10/28/10 and 11/5/10)

WAC 392-122-228 Alternative learning experiences for juvenile students incarcerated in adult jail facilities.

~~(1) ((A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or online curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may also include participation by students and parents in the design and implementation of a student's learning experience.))~~ **General.**

(a) This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

~~((a))~~ (i) Individual courses of study for ~~((juvenile))~~ students ~~((incarcerated))~~ in adult jail facilities ~~((-"Adult jail facility" means any jail operated under the authority of chapter 70.48 RCW;~~

~~((b))~~ housing juveniles;

(ii) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 181-82 WAC, or a contractor pursuant to WAC 392-121-188;

~~((c))~~ (iii) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

~~((d))~~ (iv) Provided in whole or part, outside the regular classroom setting, including those learning experiences developed digitally via the internet or other electronic means.

(b) This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences for juvenile students incarcerated in adult jail facilities. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

(2) **Requirements.** An alternative learning experience for a juvenile student incarcerated in adult jail facilities may be counted as a course of study pursuant to WAC 392-121-107 if ~~((the following requirements are met:~~

~~((2))~~ the alternative learning experience meets the requirements of this section.

(3) **School district board policies for alternative learning experiences**~~((:)).~~ The board of directors of a school district claiming state funding for alternative learning experiences for juvenile students incarcerated in adult jail facilities shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience for juvenile students incarcerated in adult jail facilities that meets the minimum criteria pursuant to subsection ~~((4))~~ (5) of this section;

(b) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

~~((i))~~ (i) Require each juvenile student who is incarcerated in an adult jail facility and enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course objectives or the requirements of the learning plan.

(ii) Such direct personal contact must be for a period not less than thirty minutes per week.

(iii) Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities.

(iv) Direct personal contact ~~((means))~~ must be a face-to-face meeting with the student;

(d) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student;

~~((i))~~ (i) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. ~~((This))~~

(ii) The annual report shall include at least the following:

~~((A))~~ (A) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

~~((B))~~ (B) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

~~((C))~~ (C) A description of how a written student learning plan pursuant to subsection ~~((4))~~ (5) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

~~((D))~~ (D) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

~~((E))~~ (E) Results of any self-evaluations conducted pursuant to subsection ~~((7))~~ (8) of this section~~((:)).~~

(f) Satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies ~~((under chapter 392-410 WAC))~~; and

(g) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements ~~((f))~~ under chapter 180-51 WAC ~~((g))~~.

~~((3))~~ **(4) Alternative learning experience implementation standards** ~~((z))~~.

(a) Alternative learning experiences shall be accessible to all juveniles incarcerated in adult jail facilities, including those with disabilities. Alternative learning experiences for ~~((special education))~~ students eligible for special education services shall be provided in accordance with chapter 392-172A WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that enrolled juvenile students incarcerated in adult jail facilities have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan.

(c) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

~~((i))~~ (d) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. ~~((“Proctored” means))~~

~~((ii))~~ (ii) Proctored examinations or projects must be directly monitored by an adult authorized by the school district.

~~((4))~~ (e) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or online curricula, and may be delivered over the internet or using other electronic means.

(f) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may include participation by students and parents in the design and implementation of a student's learning experience.

(5) Written student learning plan ~~((z))~~.

(a) Each juvenile student incarcerated in an adult jail facility who is enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress.

(b) The written student learning plan shall include, but not be limited to, the following elements:

~~((a))~~ (i) A beginning and ending date for the learning experience;

~~((b))~~ (ii) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection ~~((5))~~ (6) of this section and must be based upon the criteria in subsection ~~((6))~~ (7) of this section;

~~((c))~~ (iii) A description of how weekly contact requirements will be fulfilled;

~~((d))~~ (iv) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

~~((e))~~ (v) Identification of instructional materials essential to successful completion of the learning plan; and

~~((f))~~ (vi) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

~~((c))~~ (i) The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district.

(ii) For a high school alternative learning experience, the plan shall also specify whether the experience meets state and district graduation requirements.

~~((5))~~ (6) **Enrollment reporting** ~~((Effective the 2009-10 school year,))~~. The full-time equivalency of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-122-225(1) and the estimated average weekly hours of learning activity described in the written student learning plan on the first enrollment count date on or after the start date specified in the written student learning plan; and

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for ten consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in his or her alternative learning experience or participated in another course of study as defined in WAC 392-121-107.

~~((6))~~ **(7) Accountability for student performance** ~~((z))~~.

(a) At minimum, juvenile students incarcerated in adult jails who are enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. The results of the review shall be communicated to the student.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the stu-

dent fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff.

(b) The educational progress of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district.

~~((7))~~ **(8) Program evaluation**~~((:))~~. School districts offering alternative learning experiences to juvenile students incarcerated in adult jail facilities shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

~~((8))~~ **(9) Annual reporting**~~((:))~~.

(a) Each school district offering alternative learning experiences shall report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section, including student headcount and full-time equivalent enrollment claimed for basic education funding.

(b) The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs.

(c) The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

~~((9))~~ **(10) Documentation**~~((:))~~. In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection ~~((2))~~ **(3)(g)** of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection ~~((8))~~ **(9)** of this section;

(d) The written student learning plans required by subsection ~~((4))~~ **(5)** of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection ~~((6))~~ **(7)** of this section; and

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress.

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

WAC 392-122-270 State institutional education program—Apportionment of state moneys. **(1)** From the state institutional education program moneys appropriated to the superintendent of public instruction, the superintendent shall make allocations to school districts and other education providers based on the institutional education program's annual average full-time equivalent institutional education students and as provided in the state Operating Appropriations Act and WAC 392-122-200 through 392-122-275.

~~((4))~~ **(2)** Institutional education program allocations shall be based on a two hundred twenty-day school year. Allocations to a school district or other education provider offering less than two hundred twenty school days shall be reduced pro rata as provided in WAC 392-122-910.

~~((2))~~ **(3)** The superintendent of public instruction shall make payments in the same manner as provided in WAC 392-121-400.

~~((3))~~ **(4)** The superintendent of public instruction may reduce or delay payment of institutional education program moneys pursuant to chapter 392-117 WAC ~~((, Timely reporting))~~.

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

WAC 392-122-275 State institutional education program—Reporting requirements. Each school district or other education provider operating an institutional education program shall report to the superintendent of public instruction as follows:

(1)(a)(i) The district or provider shall report on Form E-672 the number of individual enrolled institutional education program students and the number of institutional education full-time equivalent students on each institution enrollment count date.

(ii) Form E-672 is the form distributed by the superintendent of public instruction on which school districts, or other education providers operating institutional education programs report eligible institutional education students enrolled on the enrollment count dates specified in WAC 392-122-211.

(b) Report forms shall be signed by the school district superintendent or a designated official of the school district or other education provider.

(2) Each school district or other education provider operating an institutional education program shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and substantiate the program's allocation of state institutional education program moneys.

(3) Institutional enrollment reporting shall be subject to chapter 392-117 WAC ~~((, Timely reporting))~~.

(4) Each school district or other education provider shall report personnel data pursuant to instructions provided by the superintendent of public instruction.

(5) By August 15th of each year, each other education provider shall provide a budget showing the anticipated

activities and objects of expenditures for the institutional education program for the ensuing school year.

(6) By December 15th following the end of the school year, each other education provider shall provide an annual financial summary of the actual activities and objects of expenditures for the institutional education program for the preceding school year.

(7) Information required by this section shall be reported pursuant to instructions provided by the superintendent of public instruction.

K-3 CLASS SIZE

NEW SECTION

WAC 392-122-500 K-3 class size—Apportionment of state moneys. (1) State moneys for K-3 class size shall be allocated as provided in this chapter.

(2) Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 will be based upon budgeted K-3 enrollment as stated in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated K-3 class size for purposes of funding from September through December.

(4) K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs that meet the requirements of WAC 392-121-182.

(5) Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of K-3 class size funding in order to generate the full allotment.

NEW SECTION

WAC 392-122-505 K-3 class size—Student enrollment. (1) Grade level K-3 enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June.

(2) All students in alternative learning experience programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

NEW SECTION

WAC 392-122-510 K-3 class size—Teachers. (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3 multiplied by the annual percentage of students receiving special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

NEW SECTION

WAC 392-122-515 K-3 class size compliance—Supplemental FTE teachers. (1) Supplemental teacher full-time equivalent (FTE) teachers must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, and 3.

(2) Supplemental FTE teacher reporting shows the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275 under WAC 392-122-510. Supplemental full-time equivalent teachers are determined as follows:

(a) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the most current report S-275.

(b) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

NEW SECTION

WAC 392-122-520 K-3 class size—Calculation. Funded class size will be calculated by dividing the total teachers and supplemental teacher FTE across all grades K-3 collectively as provided in WAC 392-122-510 into the calculated combined total enrollment in grade levels of K, 1, 2, or 3.

STATE LEARNING ASSISTANCE PROGRAM

AMENDATORY SECTION (Amending WSR 19-04-097, filed 2/5/19, effective 3/8/19)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1)(a) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due.

(b) The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, ((public)) charter school, or ((school operated pursuant to a state-tribe education)) tribal compact school if the school district, charter school, or tribal compact school fails to submit its annual report for the prior

school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include ~~((two allocations:))~~ a district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(b)(i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least fifty percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 for the prior year.

STATE TRANSITIONAL BILINGUAL PROGRAM

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-705 Formula for the distribution of state moneys for the state transitional bilingual program. ~~((1) As used in this section the term "eligible student" shall mean those students defined under WAC 392-160-005(3) and 392-150-015.~~

~~((2))~~ A school district's or charter school's entitlement for state moneys for the state transitional bilingual program shall be calculated as follows:

~~((a))~~ (1) Multiplying the number of eligible students under WAC 392-160-005(3) and 392-160-015 by the per pupil allocation established in the State Appropriation Act for the state transitional bilingual program.

~~((b))~~ (2) The result of the calculation provided in ~~((a))~~ subsection (1) of this ~~(subsection)~~ section is the district's or charter school's entitlement subject to WAC 392-122-710 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 16-10-116, filed 5/4/16, effective 6/4/16)

WAC 392-122-710 Distribution of state moneys for the state transitional bilingual program. (1) The superintendent of public instruction shall apportion to school dis-

tricts or charter schools for the state transitional bilingual program the amount calculated per district in WAC 392-122-705 according to the apportionment schedule provided in RCW 28A.510.250.

(2) Monthly payments to districts and charter schools shall be adjusted during the year to reflect changes in the district's or charter school's reported eligible students under WAC 392-160-005(3) and 392-160-015 as reported on the P223, monthly report of school district enrollment form.

(3) For the purpose of transitional bilingual allocations, the school district's or charter school's nine-month average annual headcount enrollment of eligible students ~~((as defined in))~~ under WAC 392-160-005(3) and 392-160-015 shall be the average of such enrollment for the first school day of October through June.

STATE HIGHLY CAPABLE STUDENTS EDUCATION PROGRAM

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program. ~~((1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term defined in WAC 392-121-133.~~

~~((2))~~ A school district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

~~((a))~~ (1) Multiplying the ~~((AAFTE of the reporting district or charter school))~~ reporting district's or charter school's average annual full-time equivalent students, as defined in WAC 392-121-133, by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

~~((b))~~ (2) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-810 Distribution of state moneys for the state highly capable students education program. The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's ~~((AAFTE))~~ average annual full-time equivalent students as reported on the P223, monthly report of school district enrollment form.

GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 18-20-023, filed 9/24/18, effective 10/25/18)

WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries. (1) Categorical apportionment moneys shall be expended for allowable categorical program costs. Indirect cost charges to categorical programs are limited as provided in this section. Categorical moneys may be carried over from one school district or charter school fiscal year to another only as provided in this section.

~~((4))~~ (2) The superintendent of public instruction shall recover categorical program allocations made pursuant to this chapter if not expended by the school district or charter school during the school year for allowable program costs.

~~((2) For the 2000-01 school year and thereafter, ")~~ (3) Allowable program costs ~~(" means")~~ are direct program expenditures plus allowable indirect program charges.

(a) Direct program expenditures are expenditures directly traceable to the program for the school year reported consistent with the *Accounting Manual for Public School Districts in the State of Washington* and instructions provided by the superintendent of public instruction including the *Administrative Budgeting, and Financial Reporting Handbook*.

(b) For the purposes of this section, special education program expenditures shall be reduced (abated) by revenues to account 7121 special education revenues from other districts or charter schools.

(c) For special education, highly capable, and transitional bilingual, allowable indirect program charges equal direct program expenditures times the percentage calculated from the school district's or charter school's annual financial statements (Report F-196) for two school years prior as follows:

(i) Divide direct expenditures for program 97 district-wide support by;

(ii) Total general fund direct expenditures for all programs minus direct expenditures for program 97 district-wide support; and

(iii) Round to three decimal places.

(d) For the learning assistance program, allowable indirect program charges equal the direct program expenditures times the federal restricted indirect rate calculated by the superintendent of public instruction.

(e) For the institutional education program, allowable indirect program charges equal the state institutional education program allocation times the percentage allocated for indirect costs pursuant to the biennial operating appropriations act and the state funding formula.

~~((3) Commencing with the 1994-95 school year allocation,))~~ (4) A school district or charter school may carry over from one school district fiscal year to the next up to ten percent of the state learning assistance program allocation. ~~((For the 2017-18 school year only, a school district or charter school may carry over all unspent learning assistance program high poverty allocations to the 2018-19 school year.))~~

Carryover moneys shall be expended solely for allowable learning assistance program costs.

~~((4) Commencing with the 1997-98 school year allocation,))~~ (5) A school district or charter school may carry over from one school fiscal year to the next up to ten percent of state special education program allocation. Carryover moneys shall be expended solely for allowable state special education program costs.

~~((5) Commencing with the 1998-99 school year allocation,))~~ (6) A school district may carry over from one school district fiscal year to the next up to ten percent of the state institutional education program allocation. Carryover moneys shall be expended solely for allowable state institutional education program costs.

~~((6))~~ (7) The amount recovered pursuant to this section for special education, highly capable, bilingual, and learning assistance programs shall be determined as follows:

(a) Sum the state allocation for the categorical program for the school year and any carryover from the prior school year if applicable;

(b) Determine the district's or charter school's allowable program costs for the school year pursuant to this section;

(c) If the result of (a) of this subsection exceeds the result of (b) of this subsection, the difference less any allowable carryover shall be recovered.

~~((7) For the 2017-18 school year only, learning assistance program high poverty allocations are not subject to the recovery provisions outlined in WAC 392-122-900 (6)(a) through (e).))~~

(8) The amount recovered pursuant to this section for the institutional education program shall be determined as follows:

(a) Sum the state allocation for the institutional education program for the school year excluding any amount provided for indirect costs, and any carryover from the prior school year if applicable;

(b) Determine the school district's direct expenditures for the institutional education program as reported on Report F-196 or such other document filed pursuant to instructions provided by the superintendent of public instruction;

(c) If the amount of (a) of this subsection exceeds the amount of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(9) This section applies to categorical program allocations to school districts, charter schools, educational service districts and, in the case of institutional education programs, entities contracting to provide an institutional education program funded under this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-122-100 State special education program—
Applicable code provisions.

WAC 392-122-105 Definition—LEAP document for state special education program allocation.

WAC 392-122-107 Definition—Report 1220.

- WAC 392-122-110 Definition—State special education program—Special education program certificated instructional staff salary and mix factor variables for the allocation formula for the 1994-95 school year.
- WAC 392-122-120 State special education program—Determination of district average state special education program certificated instructional staff salary for the purpose of apportionment.
- WAC 392-122-130 State special education program—Non-employee related cost.
- WAC 392-122-131 State special education program—Basic education backout.
- WAC 392-122-132 State special education program—Substitute teacher pay allocations.
- WAC 392-122-135 State special education program—Eligible special education students.
- WAC 392-122-200 State institutional education program—Applicable code provisions.
- WAC 392-122-201 Definition—State institutional education program—School day.
- WAC 392-122-202 Definition—State institutional education program—School year.
- WAC 392-122-206 Definition—State institutional education program—Form E-672.
- WAC 392-122-208 Definition—State institutional education program—Other education provider.
- WAC 392-122-210 Definition—State institutional education program—Certificated instructional staff and mix factor variables for the purpose of apportionment.
- WAC 392-122-213 Definition—State institutional education program—Excused absence.
- WAC 392-122-230 Definition—State institutional education program—Annual average full-time equivalent (AAFTE) institutional education students.
- WAC 392-122-420 Full-day kindergarten program—Authority.
- WAC 392-122-421 Full-day kindergarten program—Definitions.
- WAC 392-122-422 Full-day kindergarten program—Applicable provisions.
- WAC 392-122-423 Full-day kindergarten program—Determination of eligibility.
- WAC 392-122-424 Full-day kindergarten program—Letter of acceptance and approvals.

- WAC 392-122-425 Full-day kindergarten program—Subsequent determination of eligible schools.
- WAC 392-122-426 Full-day kindergarten program—Apportionment of state moneys.
- WAC 392-122-600 State learning assistance program—Applicable code provisions.
- WAC 392-122-700 State transitional bilingual program—Applicable code provisions.
- WAC 392-122-800 State highly capable students education program—Applicable code provisions.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-140-916 K-3 class size funding.
- WAC 392-140-923 K-3 class size compliance—Enrollment.
- WAC 392-140-932 K-3 class size compliance—Teachers.
- WAC 392-140-934 K-3 class size compliance—Supplemental FTE teachers.
- WAC 392-140-939 K-3 funded class size.

WSR 20-23-090
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed November 17, 2020, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-112.

Title of Rule and Other Identifying Information: WAC 308-104-014 Application for driver's license or identicard.

Hearing Location(s): On December 22, 2020, at 10:30 a.m. Telephonic public rule-making hearing will be conducted remotely over the phone. Call-in number: 360-407-3815, Conference ID: 2868139. There is no requirement to RSVP for the public hearing. If you would like to attend, please dial the call-in number to the left and follow the automated instructions to enter the Conference ID number, which is located below the call-in number.

Date of Intended Adoption: December 23, 2020.

Submit Written Comments to: Damon Monroe, Agency Rules Coordinator, Department of Licensing (DOL), P.O. Box 9030, Olympia, WA 98507-9030, email rulescoordinator@dol.wa.gov.

Assistance for Persons with Disabilities: Contact Ellis Starrett, rules and policy manager, phone 360-902-3846, email Estarrett@dol.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department's current regulations require an applicant for an original driver license/identicard to provide mother's name on DOL applica-

tions. The mother's maiden name is not necessary to ascertain a person's identity and should be removed from application.

Reasons Supporting Proposal: The amendment will update the department's policy and procedure for processing applications for driver licenses, identification cards and instruction permits. The amendment will end the department's collection of an applicant's maiden name, there is no need to collect additional data not needed to establish a person's identity. See Governor's Executive Order 17-01.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.119.

Statute Being Implemented: Not applicable.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Geoffrey Cunningham, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3655; Implementation: Gilbert De Leon III, 12801 East Sprague Avenue, Spokane, WA, 509-921-2383; and Enforcement: Charlotte Anderson, 1125 Washington Street S.E., Olympia, WA 98504, 360-791-8287.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are related only to internal governmental operations that are not subject to violation by a non-government party.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

November 17, 2020

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-10-030, filed 4/25/18, effective 5/19/18)

WAC 308-104-014 Application for driver's license or identicard. A person applying for a driver's license, instruction permit, or identification card must provide the following information:

(1)(a) The person's full name, current mailing and Washington residential address, and telephone number;

(b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:

(i) Is under the age of eighteen;

(ii) Applies in person;

(iii) Attests to a lack of permanent primary resident address at each application; and

(iv) Provides a temporary mailing address where the identicard can be mailed.

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date of birth;

(4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;

(5) ~~((The person's mother's maiden name and))~~ Whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 20-23-091

PROPOSED RULES

CASCADIA COLLEGE

[Filed November 17, 2020, 2:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-051.

Title of Rule and Other Identifying Information: Use of college facilities for expressive activity, chapter 132Z-142 WAC.

Hearing Location(s): On January 26, 2021, at 3:00 p.m., at Cascadia College, Board Room CC2-260, 18345 Campus Way N.E., Bothell, WA 98011. The public hearing may need to be conducted remotely due to the COVID-19 pandemic.

Topic: Expressive activities public hearing. Join Zoom meeting <https://cascadia.zoom.us/j/81079184953?pwd=NUZIOEhYa2IvTEN6bVVXZGRySnA1Zz09>, Meeting ID: 810 7918 4953, Passcode: 407405, Dial by your location +1 253 215 8782 US (Tacoma).

Date of Intended Adoption: February 17, 2021.

Submit Written Comments to: Lily Allen, Rules Coordinator, Office of the President, 18345 Campus Way N.E., Bothell, WA 98011, email lallen@cascadia.edu, fax 425-352-8265, by January 26, 2021.

Assistance for Persons with Disabilities: Contact Gordon Dutrisac, director, student advising and support services, phone 425-352-8288, email gdutrisac@cascadia.edu, by January 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules would provide for the use of campus facilities by campus and noncampus groups for expressive activities, subject to reasonable time, place, and manner limitations.

Statutory Authority for Adoption: RCW 28B.50.140; and Administrative Procedure Act, chapter 34.05 RCW.

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

Name of Proponent: Cascadia College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Meagan Walker, external relations and planning, 425-352-8491.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not "significant legislative rules" as defined under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules do not affect small businesses.

November 17, 2020

Lily Allen

Rules Coordinator

Executive Assistant to President

Chapter 132Z-142 WAC

USE OF COLLEGE FACILITIES FOR EXPRESSIVE ACTIVITY

NEW SECTION

WAC 132Z-142-010 Purpose. This chapter contains the policies of Cascadia College concerning the use of campus facilities by campus and noncampus groups for engaging in free speech and other expressive activities. Cascadia College as an academic institution values freedom of inquiry and expression, civil discourse, and tolerance of competing viewpoints.

At the same time, campus facilities are intended primarily for use by campus groups for educational and related institutional purposes. The college intends to open the campus for expressive use by noncampus groups to the extent that such usage does not substantially and materially interfere with institutional purposes.

It is further intended, both with respect to campus and noncampus groups, that these expressive activity policies shall be interpreted and applied consistently with applicable constitutional law.

NEW SECTION

WAC 132Z-142-020 Definitions. (1) **Campus facilities - Grounds and buildings.** The term "campus facilities" as used in this chapter means the grounds and buildings owned, leased, operated, or controlled by Cascadia College.

(a) **Grounds.** The campus "grounds" consist of those outdoor areas of the campus that are generally open and accessible to the public, including any commons, public square, plaza, patio, pedestrian mall, thoroughfare or walkway, multipurpose field, lawn, or open space.

(b) **Buildings.** The "buildings" of the campus consist of any academic or administrative building, student union, library, museum or gallery, auditorium, theater, concert or recital hall, laboratory, dining or residence facility, athletic or recreational facility, conference or event center, maintenance or storage facility, parking lot, and any other structure reserved by the college for designated institutional uses.

(2) **Campus and noncampus groups.** The term "campus groups" means individuals or groups of individuals affiliated with the college as students, faculty or staff, or invited guests sponsored by a recognized student or alumni organization, academic department, or administrative office of the college. A "noncampus group" means individuals or groups of individuals who are not so affiliated with the college.

(3) **Expressive activity.** The term "expressive activity" means the exercise of those rights of speech, petition, and assembly protected under the federal and state constitutions including, but not limited to, public speech or other expressive conduct, the circulation of petitions or distribution of literature, protests, demonstrations, rallies, picketing, and other gatherings to share information, ideas, beliefs, or viewpoints.

(4) **Public forum - Designated or limited.** A "public forum" for purposes of this chapter is either "designated" or "limited." A dedicated public forum is available for expressive use both by campus and noncampus groups. A limited forum is available for expressive use only by campus groups and may be limited to designated purposes.

NEW SECTION

WAC 132Z-142-030 Use of campus facilities for expressive activity. (1) **Campus grounds.** The grounds of the campus constitute designated public forums available for use for expressive activity both by campus and noncampus groups, as those terms are defined in WAC 132Z-142-020.

(2) **Campus buildings.** The buildings of the campus constitute limited public forums available for use for expressive activity only by campus groups, as those terms are defined in WAC 132Z-142-020, and may be limited to design-

nated purposes. Campus buildings and other facilities are available for rent by noncollege groups in accordance with the college's facility rental policies.

(3) **Limits on usage.** The use of campus facilities by campus or noncampus groups for expressive activities is subject to reasonable time, place, and manner regulations as set forth in WAC 132Z-142-040.

(4) **Exception - Open public meetings.** Nothing in these rules is intended to apply to public participation in meetings of the college's governing board or associated student body that are required to be open to the public under the Open Public Meetings Act, chapter 42.30 RCW.

NEW SECTION

WAC 132Z-142-040 Limitations on use of campus facilities. Campus or noncampus groups using campus facilities for expressive activities shall be subject to the following rules governing the time, place, and manner of the expressive activity.

(1) **Disruption or interference.** The expressive activity must not substantially and materially disrupt or interfere with the college's essential academic or administrative functions or with the rights and privileges of the college's students, employees, or invitees.

(2) **Hours of activity.** Expressive activity on the campus grounds as defined in WAC 132Z-142-020 must be limited between the hours of 8:00 a.m. and 10:00 p.m. Expressive activity in campus buildings must be limited in accordance with the normal hours of operation and other rules applicable to the particular building.

(3) **Scheduling conflicts.** Campus facilities, including both "grounds" and "buildings" as defined in WAC 132Z-142-020, are not available for unscheduled expressive activities that conflict with previously scheduled uses of the facility.

(4) **Sound amplification.** Sound amplification, whether by artificial means or otherwise, must be maintained at a volume that does not substantially and materially disrupt or interfere with the college's essential academic or administrative functions.

(5) **Traffic obstruction.** The expressive activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic including, but not limited to, access by emergency vehicles or personnel. The activity must not otherwise interfere with access to campus facilities or to other campus activities or events.

(6) **Health and safety - Protection of property.** The expressive activity must not create health or safety hazards, pose safety risks to others, or cause damage to college property or the property of others. The activity must be conducted in compliance with applicable fire, health, safety, and sanitation regulations.

(7) **Advance notice requested.** Campus and noncampus groups are requested to notify the college reasonably in advance of a planned or scheduled expressive activity. Such notice does not involve any permit application or approval process. Advance notice is requested for the purpose of avoiding scheduling conflicts and making appropriate security and facility use arrangements. Groups providing the

requested notice are encouraged to provide the name and contact information for their group; the date, time and place of the activity; and the estimated number of participants.

(8) **Cleanup - Repairs.** Campus and noncampus groups using campus facilities for expressive activities are expected to clean up after the activity and return the facilities to their original condition. Reasonable charges may be assessed against responsible parties for the cost of any extraordinary cleanup or for repairing damaged property.

(9) **Camping prohibited.** There shall be no overnight camping anywhere on or in campus facilities, except as expressly authorized by the college for designated institutional purposes. Camping is defined to include sleeping, cooking, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(10) **Other applicable policies or rules.** The expressive activity must otherwise be conducted in compliance with any other applicable college policies and rules, local ordinances, and state or federal law.

NEW SECTION

WAC 132Z-142-050 Solicitation—Distribution of materials—Posting. (1) **Solicitation.** Commercial solicitation generally is not permitted on college property. Solicitation by campus and noncampus groups for other than commercial purposes is permitted to the same extent applicable to the distribution of materials under subsection (2) of this section. Space in campus buildings may be rented to noncampus groups for commercial or noncommercial purposes in accordance with college policies applicable to the particular campus facility.

(2) **Distribution of materials.**

(a) **Definition.** The term "materials" for purposes of this subsection means free literature or other tangible items, other than commercial advertising including, but not limited to, handbills, pamphlets, petitions, surveys, questionnaires, and other printed matter that is otherwise lawful.

(b) **Distribution on campus grounds.** Campus and noncampus groups may distribute materials anywhere on the campus grounds as defined in WAC 132Z-142-020, provided such distribution does not substantially and materially interfere with essential college functions and is otherwise in compliance with applicable time, place, and manner regulations under WAC 132Z-142-040.

(c) **Distribution in campus buildings.** The distribution of materials in campus buildings as defined in WAC 132Z-142-020 is limited to campus groups in accordance with college policies applicable to the particular facility.

(d) **Littering - Parking lots.** Littering is prohibited. The general distribution of materials by placing them on vehicle windshields in college parking lots is deemed to constitute littering.

(3) **Posting.** The posting by campus groups of noncommercial advertising or other printed announcements is permitted in designated locations and for designated purposes in accordance with policies applicable to the particular campus facility. Posting of noncommercial announcements by non-

campus groups is permitted in areas designated for publicizing community events.

WSR 20-23-097
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed November 17, 2020, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-07-021.

Title of Rule and Other Identifying Information: Chapter 246-492 WAC, Vital statistics data release, the department of health (department) is proposing to create a new chapter of rules for data requests by government agencies, tribes, researchers, entities, and individuals for assessment, public health surveillance, and epidemiological study. The proposed rules prescribe the direct and indirect identifiers for birth and fetal death records; establish a formalized procedure for requesting vital records data; and establish fees for data files, analysis, and data requests.

Hearing Location(s): On December 22, 2020, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health (DOH) will not provide a physical location for this hearing. This helps promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register for the hearing at <https://attendee.gotowebinar.com/register/2793704426015367179>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 29, 2020.

Submit Written Comments to: Katitza Holthaus, DOH, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-753-4135, by December 22, 2020.

Assistance for Persons with Disabilities: Contact Katitza Holthaus, phone 360-236-4311, TTY 711, email katitza.holthaus@doh.wa.gov, by December 15, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules create a new chapter of rule to prescribe the direct and indirect identifiers for birth and fetal death records that the department will use to disclose vital records information to researchers, government agencies conducting nonresearch public health work, and the public; establish a formalized procedure for requesting vital records data; and establish fees for data files, analysis, and data requests.

Reasons Supporting Proposal: In 2019, the Washington state legislature passed ESSB 5332, enacting chapter 70.58A RCW and replacing chapter 70.58 RCW. The bill's intent is to increase the security of birth and death records and to reduce identity theft and prevent fraud, while maintaining access to vital records data to government agencies, researchers, private entities and individuals for assessment, public health surveillance, and epidemiological study. Chapter 70.58A RCW directs the department to release: (1) Birth and fetal death record data with direct identifiers for research purposes

with approval of the Washington state institutional review board (WSIRB); (2) birth and fetal death record data with direct identifiers to government agencies and tribal governments for nonresearch public health work by signing a data sharing agreement; (3) birth and fetal death data with indirect identifiers to anyone by signing a data sharing agreement; and (4) death data to anyone by signing a data sharing agreement. The statute requires the department to adopt rules necessary to carry out the responsibilities of the law.

Statutory Authority for Adoption: ESSB 5332 (chapter 148, Laws of 2019), enacting chapter 70.58A RCW.

Statute Being Implemented: Chapter 70.58A RCW.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Katitza Holthaus, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4311; Implementation: Katie Hutchinson, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4324; and Enforcement: Jean Remsbecker, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4307.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. By definition under RCW 34.05.328 (5)(c)(iii), the proposed rule does not qualify as a significant rule. The proposed rule prescribes the direct and indirect identifiers for birth and fetal death records and establishes a formalized procedure for requesting vital records data. In addition, WAC 246-492-990 is exempt under RCW 34.05.328 (5)(b)(vi). The procedure for requesting vital records data is exempt under RCW 34.05.328 (5)(c)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The statute dictates what vital records data can be released to whom and the proposed rule complies with the requirements set by chapter 70.58A RCW. The proposed rule does not impose more stringent requirements on private entities than on public entities. It prescribes the direct and indirect identifiers for birth and fetal death records and establishes a formalized procedure for requesting vital records data. WAC 246-492-990 is exempt under RCW 34.05.310 (4)(f). The procedure for requesting vital records data is exempt under RCW 34.05.310 (4)(e).

November 16, 2020

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPH, MPH

Secretary

Chapter 246-492 WAC

VITAL STATISTICS DATA RELEASE

NEW SECTION

WAC 246-492-001 Vital statistics data release—Purpose and scope. Vital records data is used by government agencies, tribes, researchers, private entities, and individuals for assessment, public health surveillance, and epidemiological study. The rules in this chapter provide the requirements for requesting vital records data from the department.

- (1) The rules establish the following:
 - (a) Application submission requirements;
 - (b) Process for agency to approve or deny requests;
 - (c) Direct and indirect identifiers for birth and fetal death records; and
 - (d) Fees for data files, analysis, and data requests.
- (2) The rules in this chapter do not address the process to request certificates or informational copies of vital records, which has been promulgated in chapter 246-491 WAC.

NEW SECTION

WAC 246-492-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Analytic services" means a service provided by the department that includes working with vital records data in order to disseminate requested information to customers. This service includes, but is not limited to, data analysis for calculating and providing specific counts, rates, and other statistics; building and distributing aggregate reports; linkage of data; and producing record level data files and subsets of data files for customers.
- (2) "Custom data request" means a specialized vital records data request or data file created and released by the department. Custom data request does not mean standard data file.
- (3) "Data" means a data file containing multiple records.
- (4) "Department" means the department of health.
- (5) "Direct identifier" means a single data element that identifies an individual person.
- (6) "Fetal death" means any product of conception that shows no evidence of life, such as breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles after complete expulsion or extraction from the individual who gave birth that is not an induced termination of pregnancy and:
 - (a) Has completed twenty or more weeks of gestation as calculated from the date the last menstrual period of the individual who gave birth began, to the date of expulsion or extraction; or
 - (b) Weighs three hundred fifty grams or more, if weeks of gestation are not known.
- (7) "General data inquiry request" means a request for information that can be answered with use of vital records data, but without the need for extensive investigation, analysis, report building or data file production.
- (8) "Government agencies" includes state boards, commissions, committees, departments, educational institutions,

or other state agencies which are created by or pursuant to statute, other than courts and the legislature; county or city agencies, United States federal agencies, and federally recognized tribes and tribal organizations.

(9) "Human research review board" is a standing institutional review board operating under chapter 42.48 RCW.

(10) "Indirect identifier" means a single data element that on its own does not identify an individual person, but when combined with other indirect identifiers can be used to identify an individual person.

(11) "Individual" means a natural person.

(12) "Infant death" means a death of a child under one year of age.

(13) "Public health purpose" means a purpose that seeks to support or evaluate public health activities, which include, but are not limited to, health surveillance; identifying population health trends; health assessments; implementing educational programs; program evaluation; developing and implementing policies; determining needs for access to services and administering services; creating emergency response plans; promoting healthy lifestyles; and preventing, detecting, and responding to infectious diseases, injury, and chronic and inheritable conditions. Public health purpose does not include research as defined in this section.

(14) "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes.

(15) "Secretary" means the secretary of the department of health.

(16) "Standard data file" means routine statewide vital records data created and released by the department. Standard data file does not mean specialized custom data requests and data files.

(17) "State" means Washington state unless otherwise specified.

(18) "State registrar" means the person appointed by the secretary to administer the vital records system under RCW 70.58A.030.

(19) "Vital record" or "record" means a report of a vital life event that has been registered and supporting documentation.

(20) "Vital statistics" means the aggregated data derived from vital records, including related reports, and supporting documentation.

NEW SECTION

WAC 246-492-020 Direct and indirect identifiers. (1) The department may disclose vital records information for persons named in any birth, death, or fetal death record in accordance with chapter 70.58A RCW and this chapter.

(2) The department may aggregate data from birth and fetal death records, and may release such aggregated data with either direct identifiers or indirect identifiers, or both, in accordance with chapter 70.58A RCW and this chapter.

(3) Birth record direct and indirect identifiers are as follows:

Birth Record Item	Direct or Indirect Identifier
Child Name	Direct Identifier
Child Date of Birth	Indirect Identifier
Child Time of Birth	Indirect Identifier
Child Sex	Indirect Identifier
Type of Birthplace	Indirect Identifier
Planned Birthplace, if different	Indirect Identifier
Name of Facility	Direct Identifier
County of Birth	Indirect Identifier
City of Birth	Indirect Identifier
Mother/Parent Name	Direct Identifier
Mother/Parent Date of Birth	Indirect Identifier
Mother/Parent Birthplace	Indirect Identifier
Mother/Parent Social Security Number	Direct Identifier
Do you want to get a Social Security Number for your child?	Indirect Identifier
Mother/Parent Residence: Number and Street	Direct Identifier
Mother/Parent Residence: City/County	Indirect Identifier
Mother/Parent Residence: Country	Indirect Identifier
Mother/Parent Residence: State	Indirect Identifier
Mother/Parent Residence: Zip Code	Indirect Identifier
Mother/Parent Tribal Reservation	Indirect Identifier
Mother/Parent Residence Inside City Limits?	Indirect Identifier
Mother/Parent Length at Current Residence	Indirect Identifier
Mother/Parent Telephone Number	Direct Identifier
Mother/Parent Mailing Address: Number and Street	Direct Identifier
Mother/Parent Mailing Address: Country	Indirect Identifier
Mother/Parent Mailing Address: State	Indirect Identifier
Mother/Parent Mailing Address: City	Indirect Identifier

Birth Record Item	Direct or Indirect Identifier
Mother/Parent Mailing Address: Zip Code	Indirect Identifier
Mother/Parent Occupation	Indirect Identifier
Mother/Parent Industry	Indirect Identifier
Mother/Parent Education Level	Indirect Identifier
Mother/Parent Hispanic Origin?	Indirect Identifier
Mother/Parent Race	Indirect Identifier
Mother/Parent Current Height	Indirect Identifier
Mother/Parent Prepregnancy Weight	Indirect Identifier
Were WIC benefits utilized during pregnancy?	Indirect Identifier
Cigarette Smoking Before and During Pregnancy	Indirect Identifier
Mother/Parent Marital Status	Indirect Identifier
Father/Parent Name	Direct Identifier
Father/Parent Date of Birth	Indirect Identifier
Father/Parent Birthplace	Indirect Identifier
Father/Parent Social Security Number	Direct Identifier
Father/Parent Occupation	Indirect Identifier
Father/Parent Industry	Indirect Identifier
Father/Parent Education Level	Indirect Identifier
Father/Parent Hispanic Origin?	Indirect Identifier
Father/Parent Race	Indirect Identifier
Date of First Prenatal Care Visit	Indirect Identifier
Date of Last Prenatal Care Visit	Indirect Identifier
Total Number of Prenatal Visits During Pregnancy	Indirect Identifier
Number of Previous Live Births	Indirect Identifier
Date of Last Live Birth	Indirect Identifier
Number of Pregnancy Outcomes	Indirect Identifier
Date of Last Other Pregnancy Outcomes	Indirect Identifier
Date Last Normal Menses Began	Indirect Identifier
Mother/Parent Weight at Delivery	Indirect Identifier
Was mother/parent transferred to higher level care for maternal medical or fetal indications for delivery?	Indirect Identifier

Birth Record Item	Direct or Indirect Identifier
Principle Source of Payment for Delivery	Indirect Identifier
Birth Weight	Indirect Identifier
Infant Head Circumference	Indirect Identifier
Obstetric Estimate of Gestation	Indirect Identifier
Apgar Score	Indirect Identifier
Plurality	Indirect Identifier
Birth Order	Indirect Identifier
Was infant transferred within 24 hours of delivery?	Indirect Identifier
Is infant living at the time of report?	Indirect Identifier
Is infant being breastfed?	Indirect Identifier
Risk Factors in this Pregnancy	Indirect Identifier
Infections Present and/or Treated During Pregnancy	Indirect Identifier
Maternal Morbidity	Indirect Identifier
Method of Delivery	Indirect Identifier
Obstetric Procedures	Indirect Identifier
Onset of Labor	Indirect Identifier
Characteristics of Labor and Delivery	Indirect Identifier
Abnormal Conditions of the Newborn	Indirect Identifier
Congenital Anomalies of the Newborn	Indirect Identifier
Attendant Name	Direct Identifier
Attendant Title	Indirect Identifier
NPI of person delivering the baby	Direct Identifier
Certifier Name	Direct Identifier
Certifier Title	Indirect Identifier
Date Certified	Indirect Identifier

(4) Fetal death record direct and indirect identifiers are as follows:

Fetal Death Record Item	Direct or Indirect Identifier
Fetus Name	Direct Identifier
Fetus Sex	Indirect Identifier
Fetus Date of Delivery	Indirect Identifier
Fetus Time of Delivery	Indirect Identifier
Type of Birthplace	Indirect Identifier
Name of Facility	Direct Identifier
Facility ID	Indirect Identifier

Fetal Death Record Item	Direct or Indirect Identifier
Location of Delivery	Direct Identifier
Zip Code of Delivery	Indirect Identifier
County of Delivery	Indirect Identifier
Mother/Parent Name	Direct Identifier
Mother/Parent Date of Birth	Indirect Identifier
Mother/Parent Birthplace	Indirect Identifier
Mother/Parent Residence: Number and Street	Direct Identifier
Mother/Parent Residence: City/County	Indirect Identifier
Mother/Parent Residence: Country	Indirect Identifier
Mother/Parent Residence: State	Indirect Identifier
Mother/Parent Residence: Zip Code	Indirect Identifier
Mother/Parent Tribal Reservation	Indirect Identifier
Mother/Parent Residence Inside City Limits?	Indirect Identifier
Mother/Parent Length at Current Residence	Indirect Identifier
Father/Parent Name	Direct Identifier
Father/Parent Date of Birth	Indirect Identifier
Father/Parent Birthplace	Indirect Identifier
Name of Person Completing Cause of Death	Direct Identifier
Title of Person Completing Cause of Death	Indirect Identifier
Date Signed by Person Completing Cause of Death	Indirect Identifier
Name of Person Delivering Fetus	Direct Identifier
Title of Person Delivering Fetus	Indirect Identifier
NPI of Person Delivering Fetus	Direct Identifier
Method of Disposition	Indirect Identifier
Date of Disposition	Indirect Identifier
Place of Disposition	Indirect Identifier
Location of Disposition	Indirect Identifier
Name of Funeral Facility	Indirect Identifier
Address of Funeral Facility	Indirect Identifier
Initiating Cause/Condition	Indirect Identifier
Other Significant Causes or Conditions	Indirect Identifier
Estimated Time of Fetal Death	Indirect Identifier
Was an autopsy performed?	Indirect Identifier

Fetal Death Record Item	Direct or Indirect Identifier
Was a histological placental examination performed?	Indirect Identifier
Were autopsy or histological placental examination results used in determining the cause of death?	Indirect Identifier
Date Received by County Registrar	Indirect Identifier
Weight of Fetus	Indirect Identifier
Obstetric Estimate of Gestation	Indirect Identifier
Plurality	Indirect Identifier
Birth Order	Indirect Identifier
Mother/Parent Education	Indirect Identifier
Mother/Parent of Hispanic Origin?	Indirect Identifier
Mother/Parent Race	Indirect Identifier
Mother/Parent Occupation	Indirect Identifier
Mother/Parent Industry	Indirect Identifier
Mother/Parent Marital Status	Indirect Identifier
Mother/Parent Height	Indirect Identifier
Did mother/parent get WIC food for herself during this pregnancy?	Indirect Identifier
Mother/Parent Prepregnancy Weight	Indirect Identifier
Mother/Parent Weight at Delivery	Indirect Identifier
Date Last Normal Menses Began	Indirect Identifier
Date of First Prenatal Care Visit	Indirect Identifier
Date of Last Prenatal Care Visit	Indirect Identifier
Total Number of Prenatal Visits for this Pregnancy	Indirect Identifier
Number of Previous Live Births	Indirect Identifier
Number of other Pregnancy Outcomes	Indirect Identifier
Cigarette Smoking Before and During Pregnancy	Indirect Identifier
Was mother transferred to higher level care for maternal medical or fetal indications for delivery?	Indirect Identifier
Father/Parent Education	Indirect Identifier
Father/Parent Hispanic Origin	Indirect Identifier
Father/Parent Race	Indirect Identifier
Father/Parent Occupation	Indirect Identifier

Fetal Death Record Item	Direct or Indirect Identifier
Father/Parent Industry	Indirect Identifier
Risk Factors in this Pregnancy	Indirect Identifier
Method of Delivery	Indirect Identifier
Congenital Anomalies of the Fetus	Indirect Identifier
Maternal Morbidity	Indirect Identifier
Infections Present and/or Treated During this Pregnancy	Indirect Identifier

(5) The department may release data files linked with birth or fetal death record items. When data files are released by the department in a form or format that is linked with birth or fetal death data, the linked data will be treated with the same restrictions as the most restrictive record item in the linked birth and fetal death data files.

(6) The department may calculate additional data items from the birth or fetal death record items listed in subsections (3) and (4) of this section. These calculated data items shall maintain the same direct or indirect identifier categorization as the most restrictive record items listed in subsections (3) and (4) of this section from which the department derived the additional calculated data.

(7) The department may deidentify birth or fetal death record items listed in subsections (3) and (4) of this section that are direct identifiers. The department may release such deidentified items as an indirect identifier.

(8) The department may limit or restrict the release of vital record items in data files to maintain confidentiality standards and protect the information for persons named in any birth, death, or fetal death record.

NEW SECTION

WAC 246-492-100 Requests for birth or fetal death record data that contains direct identifiers for research purposes.

(1) A researcher requesting birth or fetal death record data that contains direct identifiers for research purposes must comply with the requirements of chapter 70.58A RCW and this section. The department will not release data to a researcher requesting data from the department until all the requirements of this section have been completed to the satisfaction of the state registrar.

(2) A researcher submitting a data request under this section must submit all of the following to the department:

(a) A completed records request form associated with the human research review board application that contains all the information required in subsection (3) of this section;

(b) Approval from the human research review board of the research proposal for which the data is being requested;

(c) A signed confidentiality agreement with the department; and

(d) All fees required by WAC 246-492-990.

(3) A researcher submitting a data request under this section must submit all of the following information on the records request form provided by the human research review board to the state registrar for review and approval:

- (a) Project title;
 - (b) Principal investigator name, title, and contact information (telephone number and email address);
 - (c) Study abstract that includes:
 - (i) Description of the proposed research study and objectives;
 - (ii) Research study design and analysis plan;
 - (iii) Duration of research study;
 - (iv) The plan for dissemination of the results and a certification that the researcher will abide by the department's small numbers guidelines in the dissemination of results; and
 - (v) A plan for the return or destruction of the information at the conclusion of the research study.
 - (d) Vital records data elements needed to complete the research study;
 - (e) Years of the requested data; and
 - (f) Geographic area of interest of the research study.
- (4) The state registrar may request additional information regarding the research proposal. If additional information is requested, the researcher must submit the information within thirty days of the state registrar's request or the request for data may be denied.
- (5) If the researcher submitting a data request under this section receives an exempt determination letter from the human research review board, the researcher may:
- (a) If the researcher is a governmental agency and will use the data for a public health purpose, comply with the provisions of WAC 246-492-200; or
 - (b) Submit a request to receive data pursuant to WAC 246-492-300.
- (6) The state registrar may deny a request for data for research purposes if the researcher submitting a data request under this section fails to meet the requirements of this section or chapter 70.58A RCW, or for the reasons permitted by chapter 70.58A RCW. If the state registrar denies a request under this section, the researcher may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

NEW SECTION

WAC 246-492-200 Requests from government agencies for birth and fetal death record data that contains direct identifiers for nonresearch public health purposes.

(1) A government agency requesting birth and fetal death record data that contains direct identifiers for nonresearch public health purposes must comply with the requirements of chapter 70.58A RCW and this section. The department will not release data to a government agency requesting data from the department pursuant to this section until all the requirements of this section have been completed to the satisfaction of the state registrar.

(2) A government agency submitting a data request under this section from the department for nonresearch public health purposes must submit all of the following to the department in the form or format required by the state registrar:

- (a) A completed application on the form provided by the department;

- (b) A signed data sharing agreement with the department that conforms with WAC 246-492-400;

- (c) All information required in subsection (3) of this section; and

- (d) All fees required by WAC 246-492-990.

(3) A government agency submitting a data request under this section from the department for nonresearch public health purposes must submit to the state registrar all of the following information:

- (a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and organization privacy officer;

- (b) Purpose or intended use of the data being requested;

- (c) Justification of how the purpose or intended use of the data meets the definition of a public health purpose;

- (d) Length of time and frequency of the data being requested;

- (e) State if any contact with subjects is proposed, provide justification of why and how this achieves the public health purpose, and the methods that will be used for contacting subjects;

- (f) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information, including stored information;

- (g) Provision for return or destruction of the information at the conclusion of use;

- (h) Geographic area of interest;

- (i) Names and titles of all persons who will have access to the data;

- (j) The plan for use of the data and certification to abide by the department's small numbers guidelines;

- (k) Vital records data elements needed to achieve the public health purpose; and

- (l) Years of the requested data.

(4) The state registrar may request additional information regarding the request for birth and fetal death record data for public health purposes. If additional information is requested, the government agency must submit the information within thirty days of the state registrar's request or the request for data may be denied.

(5) If the state registrar determines the request for data submitted pursuant to this section is in fact for research purposes, the state registrar will require the government agency to comply with the provisions of WAC 246-492-100.

(6) If the state registrar suspects or is unsure if the request for data submitted pursuant to this section is for research purposes, the state registrar may require the government agency to comply with the provisions of WAC 246-492-100.

(7) The state registrar may deny a request for data for nonresearch public health purposes if the government agency fails to meet the requirements of this section or chapter 70.58A RCW, or for the reasons permitted by chapter 70.58A RCW. If the state registrar denies a request under this section, the government agency may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

NEW SECTION

WAC 246-492-300 Requests from individuals or entities for birth and fetal death data that contains indirect identifiers, infant death data, death data, or marriage and divorce data. (1) This section applies to the following data requests:

(a) Birth and fetal death data that contains only indirect identifiers;

(b) Infant death data that contains indirect identifiers;

(c) Death data files; and

(d) Marriage and divorce data files.

(2) All requests for data under this section must comply with the requirements of chapter 70.58A RCW and this section. The department will not release data to an individual or entity requesting data from the department pursuant to this section until all the requirements of this section have been completed to the satisfaction of the state registrar.

(3) The data released pursuant to this section will only be in the data file format prescribed by the state registrar.

(4) An individual or entity submitting a data request under this section must submit all of the following on the form or in the format required by the state registrar:

(a) A completed application on the form provided by the department;

(b) A signed data sharing agreement with the department that conforms with WAC 246-492-400;

(c) All information required in subsection (5) of this section; and

(d) All fees required by WAC 246-492-990.

(5) An individual or entity submitting a data request under this section must submit all of the following information to the state registrar:

(a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and the organization privacy officer;

(b) Purpose or intended use of the data being requested;

(c) Length of time data is needed or length of the project;

(d) For requests of death, marriage, or divorce data only: State if any contact with subjects is proposed and provide justification why;

(e) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information including storage of data, and provision for return or destruction of the information at the conclusion of use;

(f) Geographic area of interest;

(g) Names and titles of all persons who will have access to the data;

(h) The plan for dissemination of the results and certification to abide by the department's small numbers guidelines; and

(i) Type of vital records data and years requested.

(6) The state registrar may request additional information regarding the request for data under this section. If additional information is requested, the individual or entity must submit the information within thirty days of the state registrar's request or the request for data may be denied.

(7) The individual or entity must download the data from the secured file transfer site within two weeks. If after the two

weeks, the individual or entity must submit a new request and payment.

(8) The state registrar may permit the local deputy registrar to release death data to a requesting entity in a format prescribed by the state registrar upon a signed data sharing agreement with the department. A local deputy registrar permitted by the state registrar to release death data shall require the entity receiving the death data from the local deputy registrar to sign a data sharing agreement with the local deputy registrar. The local deputy registrar can only release the following information:

(a) Decedent's name;

(b) Date of death;

(c) Date of birth;

(d) Date filed;

(e) Age of decedent;

(f) Gender of decedent;

(g) Decedent's residence city and state; and

(h) County of death.

(9) The state registrar may deny a request if the individual or entity fails to meet the requirements of this section or chapter 70.58A RCW, or for reasons permitted by chapter 70.58A RCW. If the state registrar denies a request under this section, the individual or entity may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

NEW SECTION

WAC 246-492-400 Vital statistics data sharing agreements. (1) All written data sharing agreements with the department for the release of vital records data must comply with the requirements of chapter 70.58A RCW and this section.

(2) A data sharing agreement with the department is required for the following:

(a) Government agencies requesting birth and fetal death record data that contains direct identifiers for nonresearch public health purposes;

(b) Individuals or entities requesting birth and fetal death record data that contains only indirect identifiers;

(c) Individuals or entities requesting infant death data that contains indirect identifiers;

(d) Individuals or entities requesting death, marriage, or divorce record data; and

(e) Government agencies requesting vital records in the conduct of official duties as permitted by chapter 70.58A RCW.

(3) The department may use standard form data sharing agreements for all data requests, consistent with the provisions of this section and chapter 70.58A RCW. If the department elects to use a standard form data sharing agreement for data requests, the requestor shall sign the standard form data sharing agreement prepared by the department pursuant to this subsection. The department will not negotiate the terms of standard form data sharing agreements with a requestor, except for circumstances in subsection (4) of this section.

(4) For data sharing agreements with government agencies, the department may deviate from the standard form data sharing agreement if the government agency is legally pro-

hibited from signing provisions of the standard form data sharing agreement due to constitutional or other statutory provisions. The ultimate decision to modify the standard form data sharing agreement to accommodate a government agency's data request lies solely with the department. The government agency wishing to modify a term of the standard form data sharing agreement under this subsection must submit all of the following to the department in writing:

(a) All of the specific terms of the standard form data sharing agreement that the government agency is legally prohibited from complying with;

(b) An explanation of why the government agency is legally prohibited from complying with the term or terms; and

(c) Citation to the law or rule that prohibits it from complying with the term or terms of the standard form data sharing agreement.

(5) An individual or entity requesting vital records data under this section must comply with all the terms and conditions of the data sharing agreement. If the individual or entity violates the data sharing agreement, then the individual or entity may be guilty of a misdemeanor under RCW 70.58A.-590(1), will result in the immediate termination of the data sharing agreement, and result in denial of vital records data in the future.

NEW SECTION

WAC 246-492-500 Data file production. (1) The department retains the discretion to determine what form or format is most appropriate to provide to a particular requestor. Where the department provides data files on a routine schedule, the department may automate file production. The department may manually produce data files when deemed appropriate by the state registrar. Nothing in this chapter should be deemed to entitle any requestor to receive data in a particular form or format, and nothing in this chapter should be deemed to require the state registrar to produce the data in a particular form or format.

(2) Where the department provides data files on a routine schedule, the department may, in the discretion of the state registrar, allow a requestor to update their original data request with the department. If the department permits a requestor to update their data request, the requestor must pay the fee required by WAC 246-492-990(5).

NEW SECTION

WAC 246-492-990 Vital statistics data fees. (1) The department shall collect nonrefundable fees as follows:

(a) Three hundred fifty dollars per standard data file;

(b) Two hundred dollar flat fee for up to two hours of analytic services or general data inquiry requests;

(c) Any analytic services or general data inquiry requests that exceed two hours, in addition to subsection (1)(b) of this section, will be charged an hourly fee of one hundred dollars; and

(d) Fifty dollars per standard data file for students with proof of valid student status.

(2) For custom data file requests, the department shall collect nonrefundable fees as follows:

(a) Three hundred fifty dollars per data file; and

(b) One hundred dollars per hour to create the custom data file.

(3) For data requests where data files are provided on a routine schedule, the department shall collect nonrefundable fees as follows:

(a) A one-time initial automation program creation fee of one thousand five hundred dollars;

(b) One hundred seventy-five dollars per data file; and

(c) An annual maintenance fee of one thousand five hundred dollars.

(4) For existing data requests with an established automation program in existence at the time of the adoption of the rule, the department may waive the initial automation program creation fee of one thousand five hundred dollars in subsection (3)(a) of this section.

(5) Updates to data requests allowed by WAC 246-492-500(2) will be assessed a fee by the department equivalent to the actual costs incurred by the department in order to update the data request.

(6) The department, at the discretion of the state registrar, may waive fees for data requests for the following:

(a) Requests from state legislators or legislative staff;

(b) Local health jurisdictions receiving standard data files prescribed by the state registrar;

(c) Tribes, tribal organizations within the state, and Indian health service designated tribal epidemiology centers serving tribes within the state, receiving standard data files prescribed by the state registrar; and

(d) Government agencies during a state of emergency, if the data is used for official duties to aid the state of emergency response.

WSR 20-23-098

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 17, 2020, 4:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-111.

Title of Rule and Other Identifying Information: WAC 308-104-075 Driver's licenses—Prohibited practices—Suspension, cancellation, or denial period.

Hearing Location(s): On December 22, 2020, at 9:00 a.m., telephonic public rules hearing, call-in number: 360-407-3815, Conference ID: 2868139#.

Date of Intended Adoption: December 23, 2020.

Submit Written Comments to: Damon Monroe, Agency Rules Coordinator, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email rulescoordinator@dol.wa.gov.

Assistance for Persons with Disabilities: Contact Ellis Starrett, rules and policy manager, phone 360-902-3846, email Estarrett@dol.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department seeks to exercise discretion as it relates to suspension periods,

including not suspending the driver's license on identity fraud cases.

Reasons Supporting Proposal: The amendment will update the department's policy on suspension periods related to fraud. The amendment will allow for discretion as it relates to suspension periods, from a zero day suspension to three hundred sixty-four days, depending on the type of identity fraud, type of credential involved, driver status of the individual committing fraud, etc. This change will support an internal process already being used by driver and vehicle investigators.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.291.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Geoffrey Cunningham, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3655; Implementation and Enforcement: JoAnna Shanafelt, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3715.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The amendment adds no additional cost to stakeholders.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

November 17, 2020

Damonn Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-087, filed 7/31/06, effective 8/31/06)

WAC 308-104-075 Driver's licenses—Prohibited practices—Suspension, cancellation, or denial period. (1) The department (~~shall~~) may suspend, cancel, or deny all driving privileges of a person who has been convicted of or determined by the department to have committed one of the prohibited practices relating to drivers' licenses listed in RCW 46.20.0921 for a period (~~of not less than sixty consecutive days and not more than~~) up to three hundred sixty-four consecutive days. The following terms of suspension shall be determined by the department:

(a) Up to sixty days for identity theft or fraud with no connection to traffic safety;

(b) Ninety days for identity theft or fraud related to avoiding a revocation or suspension with no connection to traffic safety;

(c) One hundred eighty days for identity theft or fraud related to avoiding a revocation or suspension associated with traffic safety, or for separate additional offenses with no connection to traffic safety; or

(d) Three hundred sixty-four days for identity theft or fraud related to avoiding a revocation or suspension with a direct connection to traffic safety.

(2) For purposes of RCW 46.20.0921 (1)(e), an application for a commercial driver's license includes the application for a driver's license under RCW 46.20.091 and the application for a commercial driver's license under RCW 46.25.070.

WSR 20-23-116

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 18, 2020, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-151.

Title of Rule and Other Identifying Information: Chapters 392-172A and 392-173 WAC; WAC 392-140-60105 through 392-140-685.

Hearing Location(s): On January 13, 2021, at 3:30 p.m.; or on January 20, 2021, at 9:00 a.m., webinars via Zoom (call-in option will be available). Due to the public health emergency related to the COVID-19 virus pandemic, these public hearings will take place by webinar via Zoom (with a call-in option). There will be no physical location for the hearings. For information on registering and participating, please visit the office of superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: January 25, 2021.

Submit Written Comments to: Glenna Gallo, Assistant Superintendent, Special Education, OSPI, P.O. Box 47200, Olympia, WA 98504, email Glenna.gallo@k12.wa.us, fax 360-586-0247, www.k12.wa.us, by January 20, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by January 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal seeks to amend and add sections to chapters 392-172A and 392-173 WAC, and WAC 392-140-60105 through 392-140-685, for the purpose of addressing changes to federal law and requirements, clarifying existing requirements under current state law that impact the free appropriate public education (FAPE) of students eligible for special education services, and adding requirements from ESHB 1130 (2020 [2019]). In addition, the proposal makes housekeeping changes to correct typographical errors and reorganize WAC in this chapter for ease of reference, and other rule changes that are technical in nature.

Reasons Supporting Proposal: OSPI has the authority under state statute to develop administrative rules to implement federal statutes and state regulations governing special education services to students. These proposed rules amend and add new sections to OSPI's current special education

rules to: (1) Address changes to federal law and requirements; (2) clarify existing requirements under current state law that impact FAPE of students eligible for special education services, including new requirements under ESHB 1130 (2019); and (3) make housekeeping changes to correct typographical errors, reorganize WAC for ease of reference, and make other rule changes that are technical in nature.

OSPI shared these draft rules and solicited input from the public and stakeholders over the summer of 2020. This review period was lengthened due to the COVID-19 pandemic across the state.

Statutory Authority for Adoption: RCW 28A.155.090; 20 U.S.C. §1400 et seq.

Statute Being Implemented: Chapter 28A.155 RCW, Special education.

Rule is necessary because of federal law, 34 C.F.R. 300 Individuals with Disabilities Education Act (IDEA).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Language within these WAC was revised to meet current standards, language, professional educator standards board requirements, and the Every Student Succeeds Act. Additionally, clarification on issues that are frequently found to be noncompliant was added, including eligibility, preschool LRE/placement, LRE/placement for five year-olds enrolled in kindergarten, timelines for school districts responding to a referral, state home/hospital versus IDEA home/hospital, updates to restraint or isolation requirements, and language needs of parents. These rules have been revised since the draft released summer 2020 based on stakeholder input.

Name of Agency Personnel Responsible for Drafting: Scott Raub, OSPI special education, 360-725-6075; Implementation and Enforcement: Glenna Gallo, OSPI special education, 360-725-6075.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

November 17, 2020

Chris P. S. Reykdal

State Superintendent of Public Instruction

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-60105 Definition—High need student. For purposes of special education safety net awards, high need student means a student eligible for special education services whose Individualized Education Program (IEP) costs as calculated on worksheet C exceed a multiple of the

statewide average per pupil expenditures (APPE) as defined in section 7801 of the Every Student Succeeds Act of 2015.

(1) For federal special education safety net funding, the multiple of the statewide average per pupil expenditures shall be at least three times the statewide average; and

(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the ~~((multiple of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual Safety Net Bulletin))~~ lesser of:

(a) Two and three-tenths times the statewide average per pupil expenditure excluding provided state safety net funding; or

(b) The average per pupil expenditure calculated using the methodology defined in 20 U.S.C. Sec. 7801, the Every Student Succeeds Act of 2015, excluding provided state safety net funding, using only the expenditure and average daily attendance data for the subset of districts receiving the same salary regionalization factor as the high need student's district, as determined under RCW 28A.150.412 and the Omnibus Operating Appropriations Act.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-60120 Definition—Capacity for funding. For the purpose of state special education safety net funding, potential capacity for funding exists when an applicant's net special education expenditures exceed total resources available demonstrating a fiscal capacity in excess of all available revenue to the applicant for special education services, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue. Local education agencies with demonstrated capacity and approved applications may access safety net award regardless of the percentage of the local education agency's enrollment of students with disabilities. Beginning in ~~((2019-2020))~~ 2020-21, applicants must either submit ~~((verification of medicaid billing for each high need student application,))~~ high need student applications with adjustments for medicaid billing, if applicable(;) or receive a deduction calculated by office of the superintendent of public instruction as a percentage of the billing rates published by the health care authority to compensate for the local education agency's decision not to pursue medicaid reimbursement.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-602 Special education safety net—Eligible applicants. (1) An individual school district of the state of Washington is eligible to apply for special education safety net awards on behalf of its resident students. Resident students include those students as defined by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member districts are provided by the cooperative or educational agency is eligible to apply for special education safety net awards. Member districts shall be treated as a single school district for the purposes of this chapter and are not eligible to apply for safety net awards individually.

(3) The Washington ~~((state))~~ center for ~~((childhood deafness and hearing loss))~~ deaf and hard of hearing youth and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

(4) Individual charter schools are eligible to apply for special education safety net awards under WAC 392-140-616.

(5) Tribal compact schools are eligible to apply for special education safety net award under WAC 392-140-616.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-616 Special education safety net—Standards—High need student applications. For applicants requesting safety net awards to meet the needs of an eligible high need student, the applicant shall convincingly demonstrate to a majority of the state oversight committee members at a minimum that:

(1)(a) The reviewed individualized education program demonstrates compliance with federal and state procedural requirements, in the office of superintendent of public instruction-selected applicable reviewed areas; or

(b) The local education agency has corrected any non-compliance identified through general supervision processes, including monitoring or during a review of a sample of individualized education programs; and

(2) Costs eligible for safety net consideration are associated with providing direct special education and related services identified in implementation of an individualized education program and quantifiable by the committee on worksheet C; and

(3) In order to deliver appropriate special education and related services to the student, the applicant is providing services which incur costs exceeding:

(a) The annual threshold as established in WAC 392-140-60105 by the office of superintendent of public instruction for state safety net awards.

(b) Threshold amounts shall be adjusted pro rata for eligible students not served by the applicant on all nine enrollment count dates (October through June). For example, for a student served six of the nine count dates, the threshold amount shall be reduced to two-thirds of the full amount.

(4) The state safety net oversight committee shall adapt the worksheet A for the Washington state school for the blind, the Washington ~~((state))~~ center for ~~((childhood deafness and hearing loss))~~ deaf and hard of hearing youth, and tribal compact schools.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-650 Special education safety net—Withdrawal of application. If at any time an applicant wishes to withdraw an application submitted prior to the committee vote, the superintendent or designee of the applicant district, or lead administrator or designee of the applicant charter school, tribal compact school, Washington ~~((state))~~ center for ~~((childhood deafness and hearing loss))~~ deaf and hard of hearing youth, and the Washington state school for the blind, must submit a letter requesting withdrawal to the state oversight committee manager.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-685 Special education safety net—Recovery of state and/or federal award. High need student state and/or federal special education safety net award and state community impact safety net award shall be recovered or award reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The award is unexpended for the purpose allocated including, but not limited to, situations where the student leaves a school district, charter school, tribal compact school, Washington ~~((state))~~ center for ~~((childhood deafness and hearing loss))~~ deaf and hard of hearing youth, and the Washington state school for the blind, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school or tribal compact school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district, charter school or tribal compact school transfers the equipment to the other school district, charter school or tribal compact school.

(3) The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(4) The applicant's available revenues are significantly higher than estimated revenues on which the award was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the award was based.

(5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

Chapter 392-172A WAC

~~((RULES FOR THE))~~ PROVISION OF SPECIAL EDUCATION SERVICES

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01005 Purposes. The purposes of this chapter are to:

(1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.;

(2) Ensure that all students eligible for special education services have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(3) Ensure that the rights of students eligible for special education services and their parents are protected;

(4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education services; and

(5) Assess and ensure the effectiveness of efforts to educate students eligible for special education services.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions and public institutions of the state that are involved in the education of students eligible for special education services, including:

(i) The office of superintendent of public instruction (OSPI) to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts, charter schools, educational service agencies, and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, the Washington state school for the blind and the ~~((center for childhood deafness and hearing loss))~~ Washington center for deaf and hard of hearing youth established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapters 28A.193 and 28A.194 RCW; and

(b) Are binding on each public agency or public institution in the state that provides special education and related services to students eligible for special education services, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district, charter school, and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education services who are referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110.

(3) Each school district and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education services who are placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01020 Act. Act means Part B of the Individuals with Disabilities Education Act, as amended.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01025 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student eligible for special education services. The term does not include a medical device that is surgically implanted, or the replacement of such device.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01030 Assistive technology service. Assistive technology service means any service that directly assists a student eligible for special education services in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) The evaluation of the needs of a student, including a functional evaluation of the student in the student's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education services;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a student eligible for special education services or, if appropriate, that student's family; and

(6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-01035 Child with a disability or student eligible for special education services. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education services means a student who has been evaluated and determined to need special education services because of having a disability in one of the following eligibility categories: Intellectual disability, ~~((a hearing impairment (including deafness)))~~ deafness (including hard of hearing), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an ortho-

pedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, (~~deaf-blindness~~) deafblindness, multiple disabilities, or for students, three through ~~((eight))~~ nine, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) For purposes of providing a student with procedural safeguard protections identified in WAC 392-172A-05015, the term, "student eligible for special education services" also includes a student whose identification, evaluation or placement is at issue.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in (a) of this subsection, but only needs a related service and not special education services, the student is not a student eligible for special education services under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(d) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(e) Special education services may not be solely based on the disability category for which the student is eligible.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) (~~Deaf-blindness~~) Deafblindness means concomitant (~~hearing~~) deafness and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that ~~((they))~~ a student's educational performance is adversely affected and the student cannot be accommodated in special education programs

solely for students with deafness or students with blindness ~~((and adversely affect a student's educational performance))~~.

(c) Deafness means a ~~((hearing impairment that is so))~~ student who is deaf or hard of hearing which manifests in severe ((that the student is impaired in)) difficulty processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through ~~((eight))~~ nine who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through ~~((eight))~~ nine.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through ~~((eight))~~ nine, established under this section.

(v) School districts using the category "developmentally delayed," for students three through ~~((eight))~~ nine may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hard of hearing (~~(impairment)~~) means (~~(an impairment in)~~) difficulty hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include (~~(deaf-blindness)~~) deafblindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that

may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01055 Educational service agency.

Educational service agency means:

(1) A regional public multiservice agency:

(a) Authorized to develop, manage, and provide services or programs to students eligible for special education services within school districts;

(b) Recognized as an administrative agency by the OSPI for purposes of the provision of special education and related services provided within public elementary schools and secondary schools; and

(2) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01092 Imminent. Imminent as defined in RCW (~~(70.96B.010)~~) 71.05.020 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01100 Individualized education program. Individualized education program or IEP means a written statement of an educational program for a student eligible for special education services that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01109 Likelihood of serious harm. Likelihood of serious harm as defined in RCW ((70.06B-040)) 71.05.020 means:

(1) A substantial risk that:

(a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself;

(b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(2) The person has threatened the physical safety of another and has a history of one or more violent acts.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01115 Local educational agency or school district. (1) Local educational agency or the term "school district" as used in this chapter, means a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, any combination of public elementary and secondary schools, or for a combination of school districts.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including charter schools, educational service agencies, the ~~((center for childhood hearing loss and deafness))~~ Washington center for deaf and hard of hearing youth, and the Washington state school for the blind.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is an English learner, means the following:

(a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.

(b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.

(2) For an individual with ~~((deafness or))~~ blindness or who is deaf or hard of hearing, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01135 Part-time enrollment. Part-time enrollment means a student eligible for special education services who is home schooled or attends private school, and whose parent chooses to enroll the student in his or her resident school district for special education or related services pursuant to RCW 28A.150.350 and chapter 392-134 WAC.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01150 Public agency. Public agency includes school districts, educational service agencies, charter schools, state operated programs identified in WAC 392-172A-02000 and any other political subdivisions of the state that are responsible for providing special education or related services or both to students eligible for special education services.

NEW SECTION

WAC 392-172A-01152 Regular early childhood program. Regular early childhood program means a program that includes at least fifty percent nondisabled children (i.e., children who do not have an IEP). Programs may include, but are not limited to, the following: Head start; early childhood education and assistance program (ECEAP); kindergarten; preschool classes offered to an eligible prekindergarten population by the public school system; private kindergartens or preschools; group child development centers; or child care.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01155 Related services. (1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education services to benefit from special education services, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, behavioral services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

(a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;

(b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(3) Individual related services terms used in this definition are defined as follows:

(a) Audiology includes:

(i) Identification of students with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and

(vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(b) Counseling services means services provided by qualified social workers, psychologists, ~~((guidance))~~ school counselors, or other qualified personnel.

(c) Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are ~~((deaf blind))~~ deafblind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.

(j) Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational service needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education services to receive FAPE as described in the student's IEP. School nurse services are ser-

vices provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

(i) Preparing a social or developmental history on a student eligible for special education services;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(p) Transportation includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student eligible for special education services.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01170 Services plan. Services plan means a written statement that describes the special education and related services the school will provide to a parentally placed student eligible for special education services who is enrolled in ((~~an~~)) an approved, nonprofit private elementary or secondary school who has been designated to receive services. The plan will include the location of the services and any transportation necessary. The plan will be developed using the procedures for development and implementation of an IEP.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01175 Special education services. (1) Special education services means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education services, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) Special education services includes:

(a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035 (1)(c);

(b) Travel training; and

(c) Vocational education.

(3) The terms in this section are defined as follows:

(a) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

(b) Physical education means the development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and

(iv) Includes special physical education, adapted physical education, movement education, and motor development.

(c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the student that result from the student's disability; and

(ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

(d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01185 Supplementary aids and services. The term "supplementary aids and services" means aids, services, and other supports that are provided in ((~~general education classes or other~~)) (general education classes or other) education-related settings to enable students eligible for special education services to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172A-02050 through 392-172A-02065.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education services that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for students eligible for special education services may be special education services, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education services to benefit from special education services.

NEW SECTION

WAC 392-172A-01197 Universal design for learning.

Universal design for learning (UDL) is a framework to improve and optimize teaching and learning for all students based on research showing how students learn. The goal of UDL is to use a variety of teaching methods to remove and reduce barriers to learning and provide each student with opportunities to be successful through instructional flexibility that can be adjusted.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01200 Ward of the state. Ward of the state means a student within the jurisdiction of the department of ~~((social and health services))~~ children, youth, and families, children's administration through shelter care, dependency or other proceedings to protect abused and neglected children, except that it does not include a foster child who has a foster parent who meets the definition of a parent in WAC 392-172A-01125.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE). (1) Each school district and residential or day schools operated under chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education services between the age of three and twenty-one years, a free appropriate public educa-

tion program (FAPE). The right to a FAPE includes special education services for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education services even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education services for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education services; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education services. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2)(e).

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education services residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services under chapter 28A.194 RCW.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education services; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education services and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education services.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02010 Methods of payment for FAPE. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education services to an eligible student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a FAPE to students eligible for special education services.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to students eligible for special education services.

(3) Consistent with the IEP provisions in this chapter, the OSPI shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02015 Availability of assistive technology. (1) Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student eligible for special education services if required as part of the student's:

(a) Special education services;

(b) Related services; or

(c) Supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02020 Extended school year services. (1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education services:

(a) Beyond the normal school year;

(b) In accordance with the student's IEP; and

(c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis

that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02025 Nonacademic services. (1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education services an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02030 Physical education. (1) Physical education services, specially designed if necessary, must be made available to every student receiving FAPE.

(2) Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

(a) The student is enrolled full time in a separate facility; or

(b) The student needs specially designed physical education, as described in the student's individualized education program.

(3) If specially designed physical education is required in a student's individualized education program, the school dis-

trict shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district shall ensure that any student eligible for special education services who is enrolled in a separate facility will be provided with appropriate physical education services.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02035 Program options. Each school district shall ensure that its students eligible for special education services have available to them the variety of educational programs and services available to nondisabled students in the school district's area, including art, music, ~~((industrial arts, consumer and homemaking education, and vocational education))~~ and career and technical education.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-02040 Child find. (1) School districts shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system; except that students attending approved nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392-172A-04005. School districts will conduct any required child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education services, even though they are advancing from grade to grade.

(3) The school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include, but are not limited to, activities such as:

- (a) Providing written notification to all parents of students in the school district's jurisdiction regarding access to and the use of its child find system;
- (b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of child find;
- (c) Offering preschool developmental screenings;
- (d) Conducting local media informational campaigns;
- (e) Coordinating distribution of information with other child find programs within public and private agencies; and
- (f) Using internal district child find methods such as screening, reviewing district-wide test results, providing in-

service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education services referral.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02045 Routine checking of hearing aids and external components of surgically implanted medical devices. (1) Hearing aids. Each school district must ensure that hearing aids worn in school by students ~~((with hearing impairments, including deafness,))~~ who are deaf or hard of hearing are functioning properly.

(2) External components of surgically implanted medical devices. Each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(3) A school district is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

LEAST RESTRICTIVE ENVIRONMENT AND PLACEMENT

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02050 Least restrictive environment. Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education services, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students eligible for special education services from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the least restrictive environment where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the local education agency operates public preschool programs for children without disabilities.

(4) For children ages three to five, a general education environment is a regular early childhood program.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02055 Continuum of alternative placements. (1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students eligible

for special education services between the ages of three and twenty-one years old.

(2) The continuum required in this section for eligible students kindergarten (including five year olds in kindergarten) through age twenty-one must:

(a) Include the ~~((alternative))~~ placements listed in the definition of special education services in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

(3) The continuum of alternative placements a public agency providing special education and related services to a preschool child with a disability may include, but is not limited to, the following:

(a) Providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than school districts (such as head start or community-based child care);

(b) Enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children;

(c) Locating classes for preschool children with disabilities in regular public elementary schools; and

(d) Providing services and instruction in the home.

(4) If a public agency determines that placement in a private preschool program is necessary for a child with a disability to receive FAPE, the public agency must make that program available at no cost to the parent.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education services including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

(4) A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

(5) Notwithstanding subsections (1) through (4) of this section, an IEP team, or other team making placement decisions for a student convicted as an adult and receiving educational services in an adult correctional facility, may modify the student's placement if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02065 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education services participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency must ensure that each student eligible for special education services has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-02076 Prohibited practices. (1) School district personnel are prohibited from using aversive interventions with a student eligible for special education services, and are prohibited from physically restraining or isolating any student, except when the student's behavior poses an imminent likelihood of serious harm as defined in WAC 392-172A-01092 and 392-172A-01109.

(2) There are certain practices that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their illegality. The purpose of this section is to prohibit the use of certain practices with students eligible for special education services as follows:

(a) Electric current. No student may be stimulated by contact with electric current including, but not limited to, tasers.

(b) Food services. A student who is willing to consume subsistence food or liquid when the food or liquid is customarily served must not be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(c)(i) Force and restraint in general. A district must not use force or restraint that is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law. See RCW 9A.16.100, which prohibits the following uses of force or restraint including:

(A) Throwing, kicking, burning, or cutting a student.

(B) Striking a student with a closed fist.

(C) Shaking a student under age three.

(D) Interfering with a student's breathing.

(E) Threatening a student with a deadly weapon.

(F) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(ii) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(d) Hygiene care. A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(e) Isolation. A student must not be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-02110.

(f) Medication. A student must not be denied or subjected to an unreasonable delay in the provision of medication.

(g) Noise. A student must not be forced to listen to noise or sound that the student finds painful.

(h) Noxious sprays. A student must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(i) Physical restraints. A student must not be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object or against a wall or the floor, except under the conditions set forth in WAC 392-172A-02110.

(j) Prone, supine, and wall restraints. A student must not be subjected to the use of prone (lying face-down) and supine (lying face-up) restraint, wall restraint, or any restraint that interferes with the student's breathing.

(k) Taste treatment. A student must not be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

~~((4e))~~ (l) Water treatment. A student's head must not be partially or wholly submerged in water or any other liquid.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02080 Transition of children from the Part C program to preschool programs. Each school district shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2)(a) Each school district will participate in transition planning conferences arranged by the designee of the lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days prior to the student's third birthday.

(b) Within fifteen school days following the transition planning conference, a determination whether or not to eval-

uate the student for Part B will be made. The district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-02090 Personnel qualifications. (1)

All school district personnel providing special education services and/or related services shall meet the following qualifications:

(a) All employees shall hold such credentials, licenses, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement in (a) of this subsection, all special education ~~((teachers))~~ personnel providing, designing, supervising, monitoring or evaluating the provision of special education services shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement (or deaf education endorsement or teacher of the visually impaired endorsement) on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) A teacher will be considered to meet the applicable requirements in (a) and (b) of this subsection if that teacher is participating in an alternative route to a special education certification program under which the teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification according to the state professional educator standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(d) Other certificated related services school personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(e) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early child-

hood special education assignment must be given first to employees having early childhood special education endorsement, but may be assigned to an individual with a special education endorsement.

(f) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency (~~(with grade two standard literary Braille code)~~) by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(g) Certified and/or classified staff assigned as educational interpreters, must meet the performance standards outlined in RCW 28A.410.271 by passing an educational interpreter assessment approved by the professional educator standards board.

(h) (~~(Paraprofessional)~~) Paraeducator staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education services, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or a licensed staff, as provided in (i) of this subsection. (~~(Paraprofessional)~~) Paraeducator staff assigned to Title 1 (~~(school-wide)~~) school-wide programs shall also meet ESEA standards for (~~(paraprofessionals)~~) paraeducators.

(i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and (~~(paraprofessionals)~~) paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff (or deaf education certificated staff or teacher of the visually impaired certificated staff), or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain personnel, who meet the applicable requirements described in subsection (1)(a) of this section, to provide special education and related services to students eligible for special education services. There may be occasions when, despite efforts to hire or retain teachers who meet the applicable requirements, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet (~~(state)~~) professional educator standards board criteria pursuant to WAC 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education (~~(section)~~) division at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The school district is responsible for determining that the assigned teacher must have completed (~~(nine quarter hours (six semester hours))~~) ninety continued education credit hours of course work applicable to an endorsement in special education.

(iii) Pursuant to WAC 181-82-110, if teachers are so assigned, the following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

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

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

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of substantial professional training.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee to meet the applicable requirements described in subsection (1)(a) of this section, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education services shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of the student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of the student shall be in accordance with chapters 392-143, 392-144, and 392-145 WAC.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the OSPI.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the Washington state school for the deaf and the Washington state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an interagency agreement—i.e., an appropriate placement in the least restrictive environment.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-02100 Home/hospital instruction.

(1) Home or hospital instruction shall be provided to students eligible for special education services and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness.

(2) As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks.

(3) A student who is not determined eligible for special education services, but who qualifies pursuant to this subsection shall be deemed "~~(disabled)~~ as having a disability" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education services for the purposes of generating state or federal special education funds.

(4) A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of

qualifying a student for home/hospital instructional services pursuant to this section.

(5) Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education services in a homebound or hospital placement pursuant to a student's individualized education program.

(6) Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

(7) A student eligible for special education services who qualifies for home/hospital instruction must continue to receive IEP team determined educational services that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. ~~((The IEP team determines the appropriate services.))~~

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-02105 Emergency response protocols.

(1) If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows:

(a) The student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted;

(b) The emergency response protocols specify:

(i) The emergency conditions under which isolation, restraint, or restraint devices, if any, may be used;

(ii) The type of isolation, restraint, and/or restraint device, if any, that may be used;

(iii) The staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint device for each staff member or contracted position;

(iv) Any other special precautions that must be taken.

(c) Any use of isolation, restraint, and/or restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.

(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and the safe use of isolation, restraint, or a restraint device.

(2) School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485, regard-

less of whether the use of isolation, restraint, or restraint device is included in the student's emergency response protocols.

(3) Nothing in this section is intended to limit the application of a school district's policy developed under RCW 28A.600.485 to protect the general safety of students and staff from an imminent likelihood of serious harm.

(4) Nothing in this section is intended to limit the provision of a free and appropriate public education under Part B of the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-02110 Isolation (~~and~~) or restraint—Conditions. Any use of isolation, restraint, and/or a restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The limited use of isolation, restraint, or restraint device not prohibited in WAC 392-172A-02076 is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Isolation. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The isolation must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual (~~or auditory~~) range of the student at all times.

(e) Either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student.

(f) Any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques), and also trained by the district in isolation requirements, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(2) Restraint. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The restraint must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The restraint shall not interfere with the student's breathing.

(c) Any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(3) Restraint device. The use of a restraint device as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The restraint device shall not interfere with the student's breathing.

(c) Either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student.

(d) Any staff member or other adults using a restraint device must be trained and certified by a qualified provider in the use of such restraint devices, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(4) School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education services.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial eval-

uation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-172A-05010 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain an agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedure to override the parent's refusal to provide consent or mediation to obtain an agreement from the parent to provide consent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

- (i) It made reasonable efforts to obtain such consent; and
- (ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1)(a) A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services.

(b) The request (~~with~~) must be in writing, unless the person is unable to write.

(c) Each school district must have a referral form for requesting an initial evaluation available to the general public and provide it upon receipt of an oral or written request in the requestor's native language or with the support of a qualified interpreter when needed.

(2) The school district must document the request for an initial evaluation and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within (~~twenty-five~~) fifteen school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(d) Exception: Referral requests received through IDEA Part C notification of toddlers potentially eligible for Part B special education preschool services are subject to the timelines described under WAC 392-172A-02080 and not the timeline described in (c) of this subsection.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school district after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education services is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03020 Evaluation procedures. (1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education services as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a pre-school child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education services and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education services. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education services who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education services, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the

IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (2) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03030 Evaluations before change in eligibility. (1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education services in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope for the IEP team to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education ~~((and related))~~ services ~~((needed by the student))~~, and any related services the evaluation group determines the student needs in order to benefit from special education services;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03040 Determination of eligibility.

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education services, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education services, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop

procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education services that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives ~~((:))~~ for the areas in which the alternate assessment will be administered; and

(iii) Documentation that the parent(s) were informed, as part of the IEP process, that their student's academic achievement will be measured on alternate standards and how participation in an alternate assessment may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, evaluation data, and input from IEP team members, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Behavioral intervention plan, if determined necessary by the IEP team for the student to receive FAPE.

(i) Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE, and the parent provides consent, as defined in WAC 392-172A-01040.

(j) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(k) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; ~~(and)~~

(ii) The transition services including courses of study needed to assist the student in reaching those goals; and

(iii) A description of how the postsecondary goals and transition services align with the high school and beyond plan.

(l) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(m) The school district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03095 IEP team membership. (1)

School districts must ensure that the IEP team for each student eligible for special education services includes:

(a) The parents of the student;

(b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education services;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5)(a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education services and the school district agree, in writing, that the attendance of the

member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03100 Parent participation. A school district must ensure that one or both of the parents of a student eligible for special education services are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; ~~((and))~~

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA; and

(c) Include whatever action is necessary to ensure that the parent understands the notification being provided, including providing the notification in writing in a parent's native language when necessary for the parent's understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that ~~((will be invited to send a representative))~~ may be responsible for providing or paying for transition services and request consent as defined in WAC 392-172A-01040 from the parent/adult student to

invite a representative from the outside agency to the IEP meeting.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including:

(a) Arranging for an interpreter for parents ~~((with deafness))~~ who are deaf or hard of hearing or whose native language is other than English; and

(b) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided in accordance with RCW 28A.155.230.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-03105 When IEPs must be in effect.

(1) At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education services that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) The school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed in a timely manner of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education services transfers from one school district to another school district within Washington state and had an IEP that was in effect in

the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education services transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and

(b) Develops and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.330 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-03110 Development, review, and revision of IEP. (1) In developing each student's IEP, the IEP team must consider:

(a) The strengths of the student;

(b) The concerns of the parents for enhancing the education of their student;

(c) The results of the initial or most recent evaluation of the student; and

(d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education services, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education services and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education services who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education services participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03115 Educational placements. Consistent with WAC 392-172A-05000 (3)(a), each school district must ensure that the parents of each student eligible for special education services are members of any group that makes decisions on the educational placement of the student.

~~((STUDENTS IN PRIVATE SCHOOLS))~~

~~((Students Eligible for Special Education Enrolled by Their Parents in Private Schools))~~ **STUDENTS ELIGIBLE FOR SPECIAL EDUCATION SERVICES**

ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04000 Definition of parentally placed private school students. Parentally placed private school students means students eligible for special education services enrolled by their parents in approved, nonprofit private, including religious, elementary or secondary schools. It does not include students receiving home-based instruction under RCW 28A.225.010(4) or students placed by a school district in a nonpublic agency for the provision of FAPE.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04005 Child find for parentally placed private school students eligible for special education services. (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education services who are enrolled by their parents in approved, nonprofit private, including religious, elementary and secondary schools located in the school district, in accordance with general child find procedures and subsections (2) through (5) of this section.

(2) The child find process must be designed to ensure:

(a) The equitable participation of parentally placed private school students; and

(b) An accurate count of those students.

(3) In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(4) The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the school district has met its proportional share obligation under WAC 392-172A-04015.

(5) The child find process must be completed in a time period comparable to that for students attending public schools in the school district, for both initial evaluations and reevaluations.

(6) Each school district in which approved, nonprofit private, including religious, elementary schools and secondary schools are located must include parentally placed private school students who reside in another state but attend the private school located within the school district boundaries.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04010 Provision of services for parentally placed private school students eligible for special education services. (1) In addition to the provisions addressed in this section, parents who have placed their children in a for profit or nonprofit private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time

in their resident district in order to receive special education and/or related services are served through an IEP and are counted for federal and state special education reimbursement.

(2) To the extent consistent with the number and location of students eligible for special education services who are enrolled by their parents in approved, nonprofit private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with subsection (2) of this section and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each nonprofit private school student eligible for special education services who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed nonprofit private school students:

(a) The number of students evaluated, including initial evaluations and reevaluations;

(b) The number of students determined eligible for special education services; and

(c) The number of students served through a services plan.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must make available the following amounts for providing special education and related services, including direct services to parentally placed nonprofit private school students eligible for special education services.

(a) For students eligible for special education services aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education services aged three through twenty-one who are enrolled by their parents in approved, nonprofit private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education services in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed nonprofit private school students eligible for special education services aged three through five who are enrolled by their parents in ((a)) approved, nonprofit private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education services in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed

private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in ((a)) an approved, nonprofit private school at the kindergarten level or above.

(c) If a school district has not expended all of the funds for equitable services described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the remaining funds must be obligated for special education and related services to parentally placed nonprofit private school students eligible for special education services during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed nonprofit private school students eligible for special education services, the school district, after timely and meaningful consultation with representatives of approved, nonprofit private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education services attending nonprofit private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed nonprofit private school students eligible for special education services, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education services attending approved, nonprofit private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed nonprofit private school students eligible for special education services in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed nonprofit private school students eligible for special education services to the extent consistent with state law.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04020 Consultation. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally placed nonprofit private school students eligible for special education services during the design and development of special education and related services for the students regarding the following:

(1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed nonprofit private school students eligible for special education services

including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the school district, private school officials, and representatives of parents of parentally placed private school students eligible for special education services, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education services identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education services, including a discussion about:

(a) The types of services, including direct services and alternate service delivery mechanisms; and

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and

(c) How and when those decisions will be made.

(5) How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, the school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04025 Written affirmation. (1) When timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating nonprofit private schools after timely and meaningful consultation.

(2) If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the OSPI.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04030 Compliance with procedures for consultation. (1) A private school official has the right to submit a complaint to the OSPI, special education ((~~section~~)) division that the school district:

(a) Did not engage in consultation that was meaningful and timely; or

(b) Did not give due consideration to the views of the private school official.

(2)(a) If the private school official wishes to submit a complaint, the official must provide to the OSPI special education ((~~section~~)) division, the basis of the noncompliance by the school district with the applicable private school provisions in this part; and

(b) The school district must forward the appropriate documentation to OSPI.

(3) If the private school official is dissatisfied with the decision of the OSPI, the official may submit a complaint to the Secretary of the United States Department of Education

by providing the information on noncompliance described in subsections (1) and (2) of this section and the OSPI must forward the appropriate documentation to the secretary.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04035 Determination of equitable services. (1) A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school.

(2) Decisions about the services that will be provided to parentally placed private school students eligible for special education ((~~disabilities~~)) services under WAC 392-172A-04010 through 392-172A-04070 must be made in accordance with subsection (4) of this section and the consultation process.

(3) The school district must make the final decisions with respect to the services to be provided to eligible parentally placed private school students eligible for special education services.

(4) If a student eligible for special education services is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and

(b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-04040 Equitable services provided.

(1) The services provided to parentally placed nonprofit private school students eligible for special education services must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Parentally placed private school students eligible for special education services may receive a different amount of services than students eligible for special education services attending public schools.

(3) Each parentally placed private school student eligible for special education services who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education services.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed nonprofit private school students eligible for special education services, including materials and equipment, must be secular, neutral, and nonideological.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed nonprofit private school students eligible for special education services may be provided on the premises of private schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private school student eligible for special education services must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the services.

(3) School districts are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04055 Requirement that funds not benefit a private school. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district must use funds provided under the act to meet the special education and related services needs of students enrolled in nonprofit private schools, but not for:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply to students eligible for special education services who have been placed in or referred to ~~((a))~~ an in-state private elementary or secondary school or facility, or placed in or referred to a public or private out-of-state elementary or secondary school or facility meeting nonpublic agency (NPA) approval by the student's school district as a means of providing special education and related services when the school district cannot provide an appropriate education for the student within the district.

(2)(a) School districts are also authorized to ~~((enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC or))~~ contract with other public and private agencies under WAC 392-121-188 to provide special education or related services, or both to eligible students

when the private or public agency does not meet the criteria for nonpublic agencies under WAC 392-172A-04090 and 392-172A-04095, but the school district determines that the private or public agency can provide the student with a free appropriate public education (FAPE).

(b) When a district contracts with other public or private agencies to provide special education or related services or both, under subsection (2)(a) of this section, the school district shall notify in writing the OSPI special education division of its intent to serve a student under this section and ensure that it follows the requirements under WAC 392-172A-04085.

(3) The provisions of this section do not apply to the authority of school districts to enter into interdistrict agreements with other Washington state school districts pursuant to chapter 392-135 WAC.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-04085 Responsibility of the school district. (1) A school district that places a student eligible for special education services with a nonpublic agency or with another private or public agency under WAC 392-172A-04080(2) for special education and related services shall develop a written contract ~~((or interdistrict agreement which will))~~ which must include, but not be limited to, the following elements:

(a) The names of the parties involved;

(b) The name(s) of the student(s);

(c) The location(s) and setting(s) of the services to be provided;

(d) A description of services provided, program administration and supervision, including access to state learning standards;

(e) The charges and reimbursement including billing and payment procedures;

(f) The total contract cost;

(g) A description of the district responsibility and process of data collection and reporting for the student(s), including the data required under IDEA, restraint or isolation (RCW 28A.600.485) reports to parents and the OSPI, and school discipline;

(h) Assurance that the requirements of WAC 392-172A-02105 through 392-172A-02110 are met (including requirements for parental consent, notification, and reporting);

(i) Assurance that the agency will notify the school district and OSPI of program changes within the agency that may affect the agency's ability to contract or any complaints against the agency regarding services to students eligible for special education services; and

(j) Any other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency under WAC 392-172A-04080(1) or with another private or public agency under WAC 392-172A-04080(2) is provided special education and related services:

(a) In conformance with an IEP developed by the school district that meets the requirements of this chapter; and

(b) At no cost to the parents.

(3) Each school district remains responsible for ensuring that the student ~~((shall be))~~ is provided ~~((with a))~~ FAPE.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency conduct evaluations or IEP meetings, the school district will ensure that all applicable requirements of Part B of the act are met.

(5) The student ~~((has))~~ retains all of the rights of a student eligible for special education services who is served within the school district.

(6) The student must be provided with an opportunity to participate in state and district assessments.

(7) The student must be provided with an opportunity to fulfill the requirements to receive a Washington state diploma.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04090 Approval of nonpublic agencies. (1) The school district shall notify the special education ~~((section))~~ division of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(2) The school district and the nonpublic agency will review the requirements for approval and complete the application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(3) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and will determine whether the application will be approved or disapproved.

(4) The OSPI makes information regarding currently approved nonpublic agencies available on its website.

(5) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04080 through 392-172A-04095.

(6) Private schools or facilities located in other states must first be approved by the state education agency of the state in which the educational institution is located to provide FAPE to students referred by school districts. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the private school or facility shall meet the requirements for approval in this state under the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04095 Application requirements for nonpublic agency approval. (1) A nonpublic agency must meet the following requirements to be approved:

(a) The nonpublic agency is approved by the state board as a private school, and has at least one certificated teacher with a special education endorsement, other certificated teachers who meet state standards, and related services staff

meeting state licensure requirements for their profession. If the education program is associated with a facility, such as a hospital mental health, or treatment facility, and the program is not an approved private school, the program must comply with the licensing requirements for the facility, such as the department of health, and the facility will assure that it has teachers who meet certification requirements developed by the professional educators standards board, related services staff meeting state licensure requirements for their profession as applicable, and at least one certificated teacher with a special education endorsement.

(b) The private school or facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(c) The private school or facility meets applicable health and safety standards.

(d) The private school or facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(e) The private school or facility has procedures in place that address staff hiring and evaluation including:

(i) Checking personal and professional references for employees;

(ii) Criminal background checks in accordance with state rules for public school employees;

(iii) Regular scheduling of staff evaluations of the competencies that enable the staff to work with students.

(f) The private school or facility has a policy of nondiscrimination.

(g) The private school or facility meets state education rules for hours and days of instruction.

(h) The private school or facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education services and their families.

(2) After approval as a nonpublic agency, the private school or facility must provide annual review information to the OSPI and school districts with whom they contract the following two years. The nonpublic agency must complete a renewal application, including scheduling a site visit by a contracting school district every third year following approval.

(3) OSPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval under this section.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04100 Notification of nonpublic agency program changes. (1) An approved nonpublic agency must notify any school districts with whom they contract and the OSPI of any major program changes that occur during the approval period, including adding additional services or changing the type of programs available to students. OSPI will review these program changes with affected districts to determine whether the nonpublic agency remains able to provide contracted services to public school students eligible for special education services.

(2) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education services.

(3) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any complaints it receives regarding services to students.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04105 Suspension, revocation or refusal to renew approval. OSPI may suspend, revoke or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education services if the nonpublic agency:

(1) Fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education services; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04110 State responsibility for non-public agency placements. In implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a ((special education)) student eligible for special education services; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-04115 Placement of students when FAPE is at issue. (1) If a student eligible for special education services has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through 392-172A-04070.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a

school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(4) The cost of reimbursement may be reduced or denied if:

(a)(i) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

PROCEDURAL SAFEGUARDS

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05000 Opportunity to examine records. The parents of a student eligible for special education services must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05001 Parent participation in meetings. (1)(a) The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education services have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(2)(a) Each school district must ensure that a parent of each student eligible for special education services is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(e) A parent of a student eligible for special education services may request permission to observe their student's current educational placement, and to observe any educational placement proposed or under consideration either by a parent or a group that makes decisions on the educational placement of the parent's child, in accordance with applicable school district policy and state law.

(3) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as

scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

(4) Each school district must document the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided at any meeting under this section, including meetings related to a student's IEP, school discipline, and truancy, in accordance with RCW 28A.155.230.

(5) A parent may request consent to record meetings under this section, in accordance with applicable school district policies and state law. Any recording that is maintained by the school district is an "education record" within the meaning under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible for special education services have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the par-

ent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05010 Prior notice and contents. (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education services, or referred for special education services a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education services have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3)(a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05015 Procedural safeguards notice.

(1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education services one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:

(i) The time period in which to file a state complaint and due process hearing request;

(ii) The opportunity for the school district to resolve the due process hearing request; and

(iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;

- (f) The availability of mediation;
 - (g) The student's placement during the pendency of any due process hearing;
 - (h) Procedures for students who are subject to placement in an interim alternative educational setting;
 - (i) Requirements for unilateral placement by parents of students in private schools at public expense;
 - (j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;
 - (k) Civil actions, including the time period in which to file those actions; and
 - (l) Attorneys' fees.
- (4)(a) The procedural safeguards notice must be:
- (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:
- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in (b) of this subsection have been met.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05020 Electronic mail. A parent of a student eligible for special education services may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

STATE (~~(CITIZEN))~~ COMMUNITY COMPLAINT PROCEDURES

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI(~~(s))~~ special education (~~(section))~~ division, a written, signed complaint that the OSPI, or a subgrantee of the OSPI including, but not limited to, an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

- (2)(a) A written complaint filed with OSPI will include:
 - (i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

- (B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;
 - (ii) The facts on which the statement is based;
 - (iii) The signature and contact information, including an address of the complainant; and
 - (iv) The name and address of the school district, or other agency subject to the complaint.
- (b) If the allegations are with respect to a specific student the information must also include:
- (i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;
 - (ii) The name of the school the student attends and the name of the school district;
 - (iii) A description of the nature of the problem of the student, including the facts relating to the problem; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the assistant superintendent of special education, OSPI.
- (d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
- (e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05040.

(2) The OSPI will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, either notify the district of the additional issues or inform the parent of the option to open a new complaint.

(3) The school district or other agency shall respond in writing to the OSPI with documentation of the investigation, no later than (~~(twenty))~~ seventeen calendar days after the date of receipt of the complaint.

- (4) The response to the OSPI shall clearly state whether:
 - (a) The allegations contained in the complaint are denied and the basis for such denial; or
 - (b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(5) The OSPI will review and determine which portions of the district's or other agency's response is relevant to the

complaint and provide the complainant a copy of the school district's or other agency's relevant response to the complaint and provide the complainant an opportunity to reply. If the complainant is not authorized to review personally identifiable information, that information will not be provided to the complainant.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the school district or other public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days after receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If the OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district or other public agency has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education services.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a school district or other public agency is not achieved pursuant to subsection (8) of this section, the OSPI will initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05035 ((~~Citizen~~)) Community complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the OSPI must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The OSPI must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the OSPI.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05045 Informing ((~~citizens~~)) the public about complaint procedures. The OSPI shall inform parents and other interested individuals about the ((~~citizen~~)) community complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;

(2) Posting information about the complaint procedures on the website;

(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05060 Mediation purpose—Availability. (1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication when requested unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05085 Due process hearing request filing and response. (1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must ~~((file))~~:

(i) Serve the request, which must remain confidential, directly with the other party; and

(ii) File a copy of the request via mail, fax, or electronically directly with the OSPI's designee, the office of administrative hearings, at the following:

Mail:

Office of Administrative Hearings

600 University Street, Suite 1500

Seattle, WA 98101-3126

Fax: 206-587-5135

Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.

~~((The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.))~~ Due process hearing timelines will begin upon receipt of the request by both the other party and the office of administrative hearings, whichever date is later.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party ~~((receiving))~~ served with the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party

believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice that a parent has ~~((filed))~~ served a due process hearing request ~~((with))~~ on the district and ~~((provided))~~ filed a copy of the due process request ~~((to the OSPI administrative resources section))~~ with

the office of administrative hearings, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the parent's filing of the due process hearing request under WAC 392-172A-05085, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-03100(6), the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting within fifteen days as specified in subsection (1) of this section or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant to this section, a party may void the agreement within three business days of the agreement's execution.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 (~~and 392-172A-05165~~).

(1) Any party to a due process hearing has the right to:

(a) Be represented by counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of students eligible for special education services;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing (~~or two business days if the hearing is expedited pursuant to WAC 392-172A-05160~~);

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, (~~or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165~~) each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section, the timelines addressed in WAC 392-172A-05110, and the timelines and procedures for civil actions addressed in WAC 392-172A-05115, the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education services;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2)(a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 C.F.R. Secs. 300.500 through 300.599.

(b) Subsection (2)(a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3)(a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3)(b) of this section an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-05125 Student's status during proceedings. (1)(a) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(b) The student's status during the pendency of any proceedings does not preclude the IEP team from meeting, as needed or as required under this chapter, and updating and implementing the student's IEP, unless those changes are in dispute.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) Subject to subsections (4) and (5) of this section, when a student eligible for special education services reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter 11.88 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of eighteen who have not been determined incapacitated under chapter 11.88 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of the student, may challenge the certi-

fication at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter ((41.94)) 11.125 RCW.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05175 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145, 392-172A-05148, and 392-172A-05149. Each school district shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education services and students who may be deemed to be eligible for special education services, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education services who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) A school district is only required to provide services during periods of removal to a student eligible for special education services who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed. The services may be provided in an interim alternative educational setting.

(3) After a student eligible for special education services has been removed from his or her current placement for ten school days in the same school year, and the removal is a

change of placement under WAC 392-172A-05155, during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting.

(4) After a student eligible for special education services has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, during any subsequent days of removals, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The services may be provided in an interim alternative educational setting.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05146 Manifestation determination.

(1) Within ten school days of any decision to change the placement of a student eligible for special education services because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in subsection (1)(a) or (b) of this section was met.

If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05148 Conduct is not a manifestation of student's disability. (1) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to WAC 392-172A-05146, school personnel may apply the relevant disciplinary procedures to students eligible for special education services in the same manner and for the same duration as a district would apply discipline

procedures to students without disabilities, except that services shall be provided in accordance with subsection (2) of this section.

(2) A student who is removed from the student's current placement pursuant to subsection (1) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(3) The student's IEP team determines appropriate services.

(4) The services required may be provided in an interim alternative educational setting.

(5) The student's IEP team determines the interim alternative educational setting.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05150 Notification of change of placement. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education services because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05155 Change of placement because of disciplinary removals. (1) For purposes of removals of a student eligible for special education services from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

(a) The removal is for more than ten consecutive school days; or

(b) The student has been subjected to a series of removals that constitute a pattern:

(i) Because the series of removals total more than ten school days in a school year;

(ii) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(2) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(3) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education services who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05146, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of ~~((receiving notice of))~~ the date the due process hearing request is filed; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the ~~((receipt of))~~ date the due process hearing request is filed.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education services before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education services if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education services prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, 392-172A-05148, or 392-172A-05149 the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the provision of a free appropriate public education for students suspended or expelled from school.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. (1) Nothing in this chapter prohibits a school district or other agency from reporting a crime committed by a student to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student eligible for special education services.

(2) An agency reporting a crime committed by a student eligible for special education services must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education services have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education services are available in multiple languages, and alternate formats upon request.

(3) Personally identifiable information about students for use by the OSPI((§)) special education ((~~section~~)) division, may be contained in state complaints, due process hearing requests and decisions, monitoring, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education services. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its website.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education services to inspect and review, during

school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the school district to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05245 District procedures for confidential information. (1) School districts must ensure that their policies and procedures for protection of confidential information comply with WAC 392-172A-05180 through 392-172A-05240.

(2) OSPI reviews compliance through targeted monitoring activities, and state complaints.

(3) If school districts do not have procedures in place that comply with subsection (1) of this section, OSPI will require the school district to correct noncompliance through corrective actions that include, but are not limited to:

(a) Review and revision of district procedures; and

(b) Technical assistance.

(4) To the extent that any violations that exist under this section are also violations under 34 C.F.R. Part 99, complaints regarding a participating agency's failure to comply may be addressed to the United States Department of Education, Family Policy Compliance Office.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the OSPI, and conduct its special education and related services program in compliance with the requirements of this chapter. The request

shall be made through an application that includes, but is not limited to, the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 C.F.R. 300.201 through 300.213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students, including evaluations;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Placement of students in private school programs to provide FAPE or placement of students in private school programs by their parents when FAPE is at issue;

(k) Use of funds;

(l) Personnel preparation;

(m) Availability of documents relating to the eligibility of the school district;

(n) Provision to OSPI of all necessary information and data for the state's performance goals;

(o) Provision of instructional materials to blind persons or persons with print disabilities;

(p) Timely correction of noncompliance; and

(q) A goal and detailed timetable for providing full educational opportunity to all (~~(special education)~~) students eligible for special education services.

(2) Identification of the school district designee responsible for child identification activities and confidentiality of information.

(3) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(4) A description of the use of funds received under Part B of the act.

(5) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, (~~(citizen)~~) community complaints, or determinations status.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education services must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06010 School district use of funds.

(1) Part B funds provided to school districts:

(a) Must be expended in accordance with the applicable provisions of this chapter;

(b) Must be used only to pay the excess costs of providing special education and related services to students eligible for special education (~~(students)~~) services, consistent with this chapter; and

(c) Must be used to supplement state, local and other federal funds and not to supplant those funds.

(2) The excess cost requirement prevents a school district from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education services.

(3)(a) A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education services before funds under Part B of the act are used.

(b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

AMENDATORY SECTION (Amending WSR 15-18-077, filed 8/28/15, effective 9/28/15)

WAC 392-172A-06015 Maintenance of effort. (1)(a)

Eligibility standard. For purposes of establishing the school district's eligibility for an award for a fiscal year, the OSPI must determine that the school district budgets, for the education of students eligible for special education services, at least the same amount, from at least one of the following sources, as the school district spent for that purpose from the same source for the most recent fiscal year for which information is available:

(i) Local funds only;

(ii) The combination of state and local funds;

(iii) Local funds only on a per capita basis; or

(iv) The combination of state and local funds on a per capita basis.

(b) When determining the amount of funds that the school district must budget to meet the requirement in (a) of this subsection, the school district may take into consideration, to the extent the information is available, the exceptions and adjustment provided in WAC 392-172A-06020 and 392-172A-06025 that the school district:

(i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the school district is budgeting; and

(ii) Reasonably expects to take in the fiscal year for which the school district is budgeting.

(c) Expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the school district is required to account to the federal government directly or through the OSPI may not be considered in determining whether a school district meets the standard in (a) of this subsection.

(2)(a) Compliance standard. Except as provided under WAC 392-172A-06020 and 392-172A-06025, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students eligible for special education services made by it from local funds below the level of those expenditures for the preceding fiscal year.

(b) A school district meets this standard if it does not reduce the level of expenditures made by the school district for the education of students eligible for special education services from at least one of the following sources below the level of those expenditures from the same source for the preceding year except as provided under WAC 392-172A-06020 and 392-172A-06025:

- (i) Local funds only.
- (ii) The combination of state and local funds.
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of state and local funds on a per capita basis.

(c) The OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the school district is required to account to the federal government directly or through the OSPI in determining a school district's compliance with the requirement in subsection (1)(a) and (b) of this section.

(3)(a) Subsequent years. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, a school district fails to meet the requirements of 34 C.F.R. 300.203 in effect at that time, the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the school district's reduced levels of expenditures.

(b) If, in any fiscal year beginning on July 1, 2015, a school district fails to meet the requirement of subsection (1)(a)(i) or (iii) of this section and the school district is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of 34 C.F.R. 203 (a) and (b), the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required under subsection (1)(a)(i) or (iii) of this section in the absence of that failure, not the school district's reduced level of expenditures.

(c) If, in any fiscal year beginning on July 1, 2015, a school district fails to meet the requirement of subsection (1)(a)(ii) or (iv) of this section and the school district is relying on the combination of state and local funds or the combination of state and local funds on a per capita basis, to meet the requirements of 34 C.F.R. 203 (a) and (b), the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required under subsection (1)(a)(ii) or (iv) of this

section in the absence of that failure, not the school district's reduced level of expenditures.

(4) If a school district fails to maintain its level of expenditures for the education of student's eligible for special education services in accordance with subsection (1) of this section, OSPI is liable in a recovery action under 20 U.S.C. 1234a to return to the United States Department of Education, using nonfederal funds, an amount equal to the amount by which the school district failed to maintain its level of expenditures in accordance with this subsection (1) of this section in that fiscal year, or the amount of the school district's Part B subgrant, in that fiscal year, whichever is lower.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06020 Exception to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

(2) A decrease in the enrollment of students eligible for special education services;

(3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education services to a particular student that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district or agency;

(b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education services.

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

(5) The assumption of costs by the high needs safety net fund operated by the OSPI.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-06030 School wide programs under Title 1 of the ESSA. (1) A school district may use funds received under Part B of the act for any fiscal year to carry out a school wide program under 20 U.S.C. Section 6314, except that the amount used in any school wide program may not exceed:

(a) The amount received by the school district under Part B for that fiscal year; divided by the number of students eligible for special education services in the jurisdiction; multiplied by

(b) The number of students eligible for special education services participating in the school wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-06010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of the calculations in WAC 392-172A-06015(2).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education services in school wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to students eligible for special education services under the IDEA.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06035 Permissive use of funds. (1) Funds provided to a school district under Part B of the act may be used for the following activities:

(a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a (~~(special education))~~ student eligible for special education services in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education services, that are needed for the implementation of those case management activities.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06040 Purchase of and access to instructional materials. The OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, including digital instructional materials, must acquire those instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work with the state instructional resources center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674 (e)(3)(B) of the act;

(d) Specialized formats has the meaning given the term in section 674 (e)(3)(D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities by other means in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education services who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06045 School district information for the OSPI. (1) The school district must provide the OSPI with information that is necessary to enable the OSPI to carry out its duties under Part B of the act and state law(§) including, but not limited to, child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education services participating in programs carried out under Part B of the act.

(2) The information will be provided to the OSPI in the form and by the timelines specified for a particular report.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education services and to the general public all documents relating to the eligibility of the school district under Part B of the act.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-06055 Records regarding migratory students eligible for special education services. The school district must cooperate in the secretary's efforts under 20 U.S.C. Section 6398 to ensure the linkage of records pertaining to migratory students eligible for special education services for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the OSPI determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the OSPI intends to withhold or recover funds in whole or in part, the school district shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district's opportunity for a hearing before the superintendent of public instruction's designee prior to a denial of the request.

(2) The OSPI shall provide an opportunity for a hearing before ~~(the)~~ it disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice of the action of the OSPI.

(b) Within thirty days after it receives a request, the OSPI shall hold a hearing to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the OSPI erred in reaching its determination.

(c) The superintendent's designee shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the OSPI's determination, it may file an appeal of OSPI's determination with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a determination under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 10-08 WAC.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06075 Collaborative requests. (1) The OSPI may require districts to submit a collaborative request for payments under Part B of the act if it is determined that a single district would be disapproved because the district is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students eligible for special education services. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single school district applicant. The request must be signed by the superintendent of each participating school district. The districts are jointly responsible for implementing programs receiving payments under Part B of the act. The total amount of funds made available to the affected school districts will be equal to the sum each would have received separately.

(2) The OSPI may not require a charter school to jointly establish its eligibility under subsection (1) of this section unless the charter school is explicitly permitted to do so under chapter 28A.710 RCW.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-06085 Coordinated early intervening services. (1) A school district may ~~((not use more than))~~ use up to fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated early intervening services (CEIS), which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that ~~((develops and maintains))~~ implements coordinated early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received coordinated early intervening services; and

(b) The number of students served under this section who received coordinated early intervening services and later ~~((receive))~~ received special education and related services within the following two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(6) Districts who have been ~~((determined to have))~~ identified as having significant disproportionality will be required to reserve the maximum amount of fifteen percent of its Part B funds to develop and implement comprehensive coordinated early intervening ~~((funds))~~ services (CCEIS) for students, in accordance with WAC 392-172A-07040.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06090 Direct services by the OSPI.

(1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education services in the area served by that school district, if the OSPI determines that the school district:

(a) Has not provided the information needed to establish the eligibility of the school district, or elected not to apply for its Part B allotment, under Part B of the act;

(b) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(c) Is unable or unwilling to be consolidated with one or more school districts in order to establish and maintain the programs; or

(d) Has one or more students eligible for special education services who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

(2)(a) In meeting the requirements in subsection (1) of this section, the OSPI may provide special education and related services directly, by contract, or through other arrangements.

(b) The excess cost requirements of WAC 392-172A-01075 do not apply to the OSPI.

(3) The OSPI may provide special education and related services in the manner and at the location as the OSPI considers appropriate. The education and services must be provided in accordance with this chapter.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07000 Methods of ensuring services.

(1) The OSPI must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute

under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education services. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education services, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which school districts may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education services, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for medicaid reimbursement because that service is provided in a school context.

(c) If a noneducational public agency other than a school district fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07005 Students eligible for special education services who are covered by public benefits or insurance or private insurance. (1) A school district may use the medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under Part B of the act, as permitted under the public benefits or insurance program, except as provided under subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a student's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Prior to accessing a student's or parent's public benefits or insurance for the first time, and after providing notification to the student's parents consistent with subsection (3) of this section, the school district must obtain written, parental consent that:

(i) Meets the requirements of 34 C.F.R. Sec. 99.30 and WAC 392-172A-05225, which consent must specify:

(A) The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to a particular student;

(B) The purpose of the disclosure, such as billing for services under the act; and

(C) The agency to which the disclosure may be made such as the health care authority; and

(ii) Specifies that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under the act.

(3) Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide written notification, consistent with WAC 392-172A-05010(3) to the student's parents, that includes:

(a) A statement of the parental consent provisions in subsection (2)(d)(i) of this section;

(b) A statement of the "no cost" provisions in subsection (2)(b) and (c) of this section;

(c) A statement that the parents have the right under 34 C.F.R. Part 99 and WAC 392-172A-05225 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. Part 99 and WAC 392-172A-05225 to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4) With regard to services required to provide FAPE to an eligible student under this part, a school district may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the school district must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(5)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(6) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 C.F.R. 80.25.

(7) If a school district spends reimbursements from federal funds such as medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(8) Nothing in this part should be construed to alter the requirements imposed on a state medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07010 Monitoring. (1) The OSPI monitors school districts' special education programs to:

(a) Improve educational results and functional outcomes for all students eligible for special education services;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving

educational results for students eligible for special education services;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq.;

(d) Validate information included in school district requests for federal funds; and

(e) Measure and report school district performance on relative targets and priorities from federally approved state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) ~~((Collection, review, and analysis of quantitative and qualitative data and other information;~~

~~(b) Conduct of))~~ Conducting on-site visits, off-site desk reviews, and/or district self-assessments;

~~((e))~~ (b) Collection, review, and analysis of such ((quantifiable)) quantitative and qualitative data and ((indicators as are needed)) other information as OSPI determines necessary to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) ~~((Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.))~~ Racial and ethnic disproportionality with regard to the identification, placement, or discipline of students receiving special education services.

(3) As part of the monitoring process, a notification of identified noncompliance shall be issued to the school district. This notification will initiate a process of correction~~((s))~~, verification, and validation to ensure that the noncompliance is corrected as soon as possible, but no later than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan ~~((is))~~ may be required.

(4) If the school district does not timely address compliance with corrective actions, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by the OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s); and/or

(ii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, to address non-compliance.

(c) Request assistance from the state auditor's office.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07012 Determinations. (1) The OSPI annually reviews the data it obtains from school districts through monitoring, submission of other required data reports, required by the district, and other public information provided by the district. Based on the data and information provided, OSPI determines if the school district:

(a) Meets the requirements and purposes of Part B of the act;

(b) Needs assistance in implementing the requirements of Part B of the act;

(c) Needs intervention in implementing the requirements of Part B of the act; or

(d) Needs substantial intervention in implementing the requirements of Part B of the act.

(2) If the OSPI determines, for two or more consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, office of special education programs, other offices of the United States Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(3) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI may take actions described under subsection (2) of this section and will take one or more of the following actions:

(a) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(b) Withhold, in whole or in part, any further payments to the district under Part B of the act;

(4) Notwithstanding subsection~~((s))~~ (2) or (3) of this section, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any fur-

ther payments to the district under Part B of the act, in addition to any other actions taken under subsection((s)) (2) or (3) of this section.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of students eligible for special education services that promote the purposes of the act, and are consistent, to the maximum extent appropriate, with the state's learning goals for all students under section 1111 (b)(2)(C) of the ESEA, 20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to the OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's and school districts' progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the United States Department of Education and to the public through its annual performance report on the progress of the state, and of students eligible for special education services in the state, toward meeting the goals established under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07020 State performance plans and data collection. (1) The OSPI has established and provided to the United States Department of Education a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the act, and describes how the state will improve such implementation. The plan is reviewed annually and rewritten every six years(~~(, with any amendments provided to the))~~ or other timeline established by the United States Department of Education.

(2)(a) As part of the state performance plan, the OSPI has established measurable and rigorous targets for indicators established by the department of education under the priority areas of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services.

(b) The OSPI must collect valid and reliable information from ~~((the))~~ districts, monitoring, and state data, as needed to report annually to the United States Department of Education on ~~((their))~~ these indicators.

(c) Data collected on specific indicators through state monitoring or sampling are collected on those indicators for each school district at least once during the six year period of the state performance plan~~((s))~~ or other timeline established by the United States Department of Education.

(3) Nothing in Part B of the act shall be construed to authorize the development of a statewide or nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the act.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07025 State use of targets and reporting. (1) The OSPI uses the targets established in the state's performance plan and the priority areas to analyze the performance of each school district.

(2)(a) The OSPI reports annually to the public on the performance of each school district ~~((located in the targets))~~ on the indicators in the state's performance plan; and makes the state's performance plan available through public means, including posting on the website of the OSPI, distribution to the media, and distribution through public agencies, subject to subsection (4) of this section.

(b) If the OSPI collects performance data through monitoring or sampling, the OSPI includes the most recently available performance data on each school district and the date the data were obtained.

(3) The OSPI must report annually to the United States Department of Education on the performance of the state under its performance plan.

(4) The OSPI does not report any information to the public or to the department of education on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-07035 Child count. The OSPI reports to the Secretary of the ~~((U.S.))~~ United States Department of Education annually as required by the office of special education programs the number of students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' annual federal count of eligible students provided to OSPI on a date selected by OSPI between October 1st and December 1st of each year.

(1) Information required in the report includes:

(a) The number of students receiving special education and related services;

(b) The number of students aged three through five receiving special education and related services in an early childhood setting within each disability category;

(c) The number of students aged ~~((six))~~ five (and are also in kindergarten) through ~~((seventeen, and eighteen through))~~ twenty-one within each disability category; and

(d) The number of students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count.

(3) A student may not be reported under more than one disability category.

(4) If a ~~((special education))~~ student eligible for special education services has more than one disability, the student is reported as follows:

(a) A student with ~~((deaf blindness))~~ deafblindness and not reported as having a developmental delay must be reported under the category "~~((deaf blindness))~~ deafblindness."

(b) A student who has more than one disability (other than ~~((deaf-blindness))~~ deafblindness or developmental delay) must be reported under the category "multiple disabilities."

(5) School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of ~~((special education))~~ students receiving special education and related services on the dates in question.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07040 Significant disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

- (a) The identification of children as students eligible for special education services;
- (b) The identification of students with a particular disability;
- (c) The placement of students in particular educational settings; or
- (d) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2)~~((a))~~ In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education services including those with a particular disability, the placement in particular educational settings of these students, or discipline, the OSPI shall ~~((provide for the))~~:

(a) Require the school district to review and, if appropriate, ~~((revision of))~~ revise the policies, procedures, and practices used in the identification ~~((or))~~, placement, or discipline of students receiving special education services to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require the school district to publicly report on any changes made to its policies, practices, and procedures described under (a) of this subsection; and

(c) Require any school district identified under this section to reserve the maximum amount of fifteen percent of its federal funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services (CCEIS) to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified~~((; and~~

~~((e) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection))~~.

(3) Each school district that implements CCEIS under this section must annually report to the OSPI on:

(a) The number of students served under this section who received CCEIS; and

(b) The number of students served under this section who received CCEIS and later received special education and related services within the following two-year period.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education services.

(1) ~~((Annually,))~~ School districts shall report to the state ~~((on the rates of long-term suspensions and expulsions))~~ all incidents of disciplinary removals of students eligible for special education services and nondisabled students ~~((for the preceding school year))~~. The state shall examine this data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring:

- (a) Among school districts or other public agencies; or
- (b) Between nondisabled students and students eligible for special education services within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with the act.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:

- (a) The development and implementation of individualized education programs;
- (b) The use of positive behavioral interventions and supports; and
- (c) Procedural safeguards.

SPECIAL EDUCATION FUNDS

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07055 State safety net fund for high need students.

(1) The state has established a special education safety net fund for students eligible for special education services. The rules for applying for reimbursement for the fund are contained in WAC 392-140-600 through 392-140-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse costs associated with the provision of services identified in ~~((a properly formulated))~~ an IEP consistent with federal and state procedural requirements and WAC 392-140-609 for applicants with eligible high need students whose cost is at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education services under the state Medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education services, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education services who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education services.

NEW SECTION

WAC 392-172A-07057 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

- (a) The amount of funds under the grant;
- (b) How the funds were used;
- (c) The total cost of the project;
- (d) The share of that cost provided from other sources;

and

(e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation, and placement of students eligible for special education services and the development and implementation of individualized education programs. Program and fiscal information records shall be available to authorized representatives of the OSPI for the purpose of compliance monitoring.

(3) Records shall be retained for six years after completion of the activities for which grant funds were used.

STATE SPECIAL EDUCATION ADVISORY COUNCIL

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07060 State special education advisory council. (1) The state special education ~~((state))~~ advisory council (SEAC) is established in order to help facilitate the provision of special education and related services to meet the unique needs of students receiving special education ~~((students))~~ services.

(2)(a) The membership of the council is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

~~((a))~~ (i) Parents of children, aged birth to twenty-six, with disabilities;

~~((b))~~ (ii) Individuals with disabilities;

~~((c))~~ (iii) Teachers;

~~((d))~~ (iv) Institutions of higher education that prepare special education and related services personnel;

~~((e))~~ (v) State and local district officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

~~((f))~~ (vi) Local administrators of special education programs;

~~((g))~~ (vii) State agencies involved in the financing or delivery of related services to students eligible for special education ~~((students))~~ services;

~~((h))~~ (viii) Representatives of private schools and public charter schools;

~~((i))~~ (ix) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education services;

~~((j))~~ (x) A state child welfare agency employee responsible for services to children in foster care;

~~((k))~~ (xi) State juvenile and adult corrections agencies;

~~((l))~~ (xii) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

(b) A majority of the members of the ~~((advisory))~~ council shall be individuals with disabilities or parents of students eligible for special education ~~((students))~~ services.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of students eligible for special education ~~((students))~~ services;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of ~~((special education))~~ students eligible for special education services;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for students eligible for special education ~~((students))~~ services.

(f) Review state due process findings and decisions.

(g) In the event that the state submits a waiver under 34 C.F.R. Sec. 300.164 regarding state-level nonsupplanting, the OSPI must consult with the SEAC prior to the submission.

(4) The council shall follow the procedures in this subsection.

(a) The ~~((advisory))~~ council shall meet as often as necessary to conduct its business.

(b) By July 1st of each year, the ~~((advisory))~~ council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report

must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes will be kept on all council meetings and shall be made available to the public on request to the OSPI.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-172A-07065 Records related to grant funds.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-173-003 Authority.

WAC 392-173-005 Purpose.

WAC 392-173-010 Definitions.

WAC 392-173-015 General duties of the department of social and health services and the superintendent of public instruction.

WAC 392-173-020 Referral and admission to a residential school—Eligibility for immediate placement.

WAC 392-173-025 Assessment, individual education plan, least restrictive environment, placement options, annual review of placement, and notice.

WAC 392-173-030 Medical evaluation.

WAC 392-173-035 Education records.

WAC 392-173-040 Annual application.

WAC 392-173-045 Staff qualifications.

WAC 392-173-047 Interagency agreements.

WAC 392-173-050 Monitoring.

WAC 392-173-055 Audits.

WAC 392-173-065 Program length.

WAC 392-173-075 Transportation and facilities.

WAC 392-173-080 Decisions, appeals and citizen complaints regarding educational programming and exclusion from an educational program.

Preproposal statement of inquiry was filed as WSR 20-16-099.

Title of Rule and Other Identifying Information: WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit?

Hearing Location(s): On December 22, 2020, at 10:30 a.m. The hearing will be conducted by telephone conference only: 360-407-3830 or 855-682-0796 (toll free), Conference ID: 1360562.

Date of Intended Adoption: December 23, 2020.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by December 21, 2020.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by December 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To describe the process for periodic reviews to assess continued eligibility for law enforcement officers' and firefighters' (LEOFF) Plan 2 catastrophic duty disability benefits.

Reasons Supporting Proposal: In accordance with RCW 41.26.470(9), this rule amendment clarifies how the department will determine if a LEOFF Plan 2 member continues to be eligible for catastrophic disability benefits.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.470.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

November 18, 2020

Jilene Siegel

Rules Coordinator

WSR 20-23-117
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed November 18, 2020, 9:57 a.m.]

Original Notice.

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit? (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least twelve months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Examples:

- Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving ~~((them)) the member~~ disabled from LEOFF employment. The knee injury, ~~((standing alone)) by itself~~, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability ~~((since)) because~~ the fully disabling condition, ALS, is not duty related.

- Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, ~~((standing alone)) by itself~~, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving ~~((him/her)) the member~~ fully disabled. The Social Security Administration grants the member a full disability based on ~~((his/her)) the member's~~ total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, ~~((standing alone)) by themselves~~, render ~~((him/her)) the member~~ totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw one hundred fifty percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your continued eligibility. If it is determined that you are no longer eligible, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement status.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is

below the defined income threshold as defined in subsection (5)(c) of this section. The documentation must include a signed copy of your filed tax return showing income from all sources for the prior year. You must also notify the department within thirty calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.)

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years until you reach age sixty-five. The department may increase the frequency of your CDRs if your condition is expected to improve, and reserves the right to require a CDR at any time at its discretion. The department may also waive the CDR if your disability is determined to be terminal.

(5) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

~~((e))~~ (e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

~~((f))~~ (f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

~~((e))~~ **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in

~~(a) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.~~

(f)) (g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

WSR 20-23-118

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 18, 2020, 9:58 a.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-24 issue of the Register.

WSR 20-23-121

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 18, 2020, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-034.

Title of Rule and Other Identifying Information: WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies, and 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.

Hearing Location(s): On December 22, 2020, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held.

To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/1401671028006212364>, webinar ID: 814-017-931. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than December 23, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 22, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by December 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-530-2000 to replace the list of covered generic products for the treatment of cough and cold. The

proposed rules cover only those products with a preferred status on the apple health preferred drug list on the date a prescription is dispensed. The agency is also amending WAC 182-530-2100 to correct references to WAC 182-530-2000 that changed as part of this rule making.

Reasons Supporting Proposal: This change allows the agency to: (1) Align access across fee-for-service and managed care organization coverage for cough and cold products; and (2) easily make adjustments based on product availability and cost effectiveness.

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: Health care authority (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: Amy Irwin, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1673.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule does not impose any costs on businesses.

November 18, 2020

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 182-530-1050;

(iii) The drug is not excluded from coverage under WAC 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 182-530-7500; and

(v) The drug is prescribed by a provider with prescriptive authority. Exceptions to the prescription requirement exist for family planning and emergency contraception in (b) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter 182-532 WAC and as follows:

(i) OTC family planning drugs, devices, and drug-related supplies without a prescription when the agency determines it necessary for client access and safety;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client;

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

(ii) A medical condition caused by a clinically documented deficiency;

(iii) A United States Preventive Services Task Force recommendation with an A or B rating;

(iv) Fluoride for clients under age twenty-one; or

(v) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the agency to be the least costly therapeutic alternative for a medically accepted indication. All covered OTC products determined to be the least costly therapeutic alternatives for medically accepted indications will be included on the agency's published apple health preferred drug list. This subsection does not apply to products prescribed for the treatment of cough or cold symptoms. See this subsection (1) (h) of this section and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 182-530-2100; and

(iv) Determined by the agency that a product covered under chapter 182-543 WAC related to ~~((durable))~~ medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound.

(g) OTC and prescription drugs to promote tobacco/nicotine cessation.

(h) ~~((The following generic products))~~ For the treatment of cough and cold(~~(+)~~

~~(i) Dextromethorphan 15 mg/5 ml liquid or syrup;~~

~~(ii) Dextromethorphan/Guaifenesin 10 mg – 100/5 ml liquid or syrup, including sugar free formulations;~~

~~(iii) Guaifenesin 100 mg/5 ml liquid or syrup;~~

~~(iv) Phenylephrine 10 mg tablets;~~

~~(v) Phenylephrine 2.5 mg/ml liquid or syrup;~~

~~(vi) Pseudoephedrine 30 mg and 60 mg tablets;~~

~~(vii) Pseudoephedrine 15 mg/5 ml liquid or syrup; and~~

~~(viii) Saline 0.65% nasal spray)), only those products included with a preferred status on the apple health preferred drug list (PDL), as described in WAC 182-530-4100, on the date a client's prescription is dispensed.~~

(2) The agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

WAC 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The medicaid agency does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidence-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction;

(iv) For cosmetic purposes or hair growth; or

(v) For treatment of cough or cold symptoms, except as listed in WAC 182-530-2000 (1)((+)) (h).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete National Drug Code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except as allowed under WAC 182-530-2000 (1)((+)) (h).

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(i) Free pharmaceutical samples.

(2) A noncovered drug can be requested through the exception to rule process as described in WAC 182-501-0160.

(3) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be

evaluated according to the process in WAC 182-501-0165. (See WAC 182-534-0100 for EPSDT rules.)

WSR 20-23-125
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed November 18, 2020, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-160.

Title of Rule and Other Identifying Information: Implementation of 2020 alcohol legislation. The Washington state liquor and cannabis board (WSLCB) proposes new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by the following four alcohol-related bills enacted during the 2020 legislative session: HB 2412 (chapter 230, Laws of 2020), ESSB 5006 (chapter 186, Laws of 2020), ESSB 6095 (chapter 200, Laws of 2020), and SSB 6392 (chapter 210, Laws of 2020).

The following section in chapter 314-02 WAC is revised: WAC 314-02-115 What are the requirements for licensees that sell keg beer?

The following section in chapter 314-12 WAC is revised: WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc.

The following sections in chapter 314-20 WAC are revised or new: WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers, and 314-20-019 Domestic brewery or microbrewery endorsement for on-premises consumption of wine.

The following sections in chapter 314-24 WAC are new: WAC 314-24-163 Domestic winery endorsement for on-premises consumption of beer, and 314-24-270 Local wine industry association license.

The following section in chapter 314-27 WAC is revised: WAC 314-27-010 Liquor purchases by Interstate Common Carrier licensees—Reports.

The following sections in chapter 314-52 WAC are revised: WAC 314-52-080 Novelty advertising, 314-52-090 Advertising sponsored jointly by retailers and manufacturers, imports, or distributors, and 314-52-110 Advertising by retail licensees.

Hearing Location(s): On January 6, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meet-

ings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: Not earlier than January 20, 2021.

Submit Written Comments to: Audrey Vasek, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by January 6, 2021.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by December 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to align existing rule language with changes made to the law by HB 2412 and ESSB 6095 and establish new rule sections needed to implement ESSB 5006 and SSB 6392. Specifically, the rule proposal:

Amends WAC 314-02-115, concerning keg registration requirements. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by HB 2412. Revisions include exempting licensed domestic breweries and microbreweries from certain keg registration and identification requirements when selling kegs of beer of their own production, consistent with RCW 66.28.200 and 66.28.210.

Amends WAC 314-12-140, concerning prohibited practices under the three-tier system for alcohol regulation. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A cross-reference to RCW 66.28.310, which contains exceptions to the money or moneys' worth restrictions, is added to subsection (2).

Amends WAC 314-20-017, concerning brewery and microbrewery retail liquor licenses. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by HB 2412. Revisions include increasing the number of retail liquor licenses that a licensed domestic brewery or microbrewery may hold from two to four, consistent with RCW 66.24.240 and 66.24.244, and making a nonsubstantive technical and clarifying change to update a subsection number in an RCW cross-reference.

Creates a new section WAC 314-20-019, concerning the domestic brewery or microbrewery endorsement for on-premises consumption of wine. The proposed new rule section implements the law as established and dictated by ESSB 5006. Consistent with RCW 66.24.246, the proposed rule section describes and clarifies the requirements that an endorsement holder must comply with in order to sell wine for on-premises consumption, and includes a reference to the annual fee for the new endorsement, which is set by law at \$200.

Creates a new section WAC 314-24-163, concerning the domestic winery endorsement for on-premises consumption of beer. The proposed new rule section implements the law as established and dictated by ESSB 5006. Consistent with RCW 66.24.246, the proposed rule section describes and clarifies the requirements that an endorsement holder must comply with in order to sell beer for on-premises consumption, and includes a reference to the annual fee for the new endorsement, which is set by law at \$200.

Creates a new section WAC 314-24-270, concerning the local wine industry association license. The proposed new rule section implements the law as established and dictated by SSB 6392. Consistent with RCW 66.24.165, the proposed rule section describes and clarifies the application criteria for a local wine industry association license, along with certain requirements and privileges of the license. A reference to the annual fee for the new endorsement, which is set by law at \$200, is also included.

Amends WAC 314-27-010, concerning the interstate common carrier license. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. Revisions include adding a new subsection (5) containing a reference to the new privileges authorized under RCW 66.24.395, and a new subsection (6) containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310. Revisions also include nonsubstantive technical and clarifying changes, such as lower-casing the term "Interstate Common Carrier" throughout the section and updating the section caption from "Liquor purchases by Interstate Common Carrier licensees—Reports." to "Interstate common carrier license—Reports." The phrase "spirituous liquor" is removed from the tax reporting requirement consistent with Initiative 1183, which moved all spirits tax collection from the WSLCB to the department of revenue in 2012.

Amends WAC 314-52-080, concerning novelty advertising. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A new subsection (6) is added containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310 as an exception to the money or moneys' worth restrictions under the three-tier system for alcohol regulation.

Amends WAC 314-52-090, concerning advertising sponsored jointly by retailers and manufacturers, importers, or distributors. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A new subsection (4) is added containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310 as an exception to the money or moneys' worth restrictions under the three-tier system for alcohol regulation.

Amends WAC 314-52-110, concerning advertising by retail licensees. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A new subsection (5) is added containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310 as an exception to the money or moneys' worth restrictions under the three-tier system for alcohol regulation.

Reasons Supporting Proposal: The proposed rules are needed to align existing rules with and implement the law as established by HB 2412, ESSB 5006, ESSB 6095, and SSB 6392. See purpose.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: HB 2412 (chapter 230, Laws of 2020), ESSB 5006 (chapter 186, Laws of 2020), ESSB 6095 (chapter 200, Laws of 2020), and SSB 6392 (chapter 210, Laws of 2020).

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and Enforcement: Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Consistent with RCW 34.05.328 (5)(a), these proposed rules are not subject to cost-benefit analysis requirements unless requested by the joint administrative rules review committee or voluntarily applied. Additionally, these proposed rules do not qualify as significant legislative rules under RCW 34.05.328 (5)(c), and are exempt from cost-benefit analysis requirements under RCW 34.05.328 (5)(b):

- The rule proposal creates new rule sections and amends existing rule sections to implement and align the rules with the law as established and dictated by HB 2412, ESSB 5006, ESSB 6095, and SSB 6392 consistent with RCW 34.05.328 (5)(b)(v).
- The rule proposal also revises and incorporates references to statutory language where necessary and appropriate consistent with RCW 34.05.328 (5)(b)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act (RFA) because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(3) by way of RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: The revisions made to WAC 314-20-017, 314-02-115, 314-27-010, 314-52-080, 314-52-090, 314-52-110, and 314-12-140, and the new rules added as WAC 314-20-019, 314-24-163, and 314-24-270, are exempt from the RFA's small business economic impact statement (SBEIS) requirement under RCW 34.05.310 (4)(c) and (e). The proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW

34.05.310 (4)(c), and create new rule sections or amend existing rule sections to implement the law or align existing rule language with the law as established and dictated by HB 2412, ESSB 5006, ESSB 6095, and SSB 6392 consistent with RCW 34.05.310 (4)(e).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

ESSB 5006: Estimated Cost of Compliance: The board applied an estimated cost of compliance of \$225 when analyzing whether the rules impose more than "minor costs" as defined in RCW 19.85.020(2) on brewery, microbrewery, or winery licensees that could potentially apply for an on-premises consumption endorsement under ESSB 5006 (codified as RCW 66.24.246). The estimated cost of compliance assumes the following costs:

Cost of endorsement: \$200. Brewery, microbrewery, and winery licensees that choose to apply for the new endorsement type created by ESSB 5006 must pay a \$200 annual fee that is mandated by RCW 66.24.246. However, the new endorsement created by ESSB 5006 is optional. Breweries, microbreweries, and wineries are not required to obtain the endorsement to continue operating as usual under the terms of their licenses. Licensees only need to obtain this endorsement if they wish to have the new beer/wine on-premises consumption privileges allowed by statute.

Administrative costs: \$25 or less. Licensees that apply for the new endorsement type will have costs associated with the initial application process, including the time needed to complete the application and any associated interaction with board representatives to discuss or verify application information. The time needed to complete these administrative tasks is estimated at one hour or less during the initial application year, with no additional time needed for renewal in any following years. The application process for the new endorsement is straightforward because the application is completed by existing licensees. During the initial application year, the board estimates that it will take ten minutes for the licensee to complete the application for the endorsement, and five to ten minutes for a phone call that confirms receipt.

When the licensee renews their underlying license in following years, the endorsement could be automatically renewed along with the underlying license (provided that the licensee pays the annual fee for the endorsement in addition to the fee for the underlying license) so that licensee does not need to spend any additional time on the endorsement at renewal.

According to the 2019 Occupational Employment Statistics (OES) Databook available in the employment security department (ESD) labor market report library, the average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the Standard Occupational Classification (SOC) Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities during the initial application year is \$21.31 (\$21.31 avg. hourly wage x 1 hour = \$21.31). For the purpose of the minor cost calculations, these estimated administrative costs are rounded up to \$25. Assuming that these administrative costs are one-time only and amortized over the total number of years that the licensee renews the endorsement, the annual estimated administrative cost for the licensee would be less than \$25.

Minor Cost Estimate: The board applied NAICS codes 312120 for Breweries and 312130 for Wineries to estimate minor costs for brewery, microbrewery, and winery licensees. According to the 2017 NAICS Manual, the brewery industry (312120) "comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer," and the winery industry (312130) "comprises establishments primarily engaged in one or more of the following: (1) Growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies." There is no separate NAICS code available for microbreweries.

As shown in the table below, the estimated cost of compliance (\$225) does not exceed the minor cost estimate for these industries (\$3,453.63 for Breweries and \$3,581.58 for Wineries), so a small business economic impact statement (SBEIS) is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312120	\$225.00	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR
312130	\$225.00	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR

SSB 6392: Estimated Cost of Compliance: The board applied an estimated cost of compliance of \$850 when analyzing whether the rules impose more than "minor costs" as defined in RCW 19.85.020(2) on organizations that could potentially apply for a local wine industry association license under SSB 6392 (codified as RCW 66.24.165). The estimated cost of compliance assumes the following costs:

Cost of license: \$700. Organizations that choose to apply for the new local wine industry association license created by SSB 6392 must pay a \$700 annual fee that is mandated by

RCW 66.24.165. The new license created by SSB 6392 is optional. Businesses are not required to obtain the license to continue operating as usual, and only need to obtain this license if they wish to have the new privileges allowed by RCW 66.24.165. For example, the new license authorizes licensees to hold up to twelve events or marketing programs per year on domestic winery premises or offsite locations if the licensee satisfies certain conditions specified in the statute.

Administrative costs: \$150 or less. Organizations that apply for the license will have costs associated with the initial application and annual renewal process, including the time needed to complete the application for the license and any associated interaction with board representatives to discuss or verify application information. Licensees will also have administrative costs associated with each event or marketing program that they hold.

Application and annual renewal costs: During the initial application year, the board estimates that it will take an applicant one hour to prepare the application and required materials, including any phone calls or other communication with board staff. For license renewal in following years, the board estimates that it will take licensees around twenty to thirty minutes to complete the renewal process.

Event or marketing program costs: Under the statute, licensees must notify the board of any event or marketing program that they plan to hold at least forty-five days in advance. The board estimates it will take the licensee around thirty minutes for each event or marketing program notification and any related phone calls or communications with board staff. Licensees are limited by statute to no more than twelve events per year. If a licensee engages in the full twelve events per year, they could spend up to six hours per year on event notifications (0.5 hour per event x 12 events per year = 6 hours per year).

The total time needed to complete these annual administrative tasks is estimated at anywhere between one hour to

seven hours during the year of initial application, depending on the number of events that a licensee holds (The total time is around thirty minutes less during renewal years).

According to the 2019 OES Databook available in the ESD labor market report library, the average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the SOC Code 43-6014) is \$21.31. The estimated annual cost for these administrative activities is anywhere between \$21.31 to \$149.17 (\$21.31 avg. hourly wage x 7 hours = \$149.17). For the purpose of the minor cost calculations, these estimated annual administrative costs are rounded up to \$150.

Minor Cost Estimate: The board applied NAICS code 813910 for Business Associations to estimate minor costs for local wine industry associations. According to the 2017 NAICS Manual, "This industry comprises establishments primarily engaged in promoting the business interests of their members. These establishments may conduct research on new products and services; develop market statistics; sponsor quality and certification standards; lobby public officials; or publish newsletters, books, or periodicals for distribution to their members."

As shown in the table below, the estimated cost of compliance (\$850) does not exceed the minor cost estimate for this industry (\$3,878.90), so an SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
813910	\$850.00	Local Wine Industry Associations	Business Associations	\$3,878.90	\$3,737.22 2018 Dataset pulled from USBLS	\$3,878.90 2018 Dataset pulled from DOR

HB 2412: Estimated Cost of Compliance: The board applied an estimated cost of compliance of \$100 when analyzing whether the rules impose more than "minor costs" as defined in RCW 19.85.020(2) on brewery and microbrewery licensees affected by the proposed rule revisions to implement HB 2412. The estimated cost of compliance was based on the following reasoning:

Nominal costs: The board anticipates that the proposed rule revisions to implement HB 2412 will not result in any new or additional costs of compliance or regulatory burden for licensees. The proposed rule revisions to implement HB 2412 do not create any new fees or add additional costs for licensees. In fact, the proposed rule revisions will likely reduce costs and regulatory burden for breweries and microbreweries by eliminating keg registration requirements and container identification requirements for sales by these licensees of kegs or other containers containing four gallons

or more of beer of their own production, consistent with HB 2412. Although the board does not anticipate any new costs of compliance resulting from the proposed rule revisions, for the purpose of the minor cost calculation, the board applied a nominal estimated cost of compliance of \$100.

Minor Cost Estimate: The board applied NAICS code 312120 for Breweries to estimate minor costs for brewery and microbrewery licensees. According to the 2017 NAICS Manual, "This industry comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer." There is no separate NAICS code available for microbreweries.

As shown in the table below, the estimated cost of compliance (\$100) does not exceed the minor cost estimate (\$3,453.63) for these industries, so an SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312120	\$100.00	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

ESSB 6095: Estimated Cost of Compliance: The board applied a nominal estimated cost of compliance of \$100 when analyzing whether the rules impose more than "minor costs" as defined in RCW 19.85.020(2) on interstate common carriers or industry members potentially affected by the proposed rule revisions to implement ESSB 6095.

For the purpose of the interstate common carrier license in RCW 66.24.395, "interstate common carriers" include "corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes."

For the purpose of the three-tier system for alcohol regulation as defined in RCW 66.28.285(3), "industry member" means "a licensed manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, directors, partners, agents, employees, and representatives of any industry member."

The estimated cost of compliance was based on the following reasoning:

Nominal costs: The board estimates that the proposed rule revisions to implement ESSB 6095 will not result in any new or additional costs of compliance or regulatory burden for interstate common carriers or industry members. The proposed rule revisions to implement ESSB 6095 do not create any new fees. In fact, the proposed rule revisions will likely reduce costs and regulatory burden for interstate common carrier licensees and industry members by implementing the new exceptions to the money or moneys' worth restrictions created by ESSB 6095. Although the board does not estimate any new costs of compliance resulting from the proposed rule revisions, for the purpose of the minor cost calculations, the board applied a nominal estimated cost of compliance of \$100.

Minor Cost Estimate: Interstate common carriers and industry members include a wide range of industries.

To estimate minor costs for interstate common carriers, the board applied NAICS codes for passenger airplanes (481111 Scheduled Passenger Air Transportation & 481211

Nonscheduled Chartered Passenger Air Transportation), passenger trains (482111 Line-Haul Railroads), and passenger vessels/ships (483114 Coastal and Great Lakes Passenger Transportation & 483112 Deep Sea Passenger Transportation). These NAICS codes were selected based on descriptions and illustrative examples in the 2017 NAICS Manual indicating that these codes capture data for industries primarily engaged in the transportation of passengers in interstate commerce and exclude those primarily engaged in transportation of freight or cargo.

To estimate minor costs for industry members, the board applied NAICS codes for wholesalers/distributors (4248 Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers), warehouses (493190 Other Warehousing and Storage), and manufacturers/producers (312120 Breweries, 312130 Wineries, and 312140 Distilleries). According to the 2017 NAICS Manual, the beer, wine, and distilled alcoholic beverage merchant wholesalers industry (4248) "comprises establishments primarily engaged in the merchant wholesale distribution of beer, ale, wine, and/or distilled alcoholic beverages," and the other warehousing and storage industry (493190) "comprises establishments primarily engaged in operating warehousing and storage facilities (except general merchandise, refrigerated, and farm product warehousing and storage)." An illustrative example given for the other warehousing and storage industry is "Whiskey warehousing."

According to the 2017 NAICS Manual, the distillery industry (312140) "comprises establishments primarily engaged in one or more of the following: (1) Distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients." The 2017 NAICS Manual descriptions for breweries and wineries are provided in the section above related to ESSB 5006.

As shown in the table below, the estimated cost of compliance (\$100) does not exceed the minor cost estimate for any of these industries (ranging from \$2,076.60 for Distilleries, to \$256,707.21 for Scheduled Passenger Air Transportation), so an SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
481111	\$100.00	Passenger airplanes	Scheduled Passenger Air Transportation	\$256,707.21	\$256,707.21 2018 Dataset pulled from USBLS	\$18,661.75 2018 Dataset pulled from DOR
481211	\$100.00	Passenger airplanes	Nonscheduled Chartered Passenger Air Transportation	\$6,873.72	\$6,873.72 2018 Dataset pulled from ESD	\$3,760.60 2018 Dataset pulled from DOR
482111	\$100.00	Passenger trains	Line-Haul Railroads	\$53,599.45	Redacted 2018 Dataset pulled from ESD	\$53,599.45 2018 Dataset pulled from DOR
483114	\$100.00	Passenger vessels/ships	Coastal and Great Lakes Passenger Transportation	\$8,630.12	Redacted 2018 Dataset pulled from USBLS	\$8,630.12 2018 Dataset pulled from DOR
483112	\$100.00	Passenger vessels/ships	Deep Sea Passenger Transportation	\$201,488.29	\$201,488.29 2018 Dataset pulled from USBLS	\$10,972.00 2018 Dataset pulled from DOR

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
4248	\$100.00	Wholesalers/ Distributors	Beer; Wine; and Distilled Alcoholic Beverage Merchant Wholesalers	\$18,339.22	\$14,627.69 2018 Dataset pulled from USBLS	\$18,339.22 2018 Dataset pulled from DOR
493190	\$100.00	Warehouses	Other Warehousing and Storage	\$12,122.17	\$8,723.03 2018 Dataset pulled from USBLS	\$12,122.17 2018 Dataset pulled from DOR
312120	\$100.00	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR
312130	\$100.00	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR
312140	\$100.00	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR

November 18, 2020
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-115 (~~What are the~~) **Requirements for licensees that sell keg beer** ~~(?)~~ ~~(Per)~~ Consistent with RCW 66.28.200 and 66.28.210 ~~(-any)~~:

~~(1)~~(a) Any licensee, except for a domestic brewery or microbrewery selling beer of its own production as provided in subsection (3) of this section, who sells beer for off-premises consumption in kegs or other containers holding four or more gallons of beer must ~~(-~~

~~(1)~~) require the purchaser to provide at least one piece of identification (see ~~(RCW 66.16.040)~~ WAC 314-11-025 for acceptable forms of identification); and

~~((2))~~ (b) The licensee or employee and purchaser must fill out a keg registration form, provided by the board, which contains:

~~((a))~~ (i) The name and address of the purchaser;

~~((b))~~ (ii) The type and number of the identification presented by the purchaser;

~~((c))~~ (iii) The address where the beer will be consumed and the date on which it will be consumed; and

~~((d))~~ (iv) A sworn statement, signed by the purchaser under penalty of perjury, that ~~(the purchaser)~~:

~~((i))~~ (A) The purchaser is at least twenty-one years of age;

~~((ii))~~ (B) The purchaser will not allow persons under twenty-one years of age to consume the beer purchased;

~~((iii))~~ (C) The purchaser will not remove or obliterate the keg registration form affixed to the keg or allow it to be removed or obliterated; and

~~((iv))~~ (D) The address listed in ~~((e))~~ (b)(iii) of this subsection is the true and correct address at which the beer will be consumed or physically located.

~~((3))~~ (2) It is the licensee's or employee's responsibility to distribute the properly completed keg registration form as follows:

(a) One copy to the purchaser;

(b) One copy affixed to the keg or container holding four gallons or more of beer, prior to it leaving the licensed premises; and

(c) One copy must be retained on the licensed premises for one year, available for inspection and copying by any law enforcement officer.

(3) Domestic breweries and microbreweries and their licensed retail locations are not subject to the keg registration and container identification requirements when selling kegs or other containers containing four gallons or more of beer of the licensee's own production, and purchasers of these kegs or containers are not subject to the related purchaser requirements, except that the purchaser must be at least twenty-one years of age and must not allow persons under twenty-one years of age to consume any beer purchased.

(4) Except in cases involving sales by domestic breweries and microbreweries of beer of the licensee's own production as described in subsection (3) of this section, possession of a keg or other container which holds four gallons or more of beer without a properly completed keg registration form affixed to it, other than on the licensee's premises, will be a violation of this title.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc. (1) No industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made

in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(2) Except as permitted under RCW 66.28.310, no industry member shall advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;
- (f) Free liquor of any kind; or
- (g) Treats or services of any nature whatsoever except such services as are authorized in this regulation.

(3) Pursuant to RCW 66.28.310 and 66.44.318 an industry member or licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of its products in such a manner as to cover up, hide or reduce the space of display of the products of any other industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when a two-day notice is given to other interested industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

(d) Provide price cards and may also price goods of its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(e) Provide point of sale advertising material and brand signs.

(f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

(g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

(h) Licensees holding nonretail class liquor licenses are permitted to allow their employees between the ages of eighteen and twenty-one to stock, merchandise, and handle liquor on or about the:

(i) Nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises; and

(ii) Retail licensee's premises, except between the hours of 11:00 p.m. and 4:00 a.m., as long as there is an adult twenty-one years of age or older, employed by the retail

licensee, and present at the retail licensee's premises during the activities.

Any act or omission of the nonretail class liquor licensee's employee occurring at or about the retail licensee's premises, which violates any provision of this title, is the sole responsibility of the nonretail class liquor licensee.

(4) No industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

(5) No industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

(6) In selling equipment, fixtures, supplies or commodities other than liquor, no industry member shall grant to any retailer, nor shall such retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retailer.

(7) Any industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection, records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

- (a) A complete description of the articles sold;
- (b) The purchase price of each unit sold together with the total amount of the sale;
- (c) Transportation costs and services rendered in connection with the installation of such articles; and
- (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection (4) of this section.

(8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to ~~((two))~~ four retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions. For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more beer.

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210 ~~((6))~~ without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery;

(b) Sell containers of beer for off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.-210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

NEW SECTION

WAC 314-20-019 Domestic brewery or microbrewery endorsement for on-premises consumption of wine. Consistent with RCW 66.24.246:

(1) A domestic brewery or microbrewery may apply for an endorsement to sell wine for on-premises consumption.

(2) The endorsement holder must comply with each of the following requirements:

(a) The wine must be produced in Washington;

(b) The wine must be sold by the single serving for on-premises consumption; and

(c) The number of wine offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars.

NEW SECTION

WAC 314-24-163 Domestic winery endorsement for on-premises consumption of beer. Consistent with RCW 66.24.246:

(1) A licensed domestic winery may apply for an endorsement to sell beer for on-premises consumption. A separate endorsement is required for each location.

(2) The endorsement holder must comply with each of the following requirements:

(a) The beer must be produced in Washington;

(b) The beer must be sold by the single serving for on-premises consumption; and

(c) The number of beer offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars for each location.

NEW SECTION

WAC 314-24-270 Local wine industry association license. Consistent with RCW 66.24.165:

(1) A nonprofit society or organization that is specifically created with the express purpose of encouraging consumer education of and promoting the economic development for a designated area of the Washington state wine industry, including both Washington statewide and Washing-

ton regional organizations, may apply for a local wine industry association license. Consistent with RCW 66.24.010(9), the board will send a local authority notice before issuing a local wine industry association license.

(2) A local wine industry association licensee may conduct a maximum of twelve events per year, and must provide notification to the board at least forty-five days before an event or the start of a marketing program conducted under the license. The board will send a local authority notice to the jurisdiction in which the event or marketing program is to be conducted under the license.

(3) A local wine industry association licensee may also apply for special occasion licenses under RCW 66.24.380 (see chapter 314-05 WAC) and special permits under RCW 66.20.010 (see chapter 314-38 WAC). The twelve events allowable under the local wine industry association license are separate and distinct from the twelve events allowable under the special occasion license.

(4) Wine furnished to a local wine industry association licensee is subject to taxes under RCW 66.24.210 (see WAC 314-19-015).

(5) The annual fee for the local wine industry association license is seven hundred dollars.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-27-010 (~~(Liquor purchases by)~~) Interstate common carrier (~~(licensees)~~) license—Reports. (1) Any licensee authorized by the board to sell liquor may sell liquor to the holder of an interstate common carrier license upon presentation of a special permit issued by the board to such licensee.

(2) Sales of liquor to such properly licensed interstate commercial common passenger carriers shall be treated as sales for export.

(3) Every federally licensed interstate commercial common passenger carrier, holding an interstate common carrier license shall, on or before the twentieth day of each month, make a report to the board, upon forms approved by the board, of all (~~(spiruous liquor,)~~) beer and wine served or sold at retail for passenger consumption by such common carrier within or over the territorial limits of the state of Washington during the preceding calendar month.

(4) Licensed beer and wine importers and distributors who sell beer or wine to such properly licensed interstate commercial common passenger carriers shall treat such sales as exports from the state.

(5) Licensed interstate common carriers may provide complimentary alcoholic beverages to passengers aboard passenger trains, vessels, or airplanes as authorized under RCW 66.24.395.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items which are of nominal

value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but are not limited to: Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only;

(c) May only be provided by industry members to retailers and their employees;

(d) May not be provided by or through retailers or their employees to retail customers.

(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.

Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.

(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(4) An industry member or their employee, may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for three years on the licensed premises and available for immediate inspection by board enforcement officers.

(5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original or copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items by the industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the industry member for a period of at least three years after each purchase or sale. Any manufacturer which does not maintain a principal office within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors.

(1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor, except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered or solicited as an inducement to secure such mention of any manufacturer, importer, or distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

(4) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-110 Advertising by retail licensees. (1)

Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the name as it appears on the license issued to the licensee:

(a) Words such as tavern, cafe, grocery, market, wine shop, and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees, shall neither be required nor prohibited as part of the trade name in advertisements.

(b) Advertisements by a spirit, beer and wine restaurant licensee may also refer to cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room.

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," "buy one—get one free," or "two for \$_____."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than

acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court; or

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

(5) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.