

WSR 21-10-008
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed April 22, 2021, 2:55 p.m., effective May 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Health care authority (HCA) is amending these rules to change the timeframe manufacturers have to report to HCA new covered drugs being introduced to market in Washington and to add the contents of the prescription drug pricing transparency program's nondisclosure agreement.

Citation of Rules Affected by this Order: Amending WAC 182-51-0100, 182-51-0600, and 182-51-0900.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 43.71C.010, 43.71C.050, 43.71C.100, and 43.71C.110.

Adopted under notice filed as WSR 21-06-099 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-51-0900 (3)(g)		
Proposed	Share information with any person, including a legislator or legislative staff member, who either is not authorized to receive confidential information or has not signed a nondisclosure agreement with the authority.	HCA made this change as a result of stakeholder comments.
Adopted	Share information <u>received according to this chapter, including a legislator or legislative staff member,</u> with any person who either is not authorized to receive confidential information or has not signed a nondisclosure agreement with the authority as specified by this chapter.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: April 22, 2021.

Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0100 Definitions. For the purposes of this chapter:

(1) "Authority" means the health care authority.

(2) "Calendar days" means the same as in WAC 182-526-0010.

(3) "Calendar year" means the period from January 1st to December 31st of each year.

(4) "Confidential information" means information collected by the authority according to RCW 43.71C.020 through 43.71C.080, which is not subject to public disclosure under chapter 42.56 RCW and must be held confidential by all data recipients, according to WAC 182-51-0900.

(5) "Covered drug" means any prescription drug that:

(a) A covered manufacturer intends to introduce to the market in Washington state at a wholesale acquisition cost of ten thousand dollars or more for a course of treatment lasting less than one month or a thirty-day supply, whichever period is longer; or

(b) Meets all of the following:

(i) Is currently on the market in Washington state;

(ii) Is manufactured by a covered manufacturer; and

(iii) Has a wholesale acquisition cost of more than one hundred dollars for a course of treatment lasting less than one month or a thirty-day supply, and, taking into account only price increases that take effect on or after ((July 28)) October 1, 2019, the manufacturer increases the wholesale acquisition cost such that:

(A) The new wholesale acquisition cost is twenty percent higher than the wholesale acquisition cost on the same day of the month, twelve months before the date of the proposed increase; or

(B) The new wholesale acquisition cost is fifty percent higher than the wholesale acquisition cost on the same day of the month, thirty-six months before the date of the proposed increase.

((5)) (6) "Covered manufacturer" means a person, corporation or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store label, or a prescription drug repackager.

((6)) (7) "Data" means all data provided to the authority under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.

~~((7))~~ (8) "Data recipient" means an individual or entity authorized to receive data under RCW 43.71C.100.

~~((8))~~ (9) "Data submission guide" means the document that identifies the data required under chapter 43.71C RCW, and provides instructions for submitting this data to the authority, including guidance on required format for reporting, for each reporting entity.

~~((9))~~ (10) "Food and drug administration (FDA) approval date" means the deadline for the FDA to review applications for new drugs or new biologics after the new drug application or biologic application is accepted by the FDA as complete in accordance with the Prescription Drug User Fee Act of 1992 (106 Stat. 4491; P.L. 102-571).

~~((10))~~ (11) "Health plan," "health carrier," and "carrier" mean the same as in RCW 48.43.005.

~~((11))~~ (12) "Introduced to market" means marketed in Washington state.

~~((12))~~ (13) "Pharmacy benefit manager" means the same as defined in RCW 19.340.010.

~~((13))~~ (14) "Pharmacy services administrative organization" means an entity that:

(a) Contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefit manager, third-party payor, or other entities, including negotiating, executing, or administering contracts with the pharmacy benefit manager, third-party payor, or other entities; and

(b) Provides administrative services to pharmacies.

~~((14))~~ (15) "Pipeline drug" means a drug or biologic product containing a new molecular entity, not yet approved by the Food and Drug Administration, for which a manufacturer intends to seek initial approval from the Food and Drug Administration under an original new drug application under 21 U.S.C. Sec. 355(b) or under a biologics license application under 42 U.S.C. Sec. 262 to be marketed in Washington state.

~~((15))~~ (16) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW that is prescribed for outpatient use and distributed in a retail setting, including generic, brand name, specialty drugs, and biological products.

~~((16))~~ (17) "Private label distributor" means a firm that does not participate in the manufacture or processing of a drug but instead markets and distributes under its own trade name, and labels a drug product made by someone else.

~~((17))~~ (18) "Qualifying price increase" means a price increase described in subsection (3)(b) of this section.

~~((18))~~ (19) "Rebate" means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to a reporting entity and are directly attribut-

able to the utilization of certain drugs by reporting entity members.

~~((19))~~ (20) "Reporting entity" means carriers, covered manufacturers, health carriers, health plans, pharmacy benefit managers, and pharmacy services administrative organizations, which are required to or voluntarily submit data according to chapter 43.71C RCW.

~~((20))~~ (21) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is available, as reported in wholesale acquisition cost guides or other publications of prescription drug pricing.

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0600 Manufacturers—Data and price reporting. (1) On or before December 31, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, ~~((the))~~ following the guidelines set in the authority's applicable data submission guide for each covered drug ~~((as the drug existed between and including July 28, 2019, and August 17))~~ introduced to market, or a covered drug that had a qualifying price increase between and including October 1, 2019, and October 15, 2020.

(2) Beginning October 16, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, following the guidelines set in the authority's applicable data submission guide, for each covered drug as follows:

(a) Sixty days in advance of a qualifying price increase for a covered drug marketed in Washington state; or

(b) Within thirty days ~~((in advance))~~ of a new covered ~~((drug's introduction))~~ drug introduced to market in Washington state.

(3) For any drug approved under section 505(j) of the federal Food, Drug, and Cosmetic Act as it existed on August 18, 2020, or a biosimilar approved under section 351(k) of the federal Public Health Service Act as it existed on August 18, 2020, if submitting data in accordance with subsection (2)(a) of this section is not possible sixty days before the price increase ~~((; or if submitting data in accordance with subsection (2)(b) of this section is not possible thirty days before the introduction to market))~~, that submission must be made as soon as known but no later than the date of the price increase ~~((or introduction to market))~~.

(4) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(5) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0900 Data confidentiality. (1) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agree-

ment. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

(2) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

(b) Having a public policy purpose to access and use the confidential information according to chapter 43.71C RCW;

(c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas;

(d) Destroying all confidential information when it is no longer needed to perform authorized activities; and

(e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under RCW 43.71C.100.

(3) Data recipients must not:

(a) Disclose any confidential information, as defined by WAC 182-51-0100, or otherwise publicly release the confidential information;

(b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 43.17C RCW;

(c) Attempt to identify people who are the subject of the confidential information;

(d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;

(e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;

(f) Have any conflicts of interests under the ethics in public service act that would prevent the data recipient from accessing or using confidential information; and

(g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.

WSR 21-10-010
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed April 23, 2021, 8:31 a.m., effective May 24, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Community Colleges of Spokane edited sections and created new sections to update current chapter 132Q-10 WAC, Student conduct code, in order to be in compliance with the new United States Department of Education (DOE) Title IX regulations that went into effect on August 14, 2020. This requires updates to the colleges' student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New WAC 132Q-10-600, 132Q-10-601, 132Q-10-602, 132Q-10-603, 132Q-10-604, 132Q-10-605, 132Q-10-606, 132Q-10-607, and 132Q-10-608.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Adopted under notice filed as WSR 21-06-084 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: An additional sentence was added at WAC 132Q-10-600: "College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 23, 2021.

John O'Rourke
Grants and Contracts Manager

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132Q-10-600 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132Q-10-601 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Community Colleges of Spokane may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A Community Colleges of Spokane employee conditioning the provision of an aid, ben-

efit, or service of the Community Colleges of Spokane on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Community Colleges of Spokane's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132Q-10-602 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Community Colleges of Spokane educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Community Colleges of Spokane exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Community Colleges of Spokane.

(3) Proceedings under this supplemental procedure must be dismissed if one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Upon receipt of the formal complaint, the Title IX coordinator shall make an initial inquiry into whether Title IX jurisdiction extends to the complaint. If the Title IX coordinator determines there is no Title IX jurisdiction, the Title IX coordinator will issue a notice of dismissal in whole or part explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.

(4) After receipt of the investigation report, if the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.

NEW SECTION

WAC 132Q-10-603 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator or designee, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct administrative panel and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The Community Colleges of Spokane will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132Q-10-604 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct administrative panel will send a hearing notice to all parties, in compliance with WAC 132Q-10-315. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Community Colleges of Spokane intends to offer the evidence at the hearing.

NEW SECTION

WAC 132Q-10-605 Rights of parties. (1) The Community Colleges of Spokane's student conduct procedures, WAC 132Q-10-101 through 132Q-10-503, and this supplemental procedure shall apply equally to all parties.

(2) The Community Colleges of Spokane bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132Q-10-606 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132Q-10-607 Initial order. (1) In addition to complying with WAC 132Q-10-330, the student conduct administrative panel will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the student conduct administrative panel's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Community Colleges of Spokane's education programs or activities; and

(h) Describes the process for appealing initial orders from Spokane Community College to Spokane Falls Community College's vice president of student affairs or initial orders from Spokane Falls Community College to the vice president of student services.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132Q-10-608 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132Q-10-335.

(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s). For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.

**WSR 21-10-019
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed April 23, 2021, 3:48 p.m., effective June 1, 2021]

Effective Date of Rule: June 1, 2021.

Purpose: The notice of construction (NOC) program fees, like the other fee programs of the Puget Sound Clean Air Agency (agency) (registration, operating permits, and asbestos), are designed to recover the costs implementing and administering the program. The last significant changes to the NOC fee schedule in Regulation I, Section 6.04 were made in 2012. The current changes are intended to adjust fees to keep the revenues in balance with the level of effort to complete the NOC review work. As costs have continued to rise over the past nine years, the agency has held off on fee increases, in part, in recognition of various challenges presented by economic conditions over the years. While the revenue and expenses for the NOC program have been roughly balanced

for most of the past nine years, the increasing costs to the program and increasing level of effort for some types of work by the agency for certain NOC applications need to be addressed through a revised fee schedule to ensure the agency does not reach a deficit condition.

The amendments to the NOC fee schedule include both cost increases for existing categories of applications as well as the addition of some new fee categories unique to certain types of applications which increase the level of effort to process those applications. The adjustments to existing fees groups are linked to increasing operational costs and are expected in the approximately the five to ten percent range which is consistent with previous fee increases.

Other fees are based on recent experience that has shown the existing fees are inadequate. New categories have been added for work that is currently not charged to applicants. Examples include:

- Size tiers for composting applications.
- Fees when agency needs to compile emissions data that should have been submitted by applicant.
- Fee for changes only to recordkeeping or reporting requirements.
- Fee for responding to comments from public, based on the level of difficulty to respond (meaning complexity and/or number of comments received).
- Fee associated with changing an application that is already under review.
- Certain State Environmental Policy Act documents such as an environmental impact statement.

Various fee levels for these revised and new fee schedule elements are based on the agency's experience and estimates for the level of effort and costs necessary to complete that work.

Citation of Rules Affected by this Order: Amending Regulation I, Section 6.04 Notice of Construction Fees.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 21-05-077 on February 17, 2021.

Date Adopted: April 22, 2021.

Craig T. Kenworthy
Executive Director

AMENDATORY SECTION

SECTION 6.04 NOTICE OF CONSTRUCTION FEES

(a) A Notice of Construction application is incomplete until the Agency has received all applicable fees as shown below:

Filing Fee (for each application, to be paid prior to any review)	\$(4,150)) <u>1,550</u>
Coffee Roaster (less than 40 pounds/batch or <u>18.14 kg/batch</u> , with thermal or catalytic oxidizer)	\$(600)) <u>650</u>
Hot Mix Asphalt Batch Plant	\$(8,000)) <u>8,500</u>

Soil Thermal Desorption Unit	\$(5,000) 5,250	<u>One previous Order of Approval. . . .</u>	<u>No additional fee</u>
<u>Marijuana Production, Processing, or Extraction:</u>		<u>((Other (not listed above) for each)) Each Piece of Equipment and Control Equipment not included in any other category in this section, 6.04(a).</u>	<u>\$((600)) 650</u>
<u>Production</u>	<u>\$1,500</u>		
<u>Extraction or Processing</u>	<u>\$1,300</u>		
<u>Combustion-Based Electric Generation Project: (combined heat input capacity)</u>		<u>Additional Charges (for each application):</u>	
10 - 100 million Btu/hr	\$(5,000) 5,250	<u>State Environmental Policy Act ("SEPA") Threshold Determination</u>	\$(800) <u>900</u>
101 - 250 million Btu/hr	\$(40,000) 10,500	(DNS, under Regulation I, Section 2.04)	
<u>((>)) More than 250 million Btu/hr</u>	\$(25,000) 26,500	SEPA Threshold Determination	\$(4,000) <u>4,400</u>
<u>Composting Facility, new facility or increased capacity at existing facility (annual waste acceptance capacity):</u>		(MDNS, under Regulation I, Section 2.07)	
<u>Less than 15,000 tons per year</u>	\$(40,000) 12,000	<u>SEPA Environmental Impact Statement (EIS), Supplemental EIS or Addendum</u>	<u>\$25,000,</u>
<u>15,000 tons or more per year, but less than 75,000 tons per year</u>	<u>\$25,000</u>	<u>in addition to all costs incurred by the Agency for the preparation of the EIS, SEIS or Addendum (EIS or SEIS under Regulation I, Section 2.08 and Addendum under WAC 197-11-630)</u>	
<u>75,000 or more tons per year</u>	<u>\$50,000</u>	Document Collection to Support Conclusion that SEPA Requirements were met by a Previous Environmental Review (not provided by applicant)	\$(800) <u>900</u>
<u>Composting Facility, changes to existing permit conditions with no increase in capacity.</u>	<u>\$6,000</u>	(See WAC 197-11-600)	
<u>Commercial Solid Waste Handling Facility Other Than Composting Facilities</u>	\$(40,000) 10,500	<u>Document and/or Reference Collection and Review to Develop Project or Facility Emissions Estimates (if not provided in entirety by applicant and not readily available to Agency) (See WAC 173-400-111 (1)(b) and 173-460-050(1)):</u>	
<u>Landfill Gas System</u>	\$(2,500) 2,750	<u>Development of facility-wide inventory if needed to determine applicability of Emissions reporting program, the Operating Permit program, or the status as a major or area source of hazardous air pollutants</u>	<u>\$2,500</u>
<u>Refuse Burning Equipment: (rated charging capacity)</u>		<u>Development of project emissions inventory from Safety Data Sheets</u>	<u>\$1,000</u>
<u>((≤)) Up to 12 tons per day</u>	\$(5,000) 5,250	<u>Other calculation of project emissions:</u>	
<u>((>)) More than 12 tons ((and ≤)) up to 250 tons per day</u>	\$(20,000) 21,000	<u>Novel source category not previously permitted by Agency</u>	<u>\$7,500</u>
<u>((>)) More than 250 tons per day</u>	\$(50,000) 52,500		
<u>Modification of Existing Permit Conditions (excluding Composting Facilities addressed above):</u>			
<u>Exclusively related to reporting or recordkeeping with no increase in emissions and no changes to materials processed, emissions unit, or control device.</u>	<u>\$650</u>		
<u>Solely administrative changes as determined by the Control Officer</u>	<u>Filing fee only</u>		
<u>Document Review to Determine the Notice of Construction Permitting History of an Emissions Unit (if determined necessary by Agency and not provided by applicant):</u>			
<u>Two or more previous Orders of Approval</u>	<u>\$650</u>		

<p><u>Higher complexity source category (Commercial solid waste handling facility, commercial composting facility, lumber kiln, landfill, wastewater treatment plant, cement kiln, glass manufacturer, asphalt plant, gasoline terminal, oil refinery, or oil re-refinery)</u></p> <p><u>Lower complexity source category (All other facility types) . . .</u></p> <p><u>Review of Engineering Source Testing submitted in support of application . .</u></p> <p><u>Review of Request to Treat Application, or Part of Application, as Confidential (fee applies regardless of the result of the Agency's review)</u></p> <p>Public Notice</p> <p>(under WAC 173-400-171)</p> <p>Public Hearing</p> <p>(under WAC 173-400-171)</p> <p>(under WAC 173-400-171)</p> <p><u>Preparation of Agency Response to Comments Resulting from Public Notice and/or Public Hearing, based on level of difficulty as determined by Control Officer based upon factors including, but not limited to, substance of or numbers of comments received:</u></p> <p style="padding-left: 20px;"><u>Low Difficulty</u></p> <p style="padding-left: 20px;"><u>Moderate Difficulty</u></p> <p style="padding-left: 20px;"><u>High Difficulty</u></p> <p>NSPS or NESHAP</p> <p>(per subpart of 40 CFR Parts 60, 61, and 63)</p> <p><u>First Tier Review of Toxic Air Contaminants:</u></p>	<p><u>\$5,000</u></p> <p><u>\$1,500</u></p> <p><u>\$1,000</u></p> <p><u>\$1,000</u></p> <p>\$(700) <u>750</u></p> <p>\$(2,000) <u>2,500</u></p> <p>\$(2,000) <u>2,500</u></p> <p>\$(2,000) <u>2,100</u></p> <p>\$(2,500) <u>3,000</u></p> <p><u>\$2,500</u></p> <p><u>\$5,000</u></p> <p>\$(1,000) <u>1,050</u></p>	<p><u>Agency Review of Screening Dispersion Modeling Analysis (provided by applicant)</u></p> <p><u>(under Regulation III, Section 2.07 (c)(1)(B))</u></p> <p>((Iterative)) Screening Dispersion Modeling Analysis <u>performed</u> by Agency (not provided by applicant)</p> <p><u>(under Regulation III, Section 2.07 (c)(1)(B))</u></p> <p><u>Agency Review of Refined Dispersion Modeling ((Analysis-Review)) (provided by applicant)</u></p> <p><u>(under Regulation III, Section 2.07 (c)(1)(C))</u></p> <p><u>Refined Dispersion Modeling performed by Agency (not provided by applicant)</u></p> <p><u>(under Regulation III, Section 2.07 (c)(1)(C))</u></p> <p>Major Source, Major Modification, or Emission Increases Greater than Prevention of Significant Deterioration (PSD)</p> <p>An Agency request for an Inapplicability Determination for PSD Program Requiring Written Applicability Determination from Ecology</p> <p>Establishing Voluntary Limits on Emissions for Synthetic Minor Source Status, Concurrent with Notice of Construction Application Review</p> <p>(See WAC 173-400-091)</p> <p>Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see 40 CFR 63.2)</p> <p>Tier II Air Toxics Review</p> <p>(under WAC 173-400-090)</p> <p><u>Review of Opacity/Grain Loading Correlation requested under Regulation I, Section 9.04(d)</u></p>	<p><u>\$800</u></p> <p>\$(1,000) <u>1,500</u></p> <p>\$(1,000) <u>1,500</u></p> <p><u>\$4,500</u></p> <p><u>\$5,000 (+ Ecology fees)</u></p> <p><u>\$5,000 (+ Ecology fees)</u></p> <p>\$(2,000) <u>2,100</u></p> <p>\$(2,500) <u>3,000</u></p> <p><u>\$5,000</u> <u>(+ Ecology fees)</u></p> <p><u>\$5,000</u></p>
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(b) A notification under Section 6.03 (b)(1) through Section 6.03 (b)(9) and 6.03 (b)(11) of this regulation is incomplete until the Agency has received a fee of \$200. An application processed as a Notice of Construction exemption under Section 6.03 (b)(10) requires payment of the Notice of Construction filing fee only. An application for coverage under a general order of approval issued by this Agency is not subject to the fees in Section 6.04(a) and instead requires payment of

a \$500 fee, which is due prior to any review of the application.

(c) An application may be subject to and an applicant required to pay multiple fees as determined applicable by the Agency under Section 6.04(a). The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant as provided in RCW ((70.94.085)) 70A.15.1570, which shall cover costs incurred by the Agency separate from Section 6.04(a) fees.

(d) Additional Fee for Service - Second Incomplete Application

Upon receipt of a second incomplete Notice of Construction application from the same applicant for the same project, the Control Officer may cease review of the application and provide written notification of that determination. The Control Officer may resume review of the application if, within 30 days of the date of the notification describing the Agency's receipt of the second incomplete Notice of Construction application, the applicant has deposited \$1,000 with the Agency, and executed a fee-for-service agreement with the Agency that allows the Agency to recover the reasonable direct and indirect costs that arise from processing the Notice of Construction application, including the requirements of other relevant laws such as ~~((the Washington State Environmental Policy Act (SEPA)))~~ SEPA.

The agreement shall require that the applicant assume full responsibility for paying the Agency for the costs incurred under the fee-for-service agreement. The Agency shall credit the \$1,000 deposit made by the applicant towards the costs required by a fee-for-service agreement. The fee-for-service agreement may require the applicant to make progress payments during the application review period. The \$1,000 deposit referred to in this section and the costs provided for in a fee-for-service agreement are in addition to the fees required in Section 6.04(a).

If the applicant has not made a \$1,000 deposit and executed such a fee-for-service agreement within 30 days of the date of the notification from the Agency describing its receipt of a second incomplete application, the Agency may issue an Intent to Disapprove an Application.

The \$1,000 deposit required under this section is not refundable. In addition, any payments made to the Agency under a fee-for-service agreement are not refundable.

(e) Additional Fee - Revised Application

The Control Officer may assess an additional fee for processing a Notice of Construction application ~~((when a subsequent))~~ if an applicant submits a significantly revised application ((is submitted)) or submits information stating or demonstrating that the project which is the subject of the application has significantly changed after review by the Agency of the original ((application was determined to be complete)) project has begun and prior to the Agency issuing an Order of Approval or Intent to Disapprove an Application regarding the original application. The revision fee may be assessed if the changed information renders invalid or moot any of the review accomplished before the submission of the changes to the project. The revision fee shall be the ~~((amount))~~ sum of the individual fee items for work that ((was charged for the original Notice of Construction application, including the filing fee)) the Agency determines must

be re-evaluated as a result of the changed information. The resulting total fee required by this Section is the fee for the original Notice of Construction application plus the revision fee.

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

WSR 21-10-020
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed April 23, 2021, 4:43 p.m., effective May 24, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This permanent rule will align chapter 352-37 WAC with statutory changes enacted under ESHB 1261 (chapter 10, Laws of 2020) that regulate motorized or gravity siphon mining.

Citation of Rules Affected by this Order: Amending WAC 352-37-010 and 352-37-340.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.610, and 79A.05.615.

Adopted under notice filed as WSR 21-06-075 on March 1, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 15, 2021.

Valeria Veasley
Management Analyst

AMENDATORY SECTION (Amending WSR 19-04-075, filed 2/1/19, effective 3/4/19)

WAC 352-37-020 Definitions. Whenever used in this chapter the terms below mean the following, unless the context clearly indicates otherwise:

"Access road" means a road designated by a city, county, or the state for the purpose of accessing the ocean beaches.

~~((("Aggregate" means a mixture of minerals separable by mechanical or physical means:))~~

"Aircraft" means any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible,

balloon, helicopter, etc. The term aircraft does not include paraglider.

"Campfires" means any open flame from a wood source.

"Camping" means erecting a tent or shelter or arranging bedding, or both, between the hours of 11:00 p.m. and 6:00 a.m.; or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" means the Washington state parks and recreation commission.

"Concentrate" means the valuable mineral content separated from aggregate.

~~("Concentrator" means a device used to physically or mechanically separate the valuable mineral content from aggregate.)~~

"Director" means the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" means that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" means that area lying above and to the landward side of the hard sand area as defined in this section.

"Excavation site" means the pit, furrow, or hole from which aggregate is removed to process and recover minerals or into which wastewater is discharged to settle out sediments.

"Fire" means any open flame from any source or device including, but not limited to, recreational fires, campfires, stoves, candles, torches, barbeques and charcoal.

"Fishtailing" means to swerve or skid from side to side.

~~("Ganged equipment" means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high-banker.)~~

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

~~("Hand-held mineral prospecting tools" means tools that are held by hand and are not powered by internal combustion, hydraulic, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and vac-pacs.)~~

"Hard sand area" means that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

~~("High-banker" means a stationary concentrator that can be operated outside the wetted perimeter of the body of water from which the water is removed, using water supplied by hand or by pumping. A high banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high banker by means other than suction dredging. This definition excludes rocker boxes.)~~

"Hovercraft" means a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" means that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Mineral prospecting (~~equipment~~) tools" means any natural or manufactured device, implement, or animal (other than the human body) that can be used in any aspect of prospecting for or recovering minerals.

"Motor vehicle" means every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" means that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 does not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" means all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches does not include any lands within the established boundaries of any Indian reservation.

~~("Pan" means an open metal or plastic dish that can be operated by hand to separate gold or other minerals from aggregate by washing the aggregate.)~~

"Parasail" means a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" means all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

~~("Power sluice" means high-banker.)~~

~~"Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications as a suction dredge.)~~

"Prospecting" means the exploration for minerals and mineral deposits.

~~("Rifle" means the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold.)~~

~~"Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that can be operated with a rocking motion.)~~

"Seashore conservation area" means all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

("Sluice" means a trough equipped with riffles across its bottom which can be used to recover gold and other minerals with the use of flowing water.)

"South Beach" means that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

("Spiral wheel" means a hand-operated or battery-powered rotating pan that is used to recover gold and minerals with the use of water.

"Suction dredge" means a machine that is used to move submerged aggregate via hydraulic suction. Aggregate is processed through an attached sluice box for the recovery of gold and other minerals.

"Wetted perimeter" means the areas of a watercourse covered with flowing or nonflowing water.)

"Wind/sand sailer" means a wheeled, wind-driven recreational conveyance.

AMENDATORY SECTION (Amending WSR 11-19-015, filed 9/8/11, effective 10/9/11)

WAC 352-37-340 Small-scale beach prospecting and placer mining. (1) Small-scale beach prospecting and placer mining is allowed year-round in the seashore conservation area, except within fifty feet on either side of designated ocean beach access roads.

(2) The director may close specific areas to beach prospecting or placer mining when deemed necessary for wildlife protection or public safety.

(3) Only ~~((hand-held))~~ mineral prospecting tools ~~((and the following mineral prospecting equipment))~~ approved for use on ocean beaches by the Washington department of fish and wildlife in chapter 220-660 WAC may be used in the seashore conservation area(:

(a) Pans;

(b) Spiral wheels;

~~(c) Sluices, concentrators, rocker boxes, and high bankers with riffle areas totaling ten square feet or less, including ganged equipment;~~

~~(d) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the suction intake nozzle size;~~

~~(e) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the suction intake nozzle size; and~~

~~(f) High bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.~~

~~(4) Upon request, other mineral prospecting equipment may be considered by the commission on a pilot basis).~~

~~((5)) (4) All trenches, depressions, or holes created in the beach during mining activities must be back-filled before working another excavation site.~~

~~((6)) (5) Setting up or using mining equipment or conducting mining activities in a manner and/or location that subjects people, personal property, or park resources to injury or damage or impedes traffic on the driveable portion of the beach is prohibited.~~

~~((7)) (6) A person may possess or transport up to ten gallons of sand or concentrate per day.~~

~~((8)) (7) Any violation of this section is an infraction under chapter 7.84 RCW.~~

WSR 21-10-022

PERMANENT RULES

THE EVERGREEN STATE COLLEGE

[Filed April 26, 2021, 11:38 a.m., effective May 27, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Update the current rules (the code of student rights and responsibilities) to be in compliance with the Title IX Regulations, which went into effect on August 14, 2020. The Evergreen State College has submitted emergency rule, and has been working on permanent rule making for the revised code.

Citation of Rules Affected by this Order: New 9; and amending 11.

Statutory Authority for Adoption: RCW 28B.40.120 (12).

Adopted under notice filed as WSR 21-05-002 on February 3, 2021 [2021].

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 10, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2021.

Daniel B. Ralph
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-170 Prohibited conduct. The code of student rights and responsibilities recognizes two types of prohibited conduct: Conduct related to community, and conduct related to persons. The subsections below outline the basic structures of community that the code seeks to uphold, and the basic rights and expectations of students that the code seeks to support. Conduct prohibited under Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, and associated procedures are set out in WAC 174-123-355 to 174-123-440 (supplemental Title IX student conduct procedures).

(1) Conduct related to community.

The Evergreen State College community is a vibrant and engaged collective of individuals who have committed to the mission of the college. The college's mission statement reads as follows: "As an innovative public liberal arts college, Evergreen emphasizes collaborative, interdisciplinary learning across significant differences. Our academic community engages students in defining and thinking critically about their learning. Evergreen supports and benefits from local and global commitments to social justice, diversity, environmental stewardship and service in the public interest." Students are encouraged to continue to grow individualistically while contributing to and shaping the Evergreen community as each person brings new ideas, new perspectives, and renewed focus that is invaluable at a liberal arts college.

Students in the college community are expected to practice academic integrity: To author their own ideas and critique and evaluate others' ideas in their own voices. The greater learning community of the college can thrive only if each person works with a genuine commitment to make their own authentic intellectual discoveries. To that end it is a community expectation that students and recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Academic dishonesty** which includes, but is not limited to, the following:

(i) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment;

(ii) Plagiarism includes taking and using as one's own without proper attribution the ideas, writings, or work of another person in completing an academic assignment. Plagiarism may also include the unauthorized submission of academic work for credit that has been submitted for credit in another course;

(iii) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment;

(iv) Using assistance or materials that are expressly forbidden to complete an academic product or assignment;

(v) The unauthorized collaboration with any other person during the completion of independent academic work;

(vi) Knowingly falsifying or assisting in falsifying in whole, or in part, the contents of one's academic work;

(vii) Permitting any other person to substitute oneself to complete academic work; or

(viii) Engaging in any academic behavior specifically prohibited by a faculty member in the course covenant, syllabus, or individual or class discussion.

(b) **Damaging, defacing, destroying, or tampering** with college property or other personal or public property. This includes, but is not limited to, graffiti and vandalism.

(c) **Disorderly conduct** which includes any individual or group behavior which is abusive, obscene, violent, excessively noisy, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals. These behaviors include, but are not limited to, those which obstruct or interfere with institutional activities, programs, events, or facilities, such as:

(i) Any unauthorized occupancy of facilities owned or controlled by the college, or blockage of access to or from such facilities, or the occupation of college property after being given notice to depart;

(ii) Interference with the ability of any authorized person to gain access to any activity, program, event, or facility sponsored or controlled by the college;

(iii) Any obstruction or delay of a public safety officer, police officer, firefighter, EMT, or any official of the college;

(iv) The use of force or violence (actual or threatened) to deny, impede, obstruct, impair, or interfere with the freedom of movement of any person, or the performance of duties of any college employee;

(v) Participation in a disruptive or coercive demonstration. A demonstration is considered disruptive or coercive if it substantially impedes college operations, interferes with the rights of others, or takes place on premises or at times where students are not authorized to be;

(vi) Obstruction of the free flow of pedestrian or vehicular traffic on college property or at college sponsored/supervised functions; or

(vii) Public urination or defecation.

(d) **Disruptive behavior in the classroom** may be defined as, but not limited to, behavior that unreasonably obstructs or disrupts the learning environment (e.g., outbursts which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining the learning community as defined in the course syllabus or covenant, and the continued use, after being given notice to stop, of any electronic or other noise or light emitting device which disturbs others, unless use of such technologies are an authorized accommodation for a documented disability for that program).

The faculty member has responsibility for maintaining a productive classroom and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive behavior or behavior that violates the general rules and regulations of the college for each class session during which the behavior occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further conduct action can be effected only through appropriate procedures of the college. The faculty member may also report incidents of classroom misconduct to the student conduct office.

(e) **Forgery, alteration, or the misuse** of college documents, records or identification cards.

(f) **Failure to comply** with the direction of or failure to identify yourself to a college official or other public official acting in the performance of their duties.

(g) **Unauthorized entry** into or onto, or the unauthorized remaining in, or upon, any college premises; or the unauthorized possession, duplication, or use of a college key or other access device.

(h) **Sounding of a false alarm** which includes, but is not limited to, initiating or causing to be initiated any false report, warning or threat, such as that of fire, explosion or emergency that intentionally causes a false emergency response; and the improper use or disabling of safety equipment and signs.

(2) Conduct related to persons.

Students of The Evergreen State College are to practice good citizenship in the campus community and beyond. Our collective efforts include implementation of the education, experiential learning, and skills gained through engagement with the faculty, staff, and students of the college. Engagement can be through civil discussions, a free exchange of ideas, participation in events and programs, or through other interactions where the desire to create spaces for learning are present. Students are encouraged to pursue new opportunities to engage and expand their intellectual curiosities and develop an understanding of the global society in which we live.

Students in the college community participate with fellow community members (faculty, staff, students, and members of the community beyond The Evergreen State College) in dialogue, educational activities, social events, and more with a focus on civil engagement and being one's best self. To that end it is a community expectation that students or recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Alcohol, drug, and tobacco violations.**

(i) **Alcohol.** The use, possession, delivery, sale, manufacture, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(ii) **Cannabis.** The use, possession, delivery, or sale of cannabis or the psychoactive compounds found in cannabis, regardless of form, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis. Cannabis use and possession is illegal under federal law and the college is required to prohibit the possession, use and distribution of illicit drugs, including cannabis, as a condition of receiving federal funding.

(iii) **Drugs.** The use, possession, delivery, sale, manufacture, or being observably under the influence of any mood altering drug, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(iv) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited except as allowed by college policy in designated smoking areas. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(b) **Assault.** Unwanted touching, physical harm or abuse, or threats of physical harm or abuse which threaten the health or safety of another person.

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves, electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass, or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(d) **Failure to be truthful to the college or a college official.** This includes, but is not limited to, knowingly making false charges against another member of the college community; and providing false or misleading information in an application for admission or to gain employment.

(e) **Failure to follow fire safety regulations.** Failure to evacuate during a fire alarm; the improper use or damaging of fire prevention or safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations, or emergency exits; or the unauthorized setting of fires.

(f) **Harm.** Behavior directed at an individual that based on a reasonable person's standard is sufficiently severe, pervasive, or persistent such that it diminishes or interferes with the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties. This includes, but is not limited to, intimidation, verbal abuse, threat(s), bullying, or other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person. Bullying is repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates another person.

(g) **Harassment.** Conduct against a person on the basis of protected status that is sufficiently severe, pervasive, or persistent as to interfere with or diminishes the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(h) **Hazing.** Conduct that includes any activity or method of initiation into a recognized organization or student social, living, learning, or athletic group that causes, or is likely to cause, bodily danger or physical or mental harm to any member of the college community.

(i) **Knowingly assisting another person to violate the code** or failing to report to a college official conduct that constitutes significant damage to property or a serious danger to the health or physical safety of an individual.

(j) **Lewd conduct.** Behavior which is sexualized or obscene that is not otherwise protected under the law including, but not limited to, exposing genitalia, and engaging in sexual intercourse or sexual activity in public.

(k) **Obstructive behavior in conduct conferences or hearings.** Any conduct at any stage of a process or investigation that is threatening or disorderly, including:

(i) Failure to abide by the directives of a student conduct official or college official(s) in the performance of their duties;

(ii) Knowing falsification, distortion, or misrepresentation of information before a student conduct official or hearing panel;

(iii) Deliberate disruption or interference with the orderly conduct of a conduct conference or hearing proceeding;

(iv) Making false statements to any student conduct officials or hearing panel;

(v) Attempting to influence the impartiality of a member of a hearing panel or a student conduct official prior to, or during the course of, a proceeding; or

(vi) Harassment or intimidation of any participant in the college conduct process.

(l) **Recording.** The recording of any private conversation, by any device, without the voluntary permission of all persons engaged in the conversation except as permitted by state law, chapter 9.73 RCW. For purposes of this section, the term "permission" will be considered obtained only when one party has announced to all other parties engaged in the communication or conversation that such communication or conversation will be recorded or transmitted; and the announcement itself is recorded as part of the conversation or communication.

(m) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of the code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or conduct proceeding.

(n) **Theft** (attempted or actual) of property, services, or identity. This includes, but is not limited to, using, taking, attempting to take, possessing, or aiding another to take college property or services, or property belonging to any person, without express permission. Identity theft is the use of another person's name and personal information including, but not limited to, private identifying information, without their permission in order to gain a financial advantage or obtain credit or other benefits in the other person's name.

(o) **Viewing,** distributing, photographing, or filming another person without that person's knowledge and voluntary permission, while the person being photographed, viewed, or filmed is in a place where they would have a reasonable expectation of privacy. The term "permission" will be considered obtained if there are signed waivers, written permission, or verbal agreement recorded with specificity to the content.

(p) **Violation of any college policy** including, but not limited to, residential and dining services policies, appropriate use of information technology resources policies, and WAC 174-136-043 regarding weapons.

(q) **Violation of federal, state, or local law** including being charged by law enforcement, or convicted of a felony or misdemeanor, under circumstances where it is reasonable to conclude that the presence of the person on college prem-

ises would constitute a danger to the physical or mental safety of a member(s) of the college community.

(r) **Stalking** is a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship violence, domestic violence, and stalking. Sexual harassment as prohibited by Title IX is defined in the supplemental Title IX student conduct procedures. See WAC 174-123-355.

(3) Sexual misconduct and consent.

In order to understand the definitions of prohibited conduct in this section, and to adjudicate complaints of sexual misconduct, it is necessary to provide a further definition of consent. This section provides information about consent related to sexual misconduct.

~~((Consent is permission expressed by words or actions that is clear, knowing, and voluntary, regarding willingness to engage in sexual activity. Consent is active, not passive. Each party has the responsibility to make certain that the other has consented before engaging in the activity. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Previous relationship or prior consent does not imply consent to future sexual acts; this includes "blanket" consent (i.e., permission in advance for any/all actions at a later time or place). Consent can be withdrawn once given, as long as that withdrawal is communicated. There is no requirement for a party to resist the sexual advance or request, and resistance is a clear demonstration of noneconsent.~~

~~A person cannot consent if they are incapacitated. Incapacitation is a state where someone cannot make reasoned decisions because they lack the capacity to give consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the complainant is physically or mentally incapacitated has engaged in noneconsensual conduct. The question of what a person should have known is objectively based on what a reasonable person in the place of the participant(s), sober and exercising good judgment, would have known about the condition of the complainant.~~

~~Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual activity. When someone makes clear to another person that they do not want sex, that they want to stop, or that they do~~

not want to go past a certain point of sexual interaction, continued pressure beyond that point is coercive.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

This code is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity. Conduct is determined a violation as per the reasonable person standard.)) Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct (~~of a sexual nature~~), including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, pervasive, or persistent as to:

(i) Deny or limit ((based on sex,)) the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college ((or an employee to engage in their work duties, that creates)); or

(ii) Alter the terms or conditions of employment for a college employee or employees; and/or

(iii) Create an intimidating, hostile, or offensive environment for other community members.

(b) **Sexual exploitation.** The term "sexual exploitation" means conduct that takes nonconsensual or abusive sexual advantage of another for their own or another's benefit. Sexual exploitation includes, but is not limited to, nonconsensual recording of sexual activity or the nonconsensual distribution of a consensual or nonconsensual recording or image; going beyond the boundaries of consent; forcing another person to engage in sexual activity for payment; or knowingly expos-

ing someone to or transmitting a sexually transmitted infection.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. The term "sexual violence" means an act or acts of a sexual nature against a person without their consent. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, relationship violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger or another body part or object, or oral copulation by mouth to genital contact. Nonconsensual sexual intercourse also includes forcing a person to engage in vaginal or anal penetration by a penis, object, tongue or finger, or oral copulation by mouth to genital contact.

(ii) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual contact includes intentional contact with the lips, breasts, buttock, groin, or genitals, or clothing covering any of those areas, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, or any other intentional bodily contact in a sexual manner.

(d) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury, or assault committed against a current or former spouse or intimate partner, current or former cohabitant, a person with whom the person shares a child in common, or a person with whom one resides.

(e) **Relationship violence.** The term "relationship violence," also known as dating violence, means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be presumed based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(f) **Stalking.** The term "stalking" means a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-200 Interim measures. (1) Interim restrictions. The student conduct official or designee may

institute interim restrictions prior to, or at any stage during, a student conduct proceeding when the physical or mental safety of any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges.

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

(b) The interim restriction has immediate effect and will remain in place during any procedural review process, until an agreement of accountability exists, a student conduct official issues a determination of responsibility, an appeal panel issues a final determination, or the student conduct official notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.

(2) **Interim suspension.** This is a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while ((a)) an investigation or student conduct proceeding is pending. The senior college official or their designee may impose an interim suspension, which has immediate effect, if there is probable cause to believe that the respondent has violated any provision of the code and presents a substantial or ongoing danger to the physical or mental safety of any member of the college community; or poses an ongoing threat of substantial disruption of, or interference with, teaching, learning, or the operations of the college.

(a) Any student assigned an interim suspension will be provided oral or written notice of the interim suspension. If oral notice is given, a written notification will be served on the respondent within two business days of the oral notice.

(b) The written notice will be entitled "Notice of Interim Suspension" and will include:

(i) The reasons for imposing the interim suspension, including a description of the conduct giving rise to the interim suspension and reference to the provisions of the code allegedly violated;

(ii) The date, time, and location when the respondent must appear before the senior college official or their designee for a hearing on the interim suspension; and

(iii) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been barred from the campus, a notice will be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent will be considered trespassing if the respondent enters the college campus other than as approved by the senior college official or their designee.

(c) The senior college official or their designee will conduct a hearing on the interim suspension within five business days after imposition of the interim suspension.

(d) During the interim suspension hearing, the issue before the senior college official or their designee is whether

there are reasonable grounds to believe that the interim suspension should be continued pending the conclusion of student conduct proceedings and/or whether the interim suspension should be less restrictive in scope.

(e) The student will be afforded an opportunity to explain why interim suspension should not be continued while conduct proceedings are pending or why the interim suspension should be less restrictive in scope.

(f) If the student fails to appear at the designated hearing time, the senior college official or their designee may order that the interim suspension remain in place pending the conclusion of the investigation and conduct or Title IX proceedings.

(g) As soon as practicable following the hearing, the senior college official or their designee will issue a written decision which will include a brief explanation for any decision continuing and/or modifying the interim suspension.

(h) To the extent permissible under applicable law, the senior college official or their designee will provide a copy of the decision to all persons or offices who may be bound or protected by it.

(i) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX sexual harassment, the complainant will be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the student. The college will also provide the complainant with same day notice of any subsequent changes to the interim suspension order.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-220 Informal resolution and agreement of accountability. The student conduct official will attempt to resolve a complaint informally using an agreement of accountability. If a complaint is not resolved using an agreement of accountability, the student conduct official will resolve the complaint by issuing a determination of responsibility and required resolution and sanction(s) as described in WAC 174-123-230.

(1) The student conduct official may work with any respondent who acknowledges responsibility for engaging in prohibited conduct to identify the resolution and sanction(s). If an agreement is reached, the resolution and sanction(s) will be contained in a written agreement of accountability signed by both the respondent and the student conduct official.

(2) A respondent who enters into an agreement of accountability will comply with the resolution and sanction(s) set forth in the agreement and will have no further right of appeal under the code. A respondent's failure to comply with an agreement of accountability may be the basis for a separate violation of misconduct under the code. A separate violation will be addressed using a conduct hold and/or initiating a conduct conference as described in WAC 172-123-210. The conduct hold will remain in effect until such time that the student satisfactorily completes all of the requirements of the agreement of accountability. If a complaint alleges non-Title IX sexual misconduct or assault, the informal resolution and agreement of accountability will not be used and a notice of determination of responsibility and

required resolution and sanctions process (WAC 174-123-230) is used.

(3) A restorative practice process may be a component of an agreement of accountability in cases where the student has taken responsibility for their actions and a violation of the code. An agreement may be entered into as part of an agreement of accountability that the student is choosing to voluntarily participate in a restorative practice process. A restorative practice is intended to provide resolution and restoration for those negatively impacted by the code violation, as well as, give the respondent an opportunity to make the situation as right as possible.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-230 Notice of determination of responsibility and required resolution and sanctions. (1) If a complaint is not resolved by entering into an agreement of accountability, the student conduct official will issue a determination of responsibility based on a preponderance of the evidence standard. Preponderance of the evidence standard means it is more likely than not that the information and evidence shows that an alleged policy violation did or did not occur.

(2) The student conduct official may take any of the following actions:

(a) Determine the respondent is not responsible for violating the code and end the conduct proceedings.

(b) Determine the available information is inconclusive at this time. The student conduct official may revisit the determination if additional relevant information becomes available.

(c) Determine the respondent is responsible for violating the code and issue required resolution(s) and sanction(s) as described in WAC 174-123-240.

(3) The determination of responsibility will identify the specific conduct that has violated the code. The required resolution and sanction(s) will state the tasks or actions, and associated deadlines, the respondent must execute to address violations of the code.

(4) The student conduct official's determination of responsibility and required resolution and sanction(s) will be final unless the respondent files a timely appeal to the senior college official. If a complaint alleges assault, non-Title IX sexual misconduct, or ~~((assault))~~ Title IX sexual harassment, the complainant is to be informed of the final determination and any required resolution and sanction imposed against the respondent and may file a timely appeal to the senior college official.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-260 Filing of appeal. (1) A respondent may appeal a student conduct official's determination of responsibility and required resolution and sanction(s) by filing a written notice of appeal to the senior college official within ten calendar days of service of the student conduct official's determination. Failure to file a notice of appeal within the time period constitutes the waiver of the right to

appeal and the student conduct official's determination of responsibility and required resolution and sanction(s) will be final.

(2) The student filing the notice of appeal must include a brief statement explaining why they are seeking review of the determination of responsibility and/or required resolution and sanction(s).

(3) Except in cases of ~~((an))~~ interim measures, including interim suspension and/or interim restriction(s), the required resolutions and sanction(s) will be on hold pending the outcome of an appeal. Interim measures will remain in place pending the outcome of the appeal.

(4) The parties to an appeal will be the appellant and the student conduct official.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the determination of responsibility and required resolution by a preponderance of the evidence.

(6) The appellant has a right to a prompt and fair hearing as provided for in these procedures.

(7) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten days or less;

(b) College housing suspension or eviction;

(c) Deferred action;

(d) Probation; and

(e) Any conditions or terms imposed in conjunction with one of the foregoing resolution and sanctions.

(8) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed by the student conduct appeal panel:

(a) Suspensions in excess of ten days;

(b) College expulsions; and

(c) Complaints referred to the panel by the student conduct review officer or senior college official, or designee.

(9) Except as provided elsewhere in this code, warnings and findings of no responsibility are final and are not subject to appeal.

(10) In cases involving allegations of assault or non-Title IX sexual misconduct ~~((or assault))~~, the complainant has the right to appeal the following outcomes using the same procedures as set forth above for the respondent:

(a) The determination of responsibility; or

(b) Any required resolutions and sanction(s) imposed including a disciplinary warning.

(11) If the respondent appeals a decision imposing discipline for ~~((a))~~ an assault or non-Title IX sexual misconduct violation, the college will notify the complainant of the appeal and provide the complainant an opportunity to participate in the appeal.

(12) Except as otherwise specified in the code, a complainant who appeals a determination of responsibility and required resolution and sanction(s) within ten calendar days of notice of the determination, or who participates as a party to a respondent's appeal of a determination of responsibility and required resolution and sanction(s) will be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-270 Brief adjudicative appeal proceedings—Initial hearing. Brief adjudicative proceedings will be conducted by a conduct review officer. Conduct review officers shall be designated by the senior college official. The conduct review officer will not participate in any case in which they are or have been involved; or in which there is direct or personal interest, prejudice, or bias.

(1) The parties to a brief adjudicative proceeding are the respondent, the student conduct official, and the complainant in cases involving assault or non-Title IX sexual misconduct (~~(or assault)~~). Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the student's view of the matter.

(2) The conduct review officer will schedule an informal hearing and serve written notice of the hearing to the parties at least seven calendar days in advance of the hearing. The notice of informal hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date on which the parties may review documents held by the student conduct official; and

(d) A date by which the parties must provide a list of witnesses and copies of any documents to other parties and to the conduct review officer.

(3) The conduct review officer will serve an initial decision upon the parties within ten calendar days of the completion of the informal hearing. The initial decision will contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision will be deemed the final decision.

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing suspension of more than ten days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-280 Brief adjudicative appeal proceedings—Administrative review of initial decision. (1) An initial decision may be appealed to the senior college official or designee, provided a party files a written request including the grounds for appeal for review with the conduct review officer within ten calendar days of service of the initial decision. The grounds for appeal are limited to new information not available at the time of the initial process, procedural error that impacted the outcome of the process, and/or bias of the student conduct official, or the conduct review officer.

(2) The senior college official or designee will not participate in any case in which they are or have been involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias.

(3) During the appeal, the senior college official or designee will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct appeal panel for a hearing.

(4) The decision on appeal must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within twenty calendar days of the request for appeal. The decision will contain a notice whether appeal to Thurston County superior court is available.

(5) If the senior college official or designee determines that the respondent's conduct may warrant imposition of a college (~~(or college housing)~~) suspension of more than ten days or college expulsion (~~(or college housing eviction)~~), the matter will be referred to the student conduct appeal panel for a hearing.

(6) In cases involving allegations of assault or non-Title IX sexual misconduct (~~(or assault)~~), the senior college official or designee, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of assault or non-Title IX sexual misconduct (~~(or assault)~~) were found to have merit and describing any resolution and sanctions and/or conditions imposed upon the respondent, including suspension or expulsion of the respondent. The decision will contain a notice whether appeal to Thurston County superior court is available.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-290 Appeal panel proceedings—Hearing procedures. (1) If not addressed in the code, the proceedings of the student conduct appeal panel will be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The senior college official, or designee, will schedule a hearing before the student conduct appeal panel and serve written notice of the hearing to the parties at least ten calendar days in advance of the hearing. The notice period may be shortened by the senior college official, or designee, with the parties' permission; and the senior college official may reschedule a hearing to a later time for good cause.

(3) The notice of hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date by which the parties must provide a list of witnesses and copies of any documents to be provided to the appeal panel. The date for providing documents must be at least five business days prior to the hearing date. Documents and witness names submitted after the deadline stated in the hearing notice will be admitted at the discretion of the appeal panel. Documents and witness names submitted after the

deadline may be excluded from the hearing absent a showing of good cause;

(d) A date on which the parties to the appeal may review documents and witness lists submitted to the panel, which must be no less than three business days prior to the hearing.

(4) The panel chair is authorized to make determinations regarding requests for postponement, release of information, or other procedural requests, provided that good cause for the request is shown. Requests for reasonable accommodations based on disability will be determined by the college's disability compliance officer.

(5) The panel chair may provide to the panel members in advance of the hearing copies of:

(a) The student conduct official's determination of responsibility and required resolution and sanction(s);

(b) The decision of the conduct review officer, if any;

(c) The review on appeal of the senior college official, if any; and

(d) The notice of appeal by the respondent or complainant.

If doing so, the chair should remind the members that these documents are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the panel chair may provide copies of these admissible exhibits to the panel members before the hearing.

(7) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(8) The student conduct official or designee, upon request, will provide reasonable assistance to the parties in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between panel members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper communication, as further provided in RCW 34.05.455, is prohibited.

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involving allegations of non-Title IX sexual misconduct or assault may elect to be represented by an attorney at their own cost, and will be deemed to have waived that right unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the panel chair with a copy to the student conduct official. The panel will ordinarily be advised by an assistant attorney general. ~~((If the respondent or the complainant is represented by an attorney,))~~ The student conduct official may ~~(also)~~ be represented by an assistant attorney general.

(11) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. Both the respondent and the complainant will be provided the option to have a trained procedural advisor provided by the college to assist them prior to and during the hearing in order to understand their rights in the appeal process. A college procedural advisor may not rep-

resent an individual in the appeal proceeding. Proceedings will not be automatically delayed due to the scheduling conflicts of any advisor.

(12) Each party is expected to present all information during the proceedings.

(13) In cases where the complaint alleges non-Title IX sexual misconduct or assault, the complainant may present information during the proceedings.

(14) Upon the failure of any party to attend or participate in a hearing, the student conduct appeal panel may either:

(a) Proceed with the hearing and issue a determination; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(15) The hearing is a closed proceeding which includes only members of the panel; the advisor to the panel, if any; the student conduct official and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the panel chair.

(16) All procedural questions and other decisions are subject to the final decision of the panel chair unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair, and impartial proceeding that adheres to the code is achieved.

(17) There will be a single verbatim sound recording of the hearing, and the record will be on file with the senior college official and is the property of the college in accordance with RCW 34.05.449.

(18) All testimony will be given under oath or affirmation. Evidence will be admitted or excluded at the discretion of the panel chair.

(19) In cases involving allegations of non-Title IX sexual misconduct or assault, neither party will directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the other party. All cross examination questions will be directed to the panel chair, who has the discretion to pose the questions on the party's behalf.

(20) In cases involving Title IX sexual harassment, non-Title IX sexual misconduct, or assault, the senior college official may designate an external hearing panel chair to preside over the hearing. The external hearing panel chair will perform all of the functions of a presiding officer under the code of student rights and responsibilities and WAC 174-108-910, unless otherwise specified in the appointment letter.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-310 Appeal panel proceedings—Determination. (1) At the conclusion of the hearing, the student conduct appeal panel will permit the parties to make closing statements in whatever form it wishes to receive them. The panel also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Only members of the student conduct appeal panel and the advisor to the panel, if any, will be present for deliberations. Deliberations are not recorded.

(3) Within fifteen calendar days following the conclusion of the hearing, or the panel's receipt of closing arguments, whichever is later, the panel will issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210 or written notice specifying the date by which it will issue a decision. The decision will include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses will be so identified.

(4) The panel's decision will also include a determination on appropriate resolution and sanction(s), if any. The panel may affirm, reverse, or modify the required resolution and sanction(s) issued by the student conduct official and/or issue additional sanction(s) or condition(s) as authorized herein.

(5) The panel's decision will also include a statement of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

(6) The panel chair will serve copies of the decision on the parties through the senior college official's office. It is the responsibility of the student to forward any notice or communication to their advisor. If a student signs a release of information, the chair of the panel will provide the decision to legal counsel representing a student.

(7) In cases involving allegations of assault, non-Title IX sexual misconduct, or (~~assault~~) Title IX sexual harassment, the chair of the student conduct appeal panel, on the same date as the decision is served to the respondent, will serve a written notice to the complainant informing the complainant of the panel's decision and describing any sanction(s) and/or condition(s) issued to the respondent, including suspension or expulsion of the respondent. The complainant may request reconsideration of the panel's decision subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES AND PROHIBITED CONDUCT

NEW SECTION

WAC 174-123-355 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Evergreen's standard disciplinary procedures, WAC 174-123-110 through 174-123-340, these supplemental procedures shall take precedence.

NEW SECTION

WAC 174-123-360 Title IX definitions. For purposes of the supplemental Title IX student conduct procedure, the following terms used have the definitions contained in the Title IX policy and procedure and the terms below are defined as follows:

(1) **Consent** means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(2) **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) **Formal complaint** means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation.

(5) **Education program or activity** includes locations, events, or circumstances over which Evergreen exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

(6) **Determination of responsibility** means a decision of the hearing panel regarding whether the respondent is responsible for the alleged violation(s) of this Title IX policy. If the respondent is found responsible for the alleged violations, the determination of responsibility will include discipline and sanctions, as appropriate.

(7) **Interim suspension** means a temporary exclusion from enrollment, including exclusion from college premises

or denial of access to all activities or privileges for which a respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200(2).

NEW SECTION

WAC 174-123-370 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Evergreen may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. An Evergreen employee conditioning the provision of an aid, benefit, or service of Evergreen on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Evergreen's educational programs or activities, or Evergreen employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or

family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 174-123-380 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an Evergreen educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Evergreen exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Evergreen.

(3) Proceedings under this procedure must be dismissed if the Title IX coordinator determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Evergreen's code of student rights and responsibilities, WAC 174-123-170.

(4) If the Title IX coordinator and/or the student conduct official determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct official will issue a notice of dismissal in whole or part to the parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 174-123-390 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct official will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct official determines that there are sufficient grounds to proceed under these procedures, the student conduct official will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with

the chair of the hearing panel. The hearing panel chair will serve the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
 - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses and the other party(ies) on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Evergreen will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
 - (iv) A party may select to have an individual as emotional support with them during Title IX processes. This individual is separate from an advisor, and will serve the purpose of providing care and emotional support for the party, but will not participate during the processes.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 174-123-400 Prehearing procedure. (1) Upon receiving the disciplinary notice, the hearing panel chair will send a hearing notice to all parties, in compliance with WAC 174-123-290(3). In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose an advisor to be at the hearing with them. The advisor will be conducting the cross-examination of parties and witnesses. The full names and contact information for all advisors selected by the parties to appear at the hearing must be submitted to the hearing panel chair at least five days before the hearing.

(3) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the hearing panel chair, with copies to all parties and the student conduct official.

(4) Parties may also select an individual to serve as emotional support during the hearing. This individual will not have a formal role in the hearing, and will serve the purpose of providing care and emotional support for the party.

(5) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Evergreen intends to offer the evidence at the hearing.

NEW SECTION

WAC 174-123-410 Rights of parties. (1) The Evergreen State College's code of student rights and responsibilities, this chapter, and this supplemental procedure shall apply equally to all parties.

(2) The college has the burden of offering and presenting sufficient testimony and evidence to establish that the respon-

dent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by advisors. The parties are entitled to advisors of their own choosing and the advisor may be an attorney. If a party does not choose a process advisor, then the Title IX coordinator will appoint a process advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 174-123-420 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The hearing chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The hearing panel may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The hearing panel shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

(7) Recording of live hearing: The live hearing will be audio-recorded, and copies may be provided to the parties, upon written request.

NEW SECTION

WAC 174-123-430 Initial order. (1) In addition to complying with WAC 174-123-310, the hearing panel will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility for each charge;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the hearing panel's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve the complainant's equal access to Evergreen's educational programs or activities; and
 - (h) Describes the process for appealing the initial order.
- (2) The hearing panel chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 174-123-440 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The parties may by filing a written notice of appeal with the hearing panel chair within ten calendar days of service of the student conduct official's, or hearing panel's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

Either party may appeal based on the following criteria: Procedural irregularity that affected the outcome of the determination; new evidence discovered that was not reasonably available at the time of the determination; a conflict of interest from a Title IX administrator; or severity of sanctioning is not consistent with the violation.

(2) The president or their designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
174-123-350	174-123-450

**WSR 21-10-027
PERMANENT RULES
SEATTLE COLLEGES**

[Filed April 26, 2021, 5:21 p.m., effective May 27, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Update current rules to be in compliance with new Title IX federal regulations issued by the Department of Education. Emergency rules filed are set to expire so we are adopting permanent rules. New sections set forth rules for Title IX allegations, the discipline process, and the hearing procedures.

Citation of Rules Affected by this Order: New 9; and amending 15.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Adopted under notice filed as WSR 21-01-091 on December 10, 2020.

Changes Other than Editing from Proposed to Adopted Version: Added nonsubstantive language to facilitate outside hearing examiner.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 15, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 8, 2021.

Shouan Pan
Chancellor

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-005 Statement of values. The Seattle College District is a diverse and dynamic learning community. As such, the college district maintains a strong commitment to our values. We value students: We promote programs, services and activities that address students' needs and interests; student success through accessibility and support services; and student development through activities both inside and outside the classroom. We value diversity: We promote respect for the abilities and interests of each individual; awareness and understanding of all people; and appreciation of the unique cultures of our campuses. We are committed to the concept and practice of equal opportunity for all, and do not tolerate discrimination or retaliation against any member of the college community because of ~~((her/his))~~ their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy;

marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification, in accordance with WAC 132F-121-110(1).

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-010 Definitions and general provisions. For purposes of this chapter~~(s)~~, except for the Title IX supplemental procedures, the following definitions apply. The definition of "consent," however, will apply to the whole chapter.

(1)(a) **Bullying.** Bullying is defined as the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at another student or staff that:

(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;

(ii) Places the student in reasonable fear of harm to ~~((her-self or himself))~~ themselves or of damage to the student's property;

(iii) Creates an unlawful hostile environment at school for the student;

(iv) Infringes on the rights of the student at school; or

(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.

(b) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(c) **Stalking.** Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(2) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, sexual violence, and domestic violence.

(a) Sexual harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational pro-

gram or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence as defined in (d) of this subsection.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking as defined in subsection (1)(c) of this section.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if ~~((he or she is))~~ they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) Domestic violence. Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.

(3) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three col-

leges, North Seattle College, Seattle Central College, and South Seattle College. The Seattle Vocational Institute is considered to be part of Seattle Central College.

(4) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.

(5) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle College, Seattle Central College, South Seattle College, (~~the Seattle Vocational Institute,~~) and/or every other District VI educational facility, each separately and all together.

(6) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.

(7) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.

(8) "Vice president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.

(9) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on (~~his/her~~) their behalf, but this officer retains responsibility for the function.

(10) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

(11) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

(12) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-020 Student rights, freedoms, and responsibilities. (1) Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect

general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(iv) Sexual misconduct investigations. Both the respondent and the (~~complainant~~) claimant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(2) Classroom freedom of expression. The district recognizes the rights of students to freedom of discussion and free expression of views. However, students' rights of classroom expression do not include expressions or conduct which create a hostile educational environment or violate chapter 49.60 RCW or other applicable law. It is the responsibility of the instructor to insure and encourage the realization not only of the fact but of the spirit of free inquiry. Instructors have the responsibility to maintain order, but this authority shall not be used to inhibit the expression of views contrary to their own. Students have the right to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they cannot do so in a disruptive manner that interferes with the educational process. Students are responsible for learning the content of any course of study for which they are enrolled. It also is the responsibility of the student to comply with the instructor's efforts to assure freedom of expression and to maintain order.

(3) Protection against improper evaluation. Instructors shall give their students fair and consistent evaluations of the students' course performance. Toward this end, instructors

are also responsible for establishing appropriate standards of academic performance for each course. Fair and consistent grading is a legitimate classroom experience.

(4) Protection against improper disclosure. Information about student views, beliefs, and political associations which is acquired by instructors in the course of their work as faculty or advisors, under circumstances which clearly indicate that it is intended to be confidential, shall be treated as confidential and shall not be disclosed to others, unless it relates to the apparent or intended commission of a crime or disclosure is required by law. Protection against improper disclosure of student education record information is a serious professional obligation incurred by the teaching profession and district administrators. However, evaluations of student ability and character may be provided to third parties with the student's consent or in accordance with applicable law.

(5) Nonacademic expression and inquiry. Students and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately, in accordance with law. They are free to support causes by orderly and lawful means which do not disrupt the operation of the institution and which comply with the district's policies regarding these activities.

(6) The district shall respect students' right to privacy. It will not inquire into the off-campus activities of its students without legal justification.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-030 Student organizations. (1) Student organizations may be established and recognized whether their aims are educational, cultural, recreational, social, athletic, religious, political, or economic. Affiliation with an external organization shall not in and of itself disqualify a campus-based student organization from recognition. Membership in a student organization shall be open to any student who subscribes to the stated aims of the organization. To operate as such, a student organization must be recognized by the approved student government organization. The student organization shall abide by all governing federal and state laws and district and campus rules, policies and procedures.

(2) A college may require, as a condition of access to campus funds and/or facilities, demonstration or proof of the student enrollments of a student organization's members. However, any list of members compiled for such purposes shall not be publicly disclosed except in accordance with applicable law. A college may, in its discretion, permit others, such as students' spouses, to participate in a student organization's activities under appropriate conditions.

(3) Each year, before a student organization may be recognized or function as such, or may use services and activities funds, a college employee must be identified to serve as its advisor and (~~his/her~~) **their** name must be approved by the vice president for student services or designee.

(4) Where funds are allocated to a student organization, financial accountability is required. Student organizations' funds shall be maintained at the college, in college accounts. The organizations shall keep detailed written records of their

income and expenditures and shall assure that these can be reconciled with the campus budget and accounting system. Student organizations' financial records must be made available upon request to the student government organization and to any administrative officer designated by the college president.

(5) A college president may withdraw a student organization's recognition and funding for good cause. Such cause shall include, but not be limited to, (a) failure to comply with this rule or other district requirements or (b) hazing.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-050 Student use of the district/college name. (1) No individual student, student group, or student organization may act or make any representation in the name of the district or of any campus without specific authorization from the vice president for student services or designee.

(2) No individual student, student group or student organization shall falsely indicate or represent that (~~his, her, or its~~) **their** own position on any policy or issue is that of the district or of any campus.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-080 Formal processing of complaints. (1) To be considered under the formal process, a complaint must be filed in writing with the campus complaints officer by the final day of the quarter following the quarter in which the problem occurred, except as otherwise provided in WAC 132F-121-090 for a grade complaint. For purposes of complaints, the quarter which follows spring quarter is fall quarter. The written document should fully specify the facts and other grounds on which the complaint is based, and should include copies of relevant supporting documents when feasible. The complaints officer may extend any deadline herein for good cause.

(2) If the complaints officer determines that the complaint does not qualify to be addressed through the formal process, that officer must inform the student, explaining the reasons in writing within five working days. The student complainant may obtain review of that notice of complaint disqualification by filing a written request with the complaints officer under subsection (9) of this section.

(3) If the complaints officer determines that the complaint does qualify as such, that officer must serve copies of the complaint and the supporting documents on the individual named in the complaint (the respondent) and the respondent's supervisor, within five working days.

(4) The respondent, upon receiving notice of the formal complaint, shall provide a response in writing to the complaints officer, and to the respondent's supervisor, within ten working days.

(5) The complaints officer must forward the written response, or the information that no response was received, to the student complainant within five working days of receipt of the response, or five working days from when a response was due.

(6) If the student complainant finds that the response or lack thereof is unsatisfactory she/he has five working days in which to submit a written request for the complaints officer to schedule a conference with the respondent to discuss the matter.

(7) Upon receipt of such request, the complaints officer has five working days to schedule the conference which must be convened within ten working days of receipt of the students' request or as soon thereafter as feasible. This conference will include the student, the respondent, and (~~his or her~~) their supervisor, and be moderated by the complaints officer.

(8) During this conference the complaints officer shall try to facilitate resolution. The complaints officer shall produce a written statement summarizing the conference and provide copies to all parties within ten working days of the conference.

(9) The student complainant may request a review of the outcome of the complaint conference (or of a complaint disqualification) by submitting a written request for administrative review to the complaints officer within five working days of receiving the conference summary.

(10) The complaints officer shall forward, within five working days, the request for administrative review, the complaint, supporting documents, and the conference summary either to the vice president of instruction (if the officer determines that the complaint is predominantly an instructional matter), or to the vice president for student services (if the officer determines that the complaint is predominantly noninstructional in nature).

(11) This administrator shall review the complaint and documentation, and may also interview knowledgeable persons as appropriate. The administrator should render a written decision within ten working days after receiving the complaint and documents, or as soon thereafter as feasible. The administrator may accept, reject, or modify any of the previous action(s) in the matter, and/or take other action(s). This decision shall be in writing and shall be served on the student complainant and others deemed appropriate.

(12) This decision of the reviewing administrator shall be the final decision of the district on that complaint.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of (~~her/his~~) their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification.

(2) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence as defined in WAC 132F-121-010(2).

(3) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication.

(4) Any act of course-related dishonesty, including but not limited to cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Any other act of college-related dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

(b) Tampering with an election conducted by or for district students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a district officer or employee.

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, cyberbullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

(9) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance

of (~~his or her~~) their duties, or failure to properly identify oneself to such a person when requested to do so.

(10) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(11) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a firearm in (~~his or her~~) their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(12) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(13) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college policies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

(14) Drugs.

(a) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) Drugs. The use, possession, delivery, sale or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(15) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(16) Conduct which is disorderly, lewd, or obscene.

(17) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

(18) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes,

bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(19) Theft or other misuse of computer time or other electronic information resources of the district. Such misuse includes but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the district's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the district's electronic information resources without authorization; or

(i) Failure to comply with the district's electronic use policy.

(20) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

(21) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(22) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(23) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(24) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

(25) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing an educational goal or major.

In addition to initiating discipline proceeding for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(26) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(27) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-120 Instructor sanctions for course work dishonesty or classroom misconduct. (1) An instructor need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the instructor may adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such grade adjustment shall not limit or preclude disciplinary sanction(s) for the same act of dishonesty.

(2) An instructor may take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course. If a student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum, that action may include removing that student from that day's class session.

(3) With regard to any act of course-related dishonesty, classroom misconduct, or other academic misconduct, the faculty member involved may notify ((his/her)) their dean, with supporting documentation. The dean shall then determine whether to refer the matter to the vice president for student services for possible disciplinary action.

(4) A student who has received a grade adjustment by the instructor on the basis of dishonesty may grieve that adjustment under the student complaint procedure. However, any disciplinary sanction that is imposed instead of or in addition to an instructor's grade adjustment may be imposed and reviewed only under the student disciplinary procedure.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-140 Initiation of discipline. (1) The vice president for student services or designee at each campus is responsible for investigating possible violations of this stu-

dent conduct code at that campus and initiating any appropriate disciplinary actions. If that officer is a respondent in a complaint initiated by the subject student, the college president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) Any member of the district community may make a complaint against a student whom she/he believes has violated this student conduct code. Such a complaint should ordinarily be filed in writing with the vice president for student services. However, no such complaint is required in order for that vice president to take action on any matter that comes to ((his/her)) their attention.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-170 Appeals and referrals generally.

(1) Except as otherwise provided herein, a respondent who has received notice of disciplinary sanction(s) imposed by the vice president for student services may appeal such sanction(s) by filing a written notice of appeal with that officer within ten days. The notice of appeal may include any statement that the respondent wishes to make of the grounds for ((her/his)) their appeal.

(2) If the vice president has referred the matter to the student conduct committee for action, no appeal is required, but the student may file a written response with the vice president within twenty days of service of that referral.

(3) Except for conduct matters referred for brief adjudicative proceedings, the vice president shall promptly transmit any notice of appeal or response to referral, together with a copy of any notification of discipline, to the chair of the student conduct committee, described below. The vice president should serve a copy of that transmittal on the respondent.

(4) Except through a summary suspension under WAC 132F-121-250, a respondent's enrollment status and rights as an enrolled student shall not be altered, on the basis of a disciplinary sanction imposed by the vice president, until (a) the appeal period has run without a proper appeal being filed or (b) if there is an appeal, either that appeal has been withdrawn or the final order has been entered.

(5) If a respondent files a timely appeal of a probation or suspension that includes restrictions on contacts, communications, or campus access, the vice president will ordinarily modify those restrictions as necessary to facilitate the respondent's preparation for the hearing.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-180 Student conduct committee. (1) A student conduct committee at each college will hear all disciplinary cases at that college which are referred to it by the vice president for student services or appealed to it by a student. For purposes of WAC 132F-108-020 and any other requirements, the district trustees and chancellor and each college president designate (a) the committee provided for herein to serve as presiding officer to hear the described student disciplinary matters and (b) the committee chair both to

handle and decide procedural matters (as provided herein) and to preside at the hearing.

(2) This committee shall be composed of the following three members:

(a) One administrator or exempt employee, appointed by the college president;

(b) One member of the faculty, appointed by the college president; and

(c) One student, appointed by the president of the recognized student government organization.

(3) Each appointment shall be accompanied by the appointment of two alternates. Each member and alternate shall serve for the academic year or until a replacement is appointed, whichever is longer. When a member is not available for a hearing, the committee chair shall designate an alternate to replace ~~((him/her))~~ them for that hearing. If a member or alternate ceases to serve, a successor shall be promptly appointed. A member or alternate may be reappointed in any role.

(4) The administrator or exempt employee shall be the committee chair.

(5) A committee member is subject to disqualification for bias, prejudice, interest, or as further provided in RCW 34.05.425.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-190 Student conduct committee hearings—In general. (1) A respondent student has a right to a prompt, fair, and impartial hearing before the student conduct committee on a referral for, or timely appeal of, a disciplinary sanction, except as otherwise provided in these rules.

(2) Chapter 34.05 RCW and chapter 10-08 WAC govern committee proceedings and control in the event of any conflict with these rules. The district's chapter 132F-108 WAC also governs committee proceedings.

(3) The chair of the committee shall give not less than seven days advance written notice of the hearing to all parties, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

(4) The committee chair may provide to the committee members in advance of the hearing copies of (a) the vice president for student service's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(5) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions, except as overridden by majority vote of the committee, concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(6) Upon request made at least five days before the hearing by either the respondent or the vice president, the two of them shall exchange, no later than the third day prior to the

hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present in their respective cases, except impeachment or rebuttal evidence. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(7) The respondent and the vice president may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(8) The vice president shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between committee members and other persons regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(10) Each party may be accompanied at the hearing by a nonattorney assistant of ~~((his/her))~~ their choice. A respondent may elect to be represented by an attorney, but will be deemed to have waived that right unless, at least four days before the hearing, written notice of the attorney's identity and participation is served on both the chair and the vice president. If the respondent is represented by an attorney, the vice president may also be represented by an attorney. If both the respondent and vice president have counsel, the committee will ordinarily be advised by a separate assistant attorney general.

(11) Minor disciplinary actions imposing probation or suspension of ten instructional days or less and any conditions or terms placed on the student may be conducted by a brief adjudicative proceeding in accordance with RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-220 President's review and final college order. (1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the committee's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argument, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A

party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) If the committee's order includes a provision for expulsion, the president must consult with and obtain the agreement of the district chancellor. If the committee's order includes a provision for suspension from any other college(s) of the district, the president must consult with and obtain the agreement of the president(s) of such college(s).

(5) Within ninety days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the committee, or enter a final order in the matter. The president shall have all of decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify any disciplinary sanction.

(6) The president's final order shall include, or incorporate by reference to the committee's initial order, all matters required by RCW 34.05.461, in accordance with RCW 34.05.464. It shall also include notice to the respondent of ((his/her)) their right to seek judicial review under RCW 34.05.510 et seq.

(7) Copies of the final order shall be served on the respondent, the vice president, any legal counsel who have appeared, and the committee chair.

(8) The decision of the president shall be the final district action in the matter.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-230 Reestablishment of academic standing after successful appeal. When a student has missed classes and/or course work due to a disciplinary suspension or expulsion, but that disciplinary sanction was appealed and not upheld, the student shall be given a reasonable opportunity to reestablish ((his/her)) their academic standing and the alternative of a withdrawal and refund of tuition and fees. Depending on the circumstances, reestablishing academic standing may include opportunities to take examinations and otherwise complete course offerings that were missed due to the disciplinary sanction or to retake the class(es).

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-250 Summary suspensions. (1) A summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which the student might otherwise be eligible, during which an investigation and/or formal disciplinary procedures are pending.

Suspension may be imposed, if the vice president for student services or ((his/her)) their designee(s) has cause to believe that any student:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) If the student poses an ongoing threat of disruption of, or interference with, the operations of the college, that student may be summarily suspended.

(2) Notice. Any student who has been summarily suspended shall be served with written notice or verbal notice of the summary suspension. If such notice is made in writing, it shall be provided by certified mail and first class mail delivered to the student's last known address.

(3) The oral or written notice to the student shall include the reasons for summary suspension, duration of the summary suspension, and any possible additional disciplinary or corrective action that may be taken. The notification shall indicate that the student must appear before the vice president of student services or designee for a summary suspension hearing at a time specified in the notice. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice president for student services or designee shall set a date for summary suspension hearing as soon as practicable.

(4) The student shall be given the opportunity to present written and/or oral evidence. The issue before the vice president for student services or designee shall be whether probable cause exists to support and to continue the summary suspension.

(5) The vice president for student services or designee shall issue a written order within two days of the informal hearing, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision to justify the determination of an immediate danger and the vice president's decision to take the specific action.

(6) If a student who has been summarily suspended fails to appear for a summary suspension hearing, the vice president for student services may order the suspension to remain in place pending the final disposition of the disciplinary process as provided in this section.

(7) The student may request a de novo review of the informal hearing decision before the student conduct committee. The review will be scheduled promptly. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

(8) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed one day per episode. Any such summary action may be appealed to the vice president for student services for a brief adjudicative proceeding.

NEW SECTION

WAC 132F-121-270 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Seattle Colleges' standard disciplinary procedures, WAC 132F-121-110 through 132F-121-260, these supplemental procedures shall take precedence. The Seattle Colleges may, at its discretion, contract

with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132F-121-280 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Seattle Colleges may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A Seattle Colleges' student conditioning the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Seattle Colleges' educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132F-121-290 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Seattle Colleges' educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Seattle Colleges exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Seattle Colleges.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the Seattle Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Seattle Colleges' student conduct code, WAC 132F-121-110.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132F-121-300 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice

with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The Seattle Colleges will appoint the party an advisor of the Seattle Colleges' choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132F-121-310 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132F-121-180. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Seattle Colleges intends to offer the evidence at the hearing.

NEW SECTION

WAC 132F-121-320 Rights of parties. (1) The Seattle Colleges' student conduct procedures, WAC 132F-121-110, and this supplemental procedure shall apply equally to all parties.

(2) The Seattle Colleges bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the Seattle Colleges' choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132F-121-330 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132F-121-340 Initial order. (1) In addition to complying with WAC 132F-121-210 the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Seattle Colleges' education programs or activities; and

(h) Describes the process for appealing the initial order to the Seattle Colleges' president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132F-121-350 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132F-121-170.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

WSR 21-10-035
PERMANENT RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed April 27, 2021, 4:44 p.m.]

Effective Date of Rule: June 1, 2021.

Purpose: New chapter 110-301 WAC recognizes the unique needs of school-age children and those who care for them. Chapter 110-301 WAC aligns the licensing requirements for programs that operate when school is not in session and serve only children aged five through twelve who attend school with the requirements for child cares serving children from birth to twelve years of age, addresses critical health and safety needs of children in care, ensures licensed programs meet federal requirements the state must comply with, and promotes cultural diversity.

Citation of Rules Affected by this Order: New WAC 110-301-0001, 110-301-0005, 110-301-0010, 110-301-0015, 110-301-0016, 110-301-0020, 110-301-0025, 110-301-0030, 110-301-0035, 110-301-0085, 110-301-0100, 110-301-0105, 110-301-0106, 110-301-0107, 110-301-0110, 110-301-0111, 110-301-0115, 110-301-0120, 110-301-0130, 110-301-0135, 110-301-0140, 110-301-0145, 110-301-0146, 110-301-0147, 110-301-0148, 110-301-0150, 110-301-0155, 110-301-0160, 110-301-0165, 110-301-0166, 110-301-0170, 110-301-0175, 110-301-0180, 110-301-0185, 110-301-0186, 110-301-0190, 110-301-0195, 110-301-0196, 110-301-0197, 110-301-0198, 110-301-0200, 110-301-0205, 110-301-0210, 110-301-0215, 110-301-0220, 110-301-0225, 110-301-0230, 110-301-0235, 110-301-0236, 110-301-0240, 110-301-0241, 110-301-0245,

110-301-0250, 110-301-0255, 110-301-0260, 110-301-0300, 110-301-0305, 110-301-0310, 110-301-0315, 110-301-0320, 110-301-0325, 110-301-0330, 110-301-0331, 110-301-0335, 110-301-0340, 110-301-0345, 110-301-0350, 110-301-0354, 110-301-0356, 110-301-0360, 110-301-0400, 110-301-0401, 110-301-0402, 110-301-0410, 110-301-0411, 110-301-0415, 110-301-0420, 110-301-0425, 110-301-0435, 110-301-0436, 110-301-0440, 110-301-0443, 110-301-0450, 110-301-0455, 110-301-0460, 110-301-0465, 110-301-0470, 110-301-0475, 110-301-0480, 110-301-0485, 110-301-0486, 110-301-0490, 110-301-0495, 110-301-0500 and 110-301-0505; and repealing WAC 110-305-0001, 110-305-0005, 110-305-0010, 110-305-0050, 110-305-1000, 110-305-1001, 110-305-1035, 110-305-1050, 110-305-1075, 110-305-1100, 110-305-1125, 110-305-1200, 110-305-1250, 110-305-1275, 110-305-1325, 110-305-1350, 110-305-1360, 110-305-1370, 110-305-1410, 110-305-1430, 110-305-1450, 110-305-1525, 110-305-1625, 110-305-1710, 110-305-1715, 110-305-1720, 110-305-1730, 110-305-1735, 110-305-1745, 110-305-1750, 110-305-1775, 110-305-1800, 110-305-1820, 110-305-1825, 110-305-1850, 110-305-1925, 110-305-2000, 110-305-2025, 110-305-2050, 110-305-2075, 110-305-2125, 110-305-2150, 110-305-217 [110-305-2175], 110-305-2200, 110-305-2225, 110-305-2250, 110-305-2275, 110-305-2300, 110-305-2325, 110-305-2350, 110-305-2375, 110-305-2400, 110-305-2425, 110-305-2450, 110-305-2575, 110-305-2600, 110-305-2625, 110-305-2675, 110-305-2700, 110-305-2725, 110-305-2775, 110-305-2825, 110-305-2850, 110-305-2875, 110-305-2900, 110-305-2925, 110-305-2975, 110-305-3000, 110-305-3200, 110-305-3210, 110-305-3250, 110-305-3275, 110-305-3300, 110-305-3315, 110-305-3325, 110-305-3375, 110-305-3425, 110-305-3450, 110-305-3475, 110-305-3525, 110-305-3550, 110-305-3575, 110-305-3600, 110-305-3625, 110-305-3635, 110-305-3650, 110-305-3700, 110-305-3850, 110-305-3875, 110-305-3925, 110-305-3950, 110-305-4000, 110-305-4025, 110-305-4050, 110-305-4075, 110-305-4100, 110-305-4200, 110-305-4225, 110-305-4250, 110-305-4275, 110-305-4300, 110-305-4350, 110-305-4360, 110-305-4375, 110-305-4475, 110-305-4550, 110-305-4625, 110-305-4635, 110-305-4650, 110-305-4700, 110-305-4725, 110-305-4750, 110-305-4800, 110-305-4850, 110-305-4875, 110-305-4900, 110-305-4925, 110-305-4950, 110-305-5000, 110-305-5050, 110-305-5100, 110-305-5125, 110-305-5150, 110-305-5175, 110-305-5200, 110-305-5225, 110-305-5250, 110-305-5600, 110-305-5625, 110-305-5725, 110-305-5750, 110-305-5800, 110-305-6000, 110-305-6025, 110-305-6050, 110-305-6075, 110-305-6100, 110-305-6125, 110-305-6150, 110-305-6175, 110-305-6200, 110-305-6225, 110-305-6250, 110-305-6275, 110-305-6400, 110-305-6425, 110-305-6450, 110-305-6475, 110-305-6500, 110-305-6550, 110-305-6575, 110-305-6600, 110-305-6625, 110-305-6650, 110-305-6675, 110-305-6775, 110-305-7500, 110-305-7515, 110-305-7525, 110-305-7530, 110-305-7575, 110-305-7580, 110-305-7625, 110-305-7650, 110-305-7675, 110-305-7680, 110-305-7700, 110-305-7725, 110-305-7750, 110-305-7800, 110-305-7825, 110-305-8000, 110-305-8010, 110-305-8025, 110-305-8050, 110-305-8060, 110-305-8075, 110-305-8100, 110-305-8125, 110-305-8150, 110-305-8175, 110-305-8225, 110-305-8250, 110-305-8275, 110-305-8300, 110-305-8325, 110-305-8350, 110-305-8375, and 110-305-8400.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 21-06-092 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version:

- An equivalency alternative to education requirements inserted in WAC 110-301-0100 and its corresponding definition inserted in WAC 110-301-0005.
- "Evening and overnight care" inserted in WAC 110-301-0110 (2)(e), 110-301-0345(2), 110-301-0360(2), and 110-301-0450 (2)(i).
- "School-age program space must allow children to move between areas without disrupting another child's work or play" removed from WAC 110-301-0130.
- Exemption from compliance with state and local building codes for programs not operating on public or private school premises inserted in WAC 110-301-0170(1) and 110-301-0415(3).
- Bathtub and shower standards inserted in WAC 110-301-0220.
- Standards for storing toilet plungers and brushes moved from WAC 110-301-0260.
- "Bathing, if the program uses a bathtub or shower described in WAC 110-301-0220(3)" inserted in WAC 110-301-0460.
- "[I]ncluding in the evening and during overnight hours if the school-age program offers care for children during those hours" inserted in WAC 110-301-0470.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 95, Amended 0, Repealed 189.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 27, 2021.

Brenda Villarreal
Rules Coordinator

Chapter 110-301 WAC

FOUNDATIONAL QUALITY STANDARDS FOR SCHOOL-AGE PROGRAMS

SECTION I

INTENT AND AUTHORITY

NEW SECTION

WAC 110-301-0001 Intent and authority. (1) The department of children, youth, and families was established under chapter 6, Laws of 2017. Chapter 43.216 RCW establishes the department's responsibility and authority to set and enforce licensing requirements, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) This chapter reflects the department's commitment to:

- (a) Promoting the health, safety, and well-being of children;
- (b) Expanding access to high quality school-age programs to improve outcomes for children;
- (c) Supporting strong school success; and
- (d) Recognizing parents and guardians as a child's primary teacher and advocate.

(3) Pursuant to this chapter, the department will periodically monitor and assess a school-age program to determine compliance with these foundational quality standards.

(4) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department regulates only health, safety, and quality standards that do not relate to the physical facility for programs operating in facilities used by public or private schools.

NEW SECTION

WAC 110-301-0005 Definitions. The following definitions apply to this chapter:

"Accessible to children" means items, areas, or materials of a school-age program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program activities, spaces, and materials that have been adapted to help children and adults with special needs function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires a school-age provider to see and hear the children they are responsible for during higher risk activities. The provider must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act.

"Aide" is a person who offers support to the school-age program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system

treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans), pollen, mold, or medication.

"Annual" or **"annually"** means an event that occurs each calendar year, not to exceed three hundred sixty-five days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to program or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Assistant teacher" is a person whose work is to assist a lead teacher, site director, or program director in providing instructional supports to children and implementing a developmentally appropriate program. The assistant teacher must carry out assigned tasks under the supervision of a lead teacher, site director, or program director.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Body of water" or **"bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children a school-age program is authorized by the department to have in care at any given time. This includes any children on-site at the school-age program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Certificate of exemption (COE)" means a form that is approved by the DOH and consistent with the requirements of WAC 246-105-050, or an immunization form produced by the state immunization information system.

"Certificate of immunization status (child)" means a form that is approved by the DOH and consistent with the requirements of WAC 246-105-050, or an immunization form produced by the state immunization information system.

"Certification" means, as applied to the licensing process, department approval of a person, home, or facility that

is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Child abuse" or **"neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than twenty-four hours a day.

"Chromated copper arsenate" or **"CCA"** is a wood preservative and insecticide that contains roughly twenty-two percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the DOH's website.

"Clean" or **"cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of school-age program staff.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what a school-age provider needs to know and is able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

"Department of children, youth, and families," "DCYF," or **"the department"** refers to the Washington state department of children, youth, and families.

"Developmentally appropriate" means:

(a) A school-age provider interacts with each child in a way that recognizes and respects the child's chronological and developmental age;

(b) Knowledge about how children grow and learn;

(c) Reflects the developmental level of the individual child; and

(d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Disability" or **"disabilities"** has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Disaster" means a sudden event, such as an accident or natural catastrophe, that causes great damage or loss of life.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

(a) The application of a fragrance-free chlorine bleach and water solution following the DOH's current guidelines for mixing bleach solutions for child care and similar environments; or

(b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"DOD" means the United States Department of Defense.

"DOH" refers to the Washington state department of health.

"Drinking water" or **"potable water"** is water suitable for drinking by the public as determined by the DOH or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: The *Washington State Early Learning and Development Guidelines*.)

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to the Washington state department of children, youth, and families' current database of professional records of individual school-age providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325. A school-age provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalent" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or **"exemption"** means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a child plans on attending or is attending a school-age program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or **"expulsion"** means to end a child's enrollment in a school-age program. A school-age provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Facility Licensing Compliance Agreement (FLCA)" means an agreement issued by the department in lieu of the department taking enforcement action against a school-age provider.

"FDA" means the United States Food and Drug Administration.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in a school-age program. The department uses these standards to equitably serve children, families, and school-age providers throughout Washington state.

"Good repair" means about eighty percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of a school-age program.

"Inactive" when used by the department to indicate a licensing status, means a school-age provider who has requested and has been approved to temporarily cease caring for children and close their school-age program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as a school-age provider.

"Inspection report" refers to a written or digital record developed by the department that identifies violations of licensing standards.

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395.

"Lead teacher" means a school-age provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"License" means a permit issued by the department legally authorizing an applicant to operate a school-age program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care in a school-age program.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care in a school-age program.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to a school-age provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonexpiring license" means a license that is issued to a school-age provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in a school-age program parent handbook when the program is open and providing care and services to children.

"OSPI" means the Washington state office of superintendent of public instruction.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how children play together, communicate, and whether they fight or get along.

"Personal needs" means a school-age provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or a wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that, even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preservice training" means professional development standards or requirements for school-age program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program director" means the person responsible for the overall management of a school-age program including the facility and operation. The program director is not responsible for being on-site at the program, unless the program director is filling in for an on-site role.

"Program philosophy" means a written statement of principles developed by a school-age provider to form the basis of the program's activities in relation to a child's development.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or **"revoke"** when used in reference to a school-age provider's licensing status, means an enforcement action by the department to close a school-age program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the school-age program (for example: Feeding, toileting, playing, and learning).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring a school-age program into compliance with this chapter and chapter 43.216 RCW.

Safety plans are developed at meetings involving at least a school-age provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the school-age program. Program changes must be agreed to in writing and signed by all participants at the meeting.

Safety plans expire thirty calendar days after being signed by all parties. Safety plans may only be extended for an additional thirty days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the DOH's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age basics" means curriculum designed to meet the initial basic training requirement for school-age program staff working in a licensed or certified school-age child care program in Washington state.

"School-age child" means a child who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"School-age program" refers to regularly scheduled care for a group of children, five years of age through twelve years of age, who are attending public or private school or receiving home-based instruction under chapter 28A.200 RCW, for periods of less than twenty-four hours, licensed by the department.

"School-age program licensee" or **"school-age licensee"** means an entity licensed and authorized by the department to operate a school-age child care program.

"School-age program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care in a school-age program.

"School-age program staff" refers to all persons who work, substitute, or volunteer in a school-age program during hours when children are or may be present, excluding licensees.

"School-age provider" or **"provider"** refers to a licensee or designee who works in a school-age program

during hours when children are or may be present. Designees include program directors, site directors, lead teachers, assistant teachers, aides, and volunteers.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means:

(a) An injury resulting in an overnight hospital stay;

(b) A severe neck or head injury;

(c) Choking or serious unexpected breathing problems;

(d) Severe bleeding;

(e) Shock or an acute confused state;

(f) Sudden unconsciousness;

(g) Dangerous chemicals in eyes, on skin, or ingested;

(h) Near drowning;

(i) One or more broken bones;

(j) A severe burn requiring professional medical care;

(k) Poisoning; or

(l) An overdose of a chemical substance.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Site director" means the school-age provider responsible for planning and implementing the school-age program services under the oversight of the program director. The site director is responsible for being on-site during the program's operating hours and providing regular supervision of staff and volunteers.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any school-age provider providing care in the school-age program.

"Supervise" or **"supervision"** means a school-age provider must be able to see or hear the children they are responsible for at all times. A school-age provider must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. A school-age provider must also reposition themselves or the children to be aware of where children are and what they are doing during care. A school-age provider must reassess and adjust their supervision each time program activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to a school-age provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (twenty-four inches).

"Technical assistance" means a service provided to a school-age provider by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Transition" is the process or period of time to change from one activity or place to another.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the school-age provider must make inaccessible to the children during program hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in a school-age program and meets licensing requirements.

"USDA" means the United States Department of Agriculture.

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the FDA that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow a school-age program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. A school-age provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to a school-age provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-301-0345. "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (twenty-four inches).

"Waiver" is an official approval by the department allowing a school-age provider not to meet or satisfy a rule in

this chapter due to specific needs of the program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. A school-age provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Washington state early learning and development guidelines" refers to guidelines published by the department, OSPI, and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means school-age program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the school-age provider must sign a written food plan.

NEW SECTION

WAC 110-301-0010 License required. (1) An individual or entity that operates a school-age program must be licensed by the department as a school-age program, pursuant to RCW 43.216.295, unless exempt under RCW 43.216.010 (2) and WAC 110-301-0025.

(2) The department must not license a department employee or a member of the employee's household if the employee is involved directly, or in an administrative or supervisory capacity, in the:

- (a) Licensing process;
- (b) Placement of a child in a licensed school-age program; or
- (c) Authorization of payment for the child in care.

NEW SECTION

WAC 110-301-0015 Program director and site director simultaneous absence. (1) The licensee must have a written plan for when the program director and site director will be simultaneously absent but the program remains open for the care of children. If the program director and site director are simultaneously absent for more than ten consecutive operating days, a school-age provider must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(2) A written notification under this section must include the following information:

- (a) The time period of the absence;

(b) Emergency contact information for the absent school-age provider; and

(c) A written plan for program staff to follow that includes:

(i) A staffing plan that meets child-to-staff ratios;

(ii) Identification of a lead teacher to be present and in charge;

(iii) School-age program staff roles and responsibilities;

(iv) How each child's needs will be met during the absence; and

(v) The responsibility for meeting licensing requirements.

(3) If a school-age program fails to comply with licensing regulations during an absence described in this section, the school-age provider must:

(a) Retrain school-age program staff on the requirements of the rules noted on the inspection report; and

(b) Document when the retraining occurred.

NEW SECTION

WAC 110-301-0016 Inactive status—Voluntary and temporary closure. (1) If a school-age licensee plans to temporarily close their school-age program for more than thirty calendar days, and this closure is a departure from the program's regular schedule, a school-age provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

(a) The date the school-age program will cease operating;

(b) The reasons why the licensee is going on inactive status; and

(c) A projected date the school-age program will reopen.

(2) The requirements of this section do not apply to licensed school-age programs that have temporary closures beyond thirty calendar days as part of their regular schedule, such as programs based on the school year or seasonal occupation.

(3) A licensee may not request inactive status during their first initial licensing period (six months) unless for an emergency.

(4) A school-age provider must inform parents and guardians that the program will temporarily close.

(5) A school-age provider is responsible for notifying the department of changes to program status including voluntary closures, new staff, or other program changes. Program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 110-06 WAC, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

(a) Place the license on inactive status;

(b) Inform the licensee that the license is inactive; and

(c) Notify the following programs of the inactive status:

(i) The department's child care subsidy programs;

(ii) CACFP; and

(iii) Child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a twelve-month period, the department must close the license. The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) The department may pursue enforcement actions after three failed attempts to monitor a school-age program if the:

(a) School-age provider has not been available to permit the monitoring visits;

(b) Monitoring visits were attempted within a three-month time period; and

(c) Department attempted to contact the provider by phone during the third attempted visit while still on the school-age program premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. After receiving notice of the intent to reopen, the department will:

(a) Conduct a health and safety visit of the school-age program within ten business days to determine that the provider is in compliance with this chapter;

(b) Activate the license and inform the licensee that the license is active; and

(c) Notify the following programs of the active status:

(i) The department's child care subsidy programs;

(ii) CACFP; and

(iii) Child care aware of Washington.

NEW SECTION

WAC 110-301-0020 Unlicensed programs. (1) If the department suspects that an individual or agency is operating an unlicensed school-age program, the department must follow the requirements of RCW 43.216.360.

(2) If an individual or agency decides to obtain a license, within thirty calendar days from the date of the department's notice in subsection (1) of this section, the individual or agency must submit a written agreement on a department form stating they agree to:

(a) Attend and participate in the next available department licensing orientation; and

(b) Submit a licensing application after completing orientation.

(3) The department's written notice under subsection (1) of this section must inform the individual or agency operating an unlicensed school-age program:

(a) That the individual or agency must stop operating an unlicensed school-age program, pursuant to RCW 43.216.360;

(b) How to respond to the department;

(c) How to apply for a license;

(d) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;

(e) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(f) How to ask for a hearing, under chapter 34.05 RCW (Administrative Procedure Act), chapter 43.216 RCW, and chapter 110-03 WAC (department hearing rules).

(4) If an individual or agency operating an unlicensed school-age program does not submit an agreement to obtain a license as provided in subsection (2) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its website that the individual is operating a school-age program without a license.

(5) An individual operating an unlicensed school-age program:

(a) Will be guilty of a misdemeanor pursuant to RCW 43.216.365; and

(b) May be subject to an injunction pursuant to RCW 43.216.355.

NEW SECTION

WAC 110-301-0025 Certified and exempt programs.

(1) The department must not license a school-age program that is legally exempt from licensing pursuant to RCW 43.216.010(2). However, if a school-age program requests to become certified by the department, the department must apply all licensing rules to the otherwise exempt program. In such a case, the department must apply licensing rules equally to licensed and certified school-age programs.

(2) The department may certify an otherwise exempt school-age program for subsidy payment without further inspection if the program is:

(a) Licensed by an Indian tribe, band, nation, or other organized community of Indians, including an Alaska native village as defined in 43 U.S.C. Sec. 1602(c), recognized as eligible for services by the United States Secretary of the Interior;

(b) Certified by the DOD; or

(c) Approved by the OSPI.

(3) A school-age program exempt from licensing pursuant to RCW 43.216.010(2) must use the department's form to submit their exempt status.

(4) A school-age program requesting certification must be located on the premises over which the tribe, DOD, or OSPI has jurisdiction.

(5) A school-age program regulated by a tribe, the DOD, or OSPI may request certification:

(a) For subsidy payment only; or

(b) As meeting foundational quality standards of this chapter.

(6) The department must not certify a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

(a) Certification process;

(b) Placement of a child in a certified program; or

(c) Authorization of payment for the child in care.

NEW SECTION

WAC 110-301-0030 Nondiscrimination. (1) A school-age program is defined by state law as a place of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, color, national origin, sex, honorably discharged veteran or military status, marital status, gender, sexual orientation, age, religion, or ability; and

(b) Comply with the requirements of the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) A school-age program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

NEW SECTION

WAC 110-301-0035 Department access to agency premises, records, programs, and staff. (1) Pursuant to RCW 43.216.250(8), an applicant or school-age program must grant reasonable access to the department during the program's hours of operation for the purpose of announced or unannounced inspections.

(a) Applicants, licensees, and school-age program staff must allow the department's authorized staff to inspect the indoor and outdoor licensed space and any adjacent enclosures, areas, spaces, substances, machinery, or devices that may directly impact the health, safety, or well-being of enrolled children to verify compliance with the requirements of this chapter and chapter 43.216 RCW. However, under RCW 43.216.250 (2)(b), department licensors are authorized to inspect only health, safety, and quality standards that do not relate to the physical facility for a school-age program operating in facilities used by public or private schools.

(b) For the purposes of this chapter "hours of operation" means the hours of the day that a licensee offers school-age program services as reported to the department on the license application or modification paperwork, or as indicated in the parent or guardian handbook.

(2) The department may deny, suspend, revoke, or not continue a license when an applicant, licensee, or program staff refuses to allow the department's authorized staff access to any of the following:

(a) Information relevant to the school-age program;

(b) The agency's premises pursuant to subsection (1) of this section;

(c) Child, staff, or program records or files;

(d) Staff members; or

(e) Children in care.

SECTION II

FAMILY ENGAGEMENT AND PARTNERSHIPS

NEW SECTION

WAC 110-301-0085 Family partnerships and communication. (1) A school-age provider must attempt to obtain information from each child's family about that child's developmental, behavioral, health, linguistic, cultural, social, and other relevant information. The provider must make this attempt upon that child's enrollment and annually thereafter.

(2) A school-age provider must determine how the program can best accommodate each child's individual characteristics, strengths, and needs. The provider must utilize the information in subsection (1) of this section and seek input

from family members and staff familiar with a child's behavior, developmental, and learning patterns.

(3) A school-age provider must:

(a) Attempt to discuss with parents or guardians information including, but not limited to:

(i) A child's strength in areas of development, health issues, special needs, and other concerns.

(ii) Family routines or events, approaches to parenting, family beliefs, culture, language, and child rearing practices;

(iii) Internal transitions within the school-age program and transitions to external services or programs, as necessary;

(iv) Collaboration between the provider and the parent or guardian in behavior management; and

(b) Give parents or guardians the school-age program's contact information for questions or concerns;

(c) Give families opportunities to share their language and culture in the school-age program;

(d) Arrange a confidential time and space for individual conversations regarding children, as needed;

(e) Allow parents or guardians access to their child during normal hours of operation, except as excluded by a court order; and

(f) Communicate verbally or in writing:

(i) Changes in drop-off and pickup arrangements as needed; and

(ii) Daily activities.

SECTION III

PROFESSIONAL DEVELOPMENT, TRAINING, AND REQUIREMENTS

NEW SECTION

WAC 110-301-0100 General staff qualifications. All school-age providers must meet the following requirements prior to working:

(1) **School-age program licensees** must meet the requirements of a program director listed in subsection (2) of this section or hire a program director who meets the qualifications prior to being granted an initial license. School-age program licensees who fulfill the role of program director in their school-age program must complete all trainings and requirements for program director.

(2) **Program directors** manage the overall school-age program operations and facilities and set appropriate program and staff expectations. The program director is not responsible for being on-site at the program, unless the program director is filling in for an on-site role.

(a) A program director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Complete forty-five college credits in any one hundred-level or above college coursework or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A program director working at the time this chapter becomes effective must have completed at least twelve college credits in any one hundred-level or above college coursework or equivalent and complete an additional thirty-

three college credits in any one hundred-level or above college coursework or equivalent within five years of the date this section becomes effective.

(B) A program director hired or promoted after this chapter becomes effective must have completed twelve college credits in any one hundred-level or above coursework or equivalent prior to being hired or promoted, and complete an additional thirty-three college credits in any one hundred-level or above coursework or equivalent within five years of the time of hire or promotion.

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(iv) Have their continued professional development progress documented annually.

(b) A program director must provide the following services:

(i) A program director may fill in as a site director or teacher if acting in this role does not interfere with the responsibilities of managing the school-age program;

(ii) Comply with foundational quality standards;

(iii) Develop a program philosophy, communicate the philosophy to all school-age program staff, parents, and guardians, and train staff to ensure the philosophy serves all children in the program (or designate a site director with this responsibility);

(iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families (or designate a site director with this responsibility); and

(v) Oversee professional development plans for school-age program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Mentoring the site director.

(3) **Site directors** plan and implement the school-age program services under the oversight of a program director. The site director is responsible for being on-site during the program's operating hours.

(a) A site director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Complete thirty college credits in any one hundred-level or above college coursework or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A site director working at the time this chapter becomes effective must have completed at least twelve college credits in any one hundred-level or above college coursework or equivalent and complete an additional eighteen college credits in any one hundred-level or above coursework or equivalent within five years of the date this section becomes effective;

(B) A site director hired or promoted after this chapter becomes effective must have completed twelve college credits in any one hundred-level or above coursework or equivalent prior to being hired or promoted, and complete an additional eighteen college credits in any one hundred-level or

above coursework or equivalent within five years of the time of hire or promotion.

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(iv) Have their continued professional development progress documented annually.

(b) A site director performs the following duties:

(i) Plan and implement curriculum and environmental design of the school-age program;

(ii) Be on-site providing regular supervision of staff and volunteers;

(iii) Comply with foundational quality standards;

(iv) Act as a teacher as long as it does not interfere with the site director's primary responsibilities; and

(v) Observe and mentor staff.

(c) One person may be the program director and the site director when qualified for both positions, provided that all requirements of subsection (2)(a) of this section are met.

(d) For program continuity, a lead teacher can fill in for a site director up to two weeks. If longer than two weeks, the licensee or program director must notify the department with a plan for how the site director's responsibilities will be managed during the site director's absence.

(4) **Lead teachers** are responsible for implementing the school-age program. Lead teachers develop and provide a nurturing and responsive environment that meets the needs of enrolled children. A lead teacher must meet the following qualifications:

(a) Be at least eighteen years old;

(b) Have a high school diploma or equivalent;

(c) Have completed twelve college credits in any one hundred-level or above college coursework or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed school-age program, whichever comes later;

(d) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(e) Have their professional development progress documented annually.

(5) **Assistant teachers** help a lead teacher provide instructional support to children and implement developmentally appropriate programming.

(a) An assistant teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105.

(b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job training from the lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.

(c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the program director or site director must notify the department with a plan for how the lead teacher's responsibilities will be managed during the lead teacher's absence.

(6) **Aides** provide classroom support to an assistant teacher, lead teacher, site director, or program director. Aides must meet the following qualifications:

(a) Be at least fourteen years old;

(b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;

(c) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(d) Aides may be counted in the staff-to-child ratio if they are working under the continuous supervision of a lead teacher, site director, or program director.

(7) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (6) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-301-0105; and

(c) Complete program based staff policies and training, pursuant to WAC 110-301-0110.

(8) **Volunteers** help at a school-age program. Volunteers must meet the following qualifications:

(a) Be at least fourteen years old and have written permission to volunteer from their parent or guardian if under eighteen years old;

(b) Work under the continuous supervision of a lead teacher, site director, or program director;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they:

(i) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(ii) Complete a TB test, pursuant to WAC 110-301-0105;

(iii) Complete the training requirements, pursuant to WAC 110-301-0106; and

(iv) Complete program-based staff policies and training, pursuant to WAC 110-301-0110.

(d) Occasional volunteers must comply with (a) and (b) of this subsection and cannot count in staff-to-child ratio. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

NEW SECTION

WAC 110-301-0105 Preservice requirements. (1) All applicants, co-applicants, program directors, and site directors must complete a department provided orientation for school-age programs. Prior to being in charge of the school-age program, those newly promoted or assuming a role of one of the roles listed here must complete or be registered in a department provided orientation training.

(2) A school-age provider must complete and pass a department background check, pursuant to chapter 110-06 WAC.

(3) A school-age provider, including volunteers must provide documentation signed within the last twelve months

by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

(a) A negative TB symptom screen and negative TB risk assessment;

(b) A previous positive FDA-approved TB test and a current negative chest radiograph and documentation of clearance to safely work in a school-age program; or

(c) A positive symptom screening or a positive risk assessment with documentation of:

(i) A current negative FDA-approved TB test;

(ii) A previous or current positive FDA-approved TB test; and

(iii) A current negative chest radiograph and documentation of clearance to safely work in a school-age program.

(4) Upon notification of TB exposure, a school-age provider may be required to be retested for TB as directed by the local health jurisdiction.

NEW SECTION

WAC 110-301-0106 Training requirements. (1) A school-age provider licensed, working, or volunteering in a school-age program before the date this section becomes effective must complete the applicable training requirements of this section within three months of the date this section becomes effective unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. A school-age provider hired after the date this section becomes effective must complete the training requirements of subsections (4) through (8) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.

(2) License applicants and school-age providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, program directors, site directors, lead teachers, and assistant teachers must complete the school-age basics training as approved or offered by the department:

(a) Prior to being granted a license;

(b) Prior to working unsupervised with children; or

(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role.

(4) A school-age provider must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) A school-age provider must complete the emergency preparedness training as approved or offered by the department according to subsection (1) of this section.

(6) A school-age provider must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(7) Program directors, site directors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(8) A school-age provider who directly cares for children must complete the prevention of exposure to blood and bodily fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(9) Program directors, site directors, lead teachers, assistant teachers and any other school-age provider counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in first-aid and cardiopulmonary resuscitation (CPR).

(a) Proof of training can be shown with a certification card, certificate, or instructor letter.

(b) The first-aid and CPR training and certification must:

(i) Be delivered in person and include a hands-on component for first aid and CPR demonstrated in front of an instructor certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program; and

(ii) Include child and adult first aid and CPR.

(10) A school-age provider who prepares or serves food to children at a school-age program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

(a) Be obtained through the local health jurisdiction, in-person or online; and

(b) Be renewed prior to expiring.

NEW SECTION

WAC 110-301-0107 In-service training. (1) Program directors, site directors, lead teachers, and assistant teachers must complete ten hours of annual in-service training after twelve months of cumulative employment.

(a) Every thirty-six months, program directors and site directors must complete a minimum of ten hours of in-service training on "leadership practices."

(b) Leadership practices training includes the following Washington state core competencies: Program planning and development, and professional development and leadership.

(2) In-service training requirements of this chapter may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours that exceed the requirements of subsection (1) of this section may be carried over from one calendar year to the next calendar year.

NEW SECTION

WAC 110-301-0110 Program based staff policies and training. (1) A school-age provider must have and follow written policies for school-age program staff. Staff policies must include those listed in subsections (2) and (3) of this

section and must be reviewed and approved by the department prior to issuing a provider's initial license. The provider must notify the department when substantial changes are made.

(2) School-age program staff policies must include, but are not limited to:

(a) All of the information in the parent or guardian handbook except fees;

(b) Job descriptions, pay dates, and benefits;

(c) Professional development expectations and plans;

(d) Expectations for attendance and conduct;

(e) School-age program staff responsibilities for:

(i) Child supervision requirements, including preventing children's access to unlicensed space;

(ii) Child growth and development;

(iii) Developmentally appropriate curriculum and activities;

(iv) Teacher-child interaction;

(v) Child protection, guidance, and discipline techniques;

(vi) Food service practices;

(vii) Off-site field trips, if applicable;

(viii) Transporting children, if applicable;

(ix) Health, safety, and sanitization procedures;

(x) Medication management procedures;

(xi) Medical emergencies, fire, disaster evacuation and emergency preparedness plans;

(xii) Mandatory reporting of suspected child abuse, neglect, and exploitation, pursuant to RCW 26.44.020 and 26.44.030 and all other reporting requirements;

(xiii) Implementation of child's individual health care or special needs plan;

(xiv) Following nonsmoking, vaping, alcohol and drug regulations;

(xv) Religious, equity, and cultural responsiveness;

(xvi) Nondiscrimination;

(xvii) Planned daily activities and routines; and

(xviii) Evening and overnight care, if applicable.

(f) Staff responsibilities if the program director or site director is absent from the school-age program;

(g) A plan that includes how both administrative and child caretaking duties are met when a job requires such dual responsibilities; and

(h) Observation, evaluation, and feedback policies.

(3) A school-age provider must have and follow written policies requiring staff working, transitioning, or covering breaks with the same classroom or group of children to share applicable information with each other on a daily basis regarding:

(a) A child's health needs, allergies, and medication;

(b) Any change in a child's daily schedule;

(c) Significant educational or developmental information;

(d) Any communications from the family; and

(e) Information to be shared with the family.

(4) A school-age provider must develop, deliver, and document the delivery of school-age staff training specific to the school-age program and premises.

(a) Training topics must include:

(i) Staff policies listed in subsections (2) and (3) of this section;

(ii) Chapter 43.216 RCW; and

(iii) Chapters 110-301 and 110-06 WAC.

(b) Training must be updated with changes in program policies and state or federal regulations.

NEW SECTION

WAC 110-301-0111 Staff oversight. (1) A school-age provider who oversees staff must:

(a) Establish a work plan with clear expectations;

(b) Be aware of what staff members are doing; and

(c) Be available and able to respond in an emergency as needed to protect the health and safety of children in care.

(2) When the program director, site director, lead teacher, or assistant teacher is the only staff supervising an aide or volunteer, the aide or volunteer may be out of the supervisor's visual and auditory range only when the aide, volunteer, or supervisor is attending to personal needs.

NEW SECTION

WAC 110-301-0115 Staff records. (1) A school-age provider must establish a records system for themselves, staff, and volunteers that complies with the requirements of this chapter. School-age program staff records must be:

(a) Verified by the licensee, program director or site director;

(b) Entered and maintained in the electronic workforce registry, if applicable. Paper records may be discarded once entered into the electronic workforce registry and confirmed by the department;

(c) Updated to delete staff names from the electronic workforce registry when they are no longer employed at the school-age program; and

(d) Kept on-site or in the program's administrative office in a manner that allows the department to review the records.

(2) Records for each school-age provider and staff member must include:

(a) First and last name;

(b) Date of birth;

(c) Job title;

(d) First and last day of employment, if applicable; and

(e) Proof of professional credentials, requirements, and training for each school-age staff member, pursuant to WAC 110-301-0100 through 110-301-0110.

(3) A licensee, program director, or site director must maintain the following records for each school-age provider and program staff in a confidential manner. These records must be reviewable by the department and must include at a minimum:

(a) A copy of current government issued photo identification;

(b) Emergency contact information;

(c) Completed employment application or resume;

(d) Annual observation, evaluation, and feedback information;

(e) The licensee's Social Security number, federal employer identification number, or a written document stating the licensee does not possess either; and

(f) Immunization records including exemption documents.

NEW SECTION

WAC 110-301-0120 Providing for personal, professional, and health needs of staff. (1) A licensee must provide for the personal and professional needs of staff by:

(a) Having a place to store personal belongings that is inaccessible to children;

(b) Having a readily accessible phone to use for emergency calls or to contact the parents and guardians of enrolled children; and

(c) Providing file and storage space for professional materials.

(2) A school-age provider must be excluded from the school-age premises when that provider's illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require a staff member to be excluded are pursuant to WAC 110-301-0205.

(3) If a staff person has not been vaccinated, or shown documented immunity to a vaccine preventable disease, that person may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010. A school-age program staff person or volunteer who has not been vaccinated against measles, mumps, and rubella or shown proof of immunity from measles must not be allowed on the school-age premises except as provided in (a) and (b) of this subsection.

(a) A school-age program may allow a person to be employed or volunteer on the school-age premises for up to thirty calendar days if the person signs a written attestation that the employee or volunteer has received the measles, mumps, and rubella vaccine, or is immune from measles, but requires additional time to obtain and provide their immunization records. The required records must include immunization records indicating the employee or volunteer has received the measles, mumps, and rubella vaccine; or records that show proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.

(b) A school-age program may allow a person to be employed or volunteer on the school-age premises if the person provides the school-age program with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090(3), that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. Subdivision (b) of this subsection does not apply if a person's health care practitioner determines that the measles, mumps, and rubella vaccine is no longer contraindicated.

(4) A school-age program's health policy, pursuant to WAC 110-301-0500, must include provisions for excluding or separating staff with a contagious disease described in WAC 246-110-010.

SECTION IV

SPACE AND FURNISHINGS

NEW SECTION

WAC 110-301-0130 Indoor school-age program space. School-age program space, ramps, and handrails must comply with, be accessible to, and accommodate children and adults with disabilities as required by the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

NEW SECTION

WAC 110-301-0135 Routine care, play, learning, relaxation, and comfort. (1) A school-age provider must have accessible and child-size furniture and equipment in sufficient quantity.

(2) Furniture and equipment must be:

(a) Maintained in a safe working condition;

(b) Developmentally and age appropriate;

(c) Visually inspected at least weekly for hazards, broken parts, or damage. All equipment with hazardous, broken parts, or damage must be repaired as soon as possible and must be inaccessible to children until repairs are made according to the manufacturer's instructions, if available;

(d) Arranged in a way that does not interfere with other play equipment;

(e) Installed and assembled according to manufacturer's specifications;

(f) Stored in a manner to prevent injury; and

(g) Accessible to a child's height so that children can find, use, and return materials independently.

NEW SECTION

WAC 110-301-0140 Room arrangement, child-related displays, private space, and belongings. (1) School-age materials and equipment must be visible, accessible to children in care, and arranged to promote and encourage independent access by children.

(2) A school-age provider must display age and developmentally appropriate school-age materials. Materials must be related to current activities and located so a child can find, use, and return materials independently.

(3) A school-age provider must offer, or allow a child to create, a place for privacy. This space must:

(a) Allow the provider to supervise children; and

(b) Include an area accessible to children who seek or need time alone or in small groups.

(4) A school-age provider must have extra clothing available for children who wet, soil, or have a need to change clothes.

(5) A school-age provider must ensure children have individual storage space for each child's belongings while in attendance. This may include, but is not limited to, a child's personal backpack or individual storage bins provided by the program. At a minimum, the space must be:

(a) Accessible to the child; and

(b) Large enough and spaced sufficiently apart from other storage space to:

- (i) Store the child's personal articles and clothing; and
- (ii) Promote or encourage children to organize their possessions.

(6) Child usable and accessible areas must be arranged to provide sufficient space for routine care, child play, and learning activities. These areas must be designed to:

- (a) Allow the provider to supervise or actively supervise the children, depending on the nature of the activities;
- (b) Allow children to move freely; and
- (c) Allow for different types of activities at the same time, such as manipulatives, language and literary materials, art materials, table games, music, or dramatic play.

NEW SECTION

WAC 110-301-0145 Outdoor school-age program space. (1) A school-age provider must visually inspect outdoor program space and equipment daily to ensure outdoor areas and equipment are free of hazards.

(2) Outdoor play space must contain a minimum of seventy-five square feet of licensed usable space per child accessing the play space at any given time. A school-age provider may develop an alternate plan if a school-age program does not have enough outdoor play space to accommodate all enrolled children at once, such as rotating groups of children to play outdoors or using an off-site play area. The department must approve alternate plans to use off-site play spaces.

(3) A school-age program must have shaded areas in outdoor play space provided by trees, buildings, or shade structures.

(4) Outdoor play space must promote a variety of age and developmentally appropriate active play areas for children in care. Activities must encourage and promote both moderate and vigorous physical activity such as running, jumping, skipping, throwing, pedaling, pushing, pulling, kicking, and climbing.

(5) Bouncing equipment including, but not limited to, trampolines, rebounders, and inflatable equipment must be inaccessible and locked. This requirement does not apply to bounce balls designed to be used by individual children.

(6) When the licensed outdoor play space is not immediately adjacent to the school-age program site, a school-age provider must use a safe route when moving to and from the licensed outdoor play space.

(7) For any program that does not operate on public or private school premises, licensed outdoor play areas must be enclosed with a fence or barrier that is intended to prevent children from exiting and discourages climbing. If the outdoor play area is enclosed by a barrier that is not a fence, the barrier may be a wall constructed with brick, stone, or a similar material.

(8) For any program that does not operate on public or private school premises, licensed outdoor play areas must be enclosed to deter people without permission from entering the area.

(9) For any program that does not operate on public or private school premises, fences, barriers, and gates must be in good condition, have no gap through which a sphere with a

diameter of three and one-half inches can pass, and have a minimum height of forty-eight inches or conform in height to applicable local codes.

(10) For any program that does not operate on public or private school premises, the opening between a fence post and gate or fence post and building must have no gap through which a sphere with a diameter of three and one-half inches can pass.

(11) For any program that does not operate on public or private school premises, a school-age provider must not install any wooden fence, playground structure, or furniture if it contains chromated copper arsenate (CCA), creosote or pentachlorophenol. If wooden fences, structures, and furniture are suspected of having CCA, they must be tested. If CCA is present, fences, structures, and furniture must be removed or sealed with an oil-based outdoor sealant annually or as needed within six months of the date this section becomes effective.

(12) Within six months of the date this section becomes effective or prior to licensing, any program that does not operate on public or private school premises must have exiting mechanisms on gates from a licensed outdoor play area to unlicensed space that are equipped with a self-closing and self-latching mechanism (shuts automatically when released from an individual's control). A gate that is not an emergency exit must be locked or self-closing and self-latching.

(13) For any program that does not operate on public or private school premises, outdoor play areas must have two exits that must not be partially or entirely blocked. At least one of the two exits must not lead back into licensed indoor space.

NEW SECTION

WAC 110-301-0146 Equipment and surfaces in outdoor school-age program space. This section is applicable to any program that does not operate on public or private school premises.

(1) Playground equipment and surfacing used by a school-age provider must comply with applicable CPSC guidelines including, but not limited to, installing, arranging, designing, constructing, and maintaining outdoor play equipment and surfacing.

(a) Climbing play equipment must not be placed on or above concrete, asphalt, packed soil, lumber, or similar hard surfaces; and

(b) The ground under swings and play equipment must be covered by a shock absorbing material (grass alone is not acceptable) such as:

- (i) Pea gravel at least nine inches deep;
- (ii) Playground wood chips at least nine inches deep;
- (iii) Shredded recycled rubber at least six inches deep; or
- (iv) Any material that has a certificate of compliance, label, or documentation stating it meets ASTM standards F1292.

(2) Permanently anchored outdoor play equipment must not be placed over septic tank areas or drain fields, and must be installed according to the manufacturer's directions.

(3) Handmade playground equipment must be maintained for safety or removed when no longer safe. Prior to

construction of new handmade playground equipment, the provider must notify the department and have plans and a materials list available upon request.

NEW SECTION

WAC 110-301-0147 Weather conditions and outdoor hazards. (1) A school-age provider must observe weather conditions and other possible hazards to take appropriate action for child health and safety. Conditions that pose a health or safety risk may include, but are not limited to:

- (a) Heat in excess of 100 degrees Fahrenheit or pursuant to advice of the local authority;
- (b) Cold less than 20 degrees Fahrenheit, or pursuant to advice of the local authority;
- (c) Lightning storm, tornado, hurricane, or flooding if there is immediate or likely danger;
- (d) Earthquake;
- (e) Air quality emergency ordered by a local or state authority on air quality or public health;
- (f) Lockdown notification ordered by a public safety authority; and
- (g) Other similar incidents.

(2) A school-age provider must ensure children are dressed for weather conditions during outdoor play time.

NEW SECTION

WAC 110-301-0148 Gardens in outdoor school-age program space. (1) A garden in a school-age program space must:

- (a) Have safeguards in place to minimize risk of cross-contamination by animals;
- (b) Use soil free from agricultural or industrial contaminants such as lead or arsenic if gardening directly in the ground;
- (c) If gardening in raised beds use:
 - (i) New soil that is labeled "organic" or "safe for children" and was obtained from a gardening supply store or other retail store; or
 - (ii) Composted soil made from material that is safe according to the Washington State University's extension master gardener composting guidelines; and
- (d) Use water that comes from a private well approved by the local health jurisdiction or from a public water system. A school-age provider must make water for gardens inaccessible to children if the provider uses irrigation water.

(2) Garden beds must be made of materials that will not leach chemicals into the soil including, but not limited to, wood treated with chromated copper arsenate, creosote or pentachlorophenol, reclaimed railroad ties, or tires.

(3) Any herbicide or pesticide must be applied pursuant to the product manufacturer's directions. The product must not be applied while children are present. Children must not apply the product or have access to the garden during the manufacturer's prescribed waiting period following application.

SECTION V

ACTIVITIES

NEW SECTION

WAC 110-301-0150 Program and activities. (1) A school-age provider must supply children in care with a variety of school-age materials that are age and developmentally appropriate and meet children's individual and cultural needs. School-age materials must be:

- (a) Clean;
- (b) Washable or disposable;
- (c) Accommodating to a range of abilities of children in care;
- (d) Available to children in care appropriate to a child's age and developmental level;
- (e) Nonpoisonous and free of toxins. If a school-age provider is using prepackaged art materials, the material packaging must be labeled "non-toxic" by the manufacturer and meet ASTM standard D-4236 as described in 16 C.F.R. 1500.14 (b)(8)(i);
- (f) In good and safe working condition;
- (g) Accommodating to special needs of children in care; and
- (h) Removed from the school-age program space once an item has been recalled by CPSC.

(2) A school-age provider must ensure a sufficient quantity and variety of materials to engage children in the school-age program such as arts and crafts supplies, construction materials, manipulative materials, music and sound devices, table games, books, social living equipment, and gross motor materials such as balls and jump ropes. Materials must:

- (a) Encourage both active physical play and quiet play activities;
- (b) Promote imagination and creativity;
- (c) Promote communication and literacy skills;
- (d) Encourage social skill development;
- (e) Promote numeracy, math, and spatial ability;
- (f) Encourage discovery, exploration, and reasoning; and
- (g) Promote learning skills.

NEW SECTION

WAC 110-301-0155 Use of television, video, and computers. (1) If a school-age provider offers screen time to children in care, the screen time must be educational, developmentally and age appropriate, nonviolent, and culturally sensitive.

(2) Children must not be required to participate in screen time activities. Alternative activities must be provided to children in care when screen time is offered.

(3) Screen time must not occur during meals or snacks.

(4) Screen time must be limited to two and one-half hours per week for each child unless computer use is required for homework or a part of curriculum.

NEW SECTION

WAC 110-301-0160 Promoting acceptance of diversity. (1) A school-age provider must provide culturally and

racially diverse learning opportunities. Diverse learning opportunities must be demonstrated by the provider's activities and materials that represent all children, families, and staff. A provider must use equipment and materials that include, but are not limited to:

- (a) Diverse dolls, books, pictures, games, or materials that do not reinforce stereotypes;
 - (b) Diverse music from many cultures in children's primary languages; and
 - (c) A balance of different ethnic and cultural groups, ages, abilities, family styles, and genders.
- (2) A school-age provider must intervene appropriately to stop biased behavior displayed by children or adults including, but not limited to:
- (a) Redirecting an inappropriate conversation or behavior;
 - (b) Being aware of situations that may involve bias and responding appropriately; and
 - (c) Refusing to ignore bias.

SECTION VI

SAFETY

NEW SECTION

WAC 110-301-0165 Safety requirements. (1) A school-age provider must keep indoor and outdoor school-age program space, materials, and equipment free from hazards and in safe working condition. Equipment and toys purchased and used must be compliant with CPSC guidelines or ASTM standards. For any program that does not operate on public or private school premises, playground equipment and surfaces must meet the requirements of WAC 110-301-0146.

(2) A school-age provider must take steps to prevent hazards to children including, but not limited to:

- (a) Ensuring firearms, guns, weapons, and ammunition are not on the premises of a school-age program; and
- (b) For any program that does not operate on public or private school premises, eliminating and not using in the licensed space, pursuant to RCW 43.216.380, any window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing risk of strangulation to children.
 - (i) Window blinds and other window coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are allowed; and
 - (ii) A window covering must not be secured to the frame of a window or door used as an emergency exit in a way that would prevent the window or door from opening easily.

(3) A school-age provider must take measures intended to prevent other hazards to children in care in school-age program space including, but not limited to:

- (a) **Cuts, abrasions, and punctures.** Equipment, materials, and other objects on the premises that have splintered edges, sharp edges, points, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children;

- (b) **Burns.** Equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;

- (c) **Sheering, crushing, or pinching.** Broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;

- (d) **Entrapment.** Spare or secondary freezers and refrigerators, washers, dryers, large compost bins, and other entrapment dangers must be inaccessible to children unless being actively supervised;

- (e) **Tripping.** Tripping hazards must be eliminated. For any program that does not operate on public or private school premises, uneven walkways and damaged flooring or carpeting, or other tripping hazards must be removed or repaired;

- (f) **Falling objects.** Large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and

- (g) **Equipment in poor condition.** Equipment in poor condition (loose parts, rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.

(4) To ensure a safe environment for children in care, a school-age provider must comply with the following requirements:

- (a) **Safe noise levels.** Noise levels must be maintained at a level in which a normal conversation may occur, except when children are engaged in gross motor activities;

- (b) **Stairway safety.**

- (i) There must not be clutter or obstructions in the stairway;

- (ii) For any program that does not operate on public or private school premises, all stairways (indoor and outdoor), not including play structures, must meet local building codes pursuant to RCW 43.216.340.

- (A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.

- (B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.

- (C) Stairways with a wall on both sides must have a handrail no higher than thirty-eight inches on at least one side of the stairway.

- (c) **Indoor temperatures for the premises.** For any program that does not operate on public or private school premises, the temperature of indoor school-age licensed space must be between 68 and 82 degrees Fahrenheit. If indoor licensed space is colder than 68 or hotter than 82 degrees Fahrenheit, a school-age provider must use climate control devices that are inaccessible to children to bring the temperature within the required range;

- (d) **Window openings.** For any program that does not operate on public or private school premises, windows within the reach of children must only open up to three and one-half inches or have some barrier or preventative measure to discourage children from exiting through the window;

- (e) **Licensed space lighting.** For any program that does not operate on public or private school premises, school-age

program space must have natural or artificial light that provides appropriate illumination for school-age program activities and supervision. A provider must comply with all light fixture manufacturers' installation and use requirements. A provider must also ensure compliance with the following requirements:

(i) Light fixtures must have shatter-resistant covers or light bulbs;

(ii) Lights or light fixtures used indoors must be designed for indoor use only;

(iii) Free standing lamps must be attached or secured to prevent tipping; and

(iv) Halogen lamps and bulbs are prohibited.

(f) **Safe water temperature.** For any program that does not operate on public or private school premises, all water accessible to enrolled children must not be hotter than 120 degrees Fahrenheit; and

(g) **Platforms and decks.** For any program that does not operate on public or private school premises, all platforms and decks used for school-age program activities must meet local building codes pursuant to RCW 43.216.340. This does not include play equipment. All platforms and decks with a drop zone of more than eighteen inches must have guardrails in sections without steps.

(5) To ensure a safe environment for children in care, a school-age provider must comply with the following electrical requirements:

(a) Electrical cords must be in good working condition, not torn or frayed, and not have any exposed wires;

(b) Electrical cords must be plugged directly into a wall outlet or a power strip with surge protector;

(c) Extension cords may only be used for a brief, temporary purpose and must not replace direct wiring;

(d) Electrical devices accessible to children must not be plugged into an electrical outlet near a water source such as a sink, tub, water table, or swimming pool; and

(e) For any program that does not operate on public or private school premises, outlets near sinks, tubs, toilets, or other water sources must be inaccessible to children or be tamper-resistant and equipped with a ground fault circuit interrupter (GFCI) outlet type.

NEW SECTION

WAC 110-301-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, a school-age program must have an emergency preparedness plan pursuant to WAC 110-301-0470.

(2) A school-age provider must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone must be available for use with sufficient backup power to function in an emergency.

(3) To ensure a safe exit from the premises during an emergency, the school-age provider must comply with the following requirements:

(a) Exit doors must not be partially or entirely blocked;

(b) For any program that does not operate on public or private school premises, emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the school-age program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned; and

(c) Exit doors that are not designated as an emergency exit door may be locked during operating hours. For any program that does not operate on public or private school premises, locking interior doors in school-age program space must be designed to be unlocked from either side. An unlocking device must be readily available.

NEW SECTION

WAC 110-301-0170 Fire safety. (1) For any program that does not operate on public or private school premises, a school-age provider must comply with the state building code, pursuant to RCW 19.27.031.

(2) For any program that does not operate on public or private school premises, a school-age provider must arrange for a fire safety inspection annually. A provider must arrange a fire safety inspection with a local government agency. If a local government agency is not available to conduct a fire safety inspection, a provider must inspect for fire safety using the state fire marshal form.

(3) To ensure a safe environment for children in care, a school-age provider must comply with the following fire safety requirements:

(a) **Combustible materials.** For any program that does not operate on public or private school premises, combustible materials:

(i) Must be properly discarded pursuant to local jurisdictions, removed from the premises, or properly stored in closed plastic or metal containers specifically designed to hold such combustible materials;

(ii) Stored in a closed plastic or metal container must be inaccessible to children in care; and

(iii) Include, but are not limited to, lint, gasoline, natural gas, diesel, fuel, propane, rags soaked in combustible materials, oils, chemicals, or solvents.

(b) **Furnaces and other heating devices.**

(i) An appliance or heating device that has a surface capable of burning a child or reaching 110 degrees Fahrenheit must be inaccessible to children in care unless a program activity involves such an appliance or device and children are being actively supervised;

(ii) For any program that does not operate on public or private school premises, paper, rubbish, or other combustible materials must be at least three feet from furnaces, fireplaces, or other heating devices; and

(iii) For any program that does not operate on public or private school premises, furnaces and other heating devices must be inaccessible to children in care.

(c) **Electrical motors.** For any program that does not operate on public or private school premises, electrical motor fans and appliances must be regularly cleaned to prevent accumulation of dust or lint.

(d) **Open flame devices, candles, matches, and lighters.**

(i) Except for the use of a gas kitchen range, open flame devices must not be used in school-age program space or any other space accessible to children in care during operating hours;

(ii) Candles must not be used during operating hours;

(iii) Matches and lighters must be inaccessible to children.

(e) **Portable heaters and generators.** Portable heaters or fuel powered generators must not be used inside school-age program space during operating hours.

(i) In case of an emergency, a generator may be used but must be placed at least twenty feet from buildings, windows, doors, ventilation intakes, or other places where exhaust fumes may be vented into the premises or school-age program space; and

(ii) Appliances must be plugged directly into a generator or into a heavy duty outdoor-rated extension cord that is plugged into a generator.

(f) **Fire alarms and smoke and carbon monoxide detectors.**

(i) For any program that does not operate on public or private school premises, a school-age program must have and maintain at least one smoke detector per floor, unless exempt under WAC 51-50-0907; and

(ii) For any program that does not operate on public or private school premises, a school-age program must have and maintain carbon monoxide detectors, unless exempt under WAC 51-50-0915.

(g) **Backup method to sound an alarm.** In addition to working smoke detectors, a school-age provider must have another method to alert all staff and enrolled children of a fire, emergency situation, or drill.

(h) **Extinguishers.** For any program that does not operate on public or private school premises, a school-age provider must have and maintain working fire extinguishers that are marked with a minimum rating of 2A:10 BC.

(i) Fire extinguishers must be located pursuant to the state building code chapter 51-54A WAC, and must be readily available for use in case of an emergency;

(ii) Fire extinguishers must be located on each level of the school-age program space used by children and mounted within seventy-five feet of an exit next to the path of the exit; and

(iii) If a fire extinguisher is mounted in a closet, there must be a sign indicating the location of the extinguisher and obstructions must not block access to the closet.

(i) **Monthly inspections.** For any program that does not operate on public or private school premises, a school-age provider must involve staff responsible for different groups of children or individual classrooms during monthly inspections. At least once per month, a provider must inspect the premises to identify possible fire hazards and eliminate any hazards found including, but not limited to:

(i) Fire extinguishers;

(ii) Smoke detectors;

(iii) Alternate alarms; and

(iv) Emergency lighting.

NEW SECTION

WAC 110-301-0175 Water hazards and swimming pools. To prevent injury or drowning and ensure the health and safety of children, a school-age provider must comply with the requirements described in this section.

(1) Filtered wading pools must be inaccessible to children when not in use. Wading pools that do not have a filtering system are not permitted in the school-age program space.

(2) Bodies of water not located in school-age program space, but that are in close proximity, must be made inaccessible to children in care, and the school-age program must have a written plan approved by the department.

(3) If a school-age provider uses water tables or similar containers, the tables or containers must be emptied and sanitized daily, or more often if necessary.

(4) For any program that does not operate on public or private school premises, the following bodies of water must be inaccessible to children in care by using a physical barrier with a locking mechanism in compliance with WAC 246-260-031(4):

(a) Swimming pools when not being used as part of the school-age program;

(b) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools, or similar bodies of water; and

(c) Uncovered wells, septic tanks, wastewater, wastewater tanks, below grade storage tanks, farm manure ponds or other similar hazards.

(5) Hot tubs and similar equipment must be made inaccessible by using a physical barrier with a locking mechanism.

(6) A school-age provider must comply with the supervision requirements of WAC 110-301-0350 when using a swimming pool as part of the school-age program.

(7) For any program that does not operate on public or private school premises, a school-age provider must comply with the following requirements when using a swimming pool on the premises as part of the school-age program:

(a) Audible alarms must be on all doors, screens, and gates in licensed areas that lead to a swimming pool. The alarm must be sufficient to warn staff when children enter the outdoor area and could access the swimming pool;

(b) Swimming pools must be maintained according to manufacturer specifications;

(c) Swimming pools must be cleaned and sanitized according to manufacturer instructions, chapter 246-260 WAC, and the DOH or local health jurisdiction guidelines; and

(d) A swimming pool must not be used if the main drain cover is missing.

SECTION VII

FOOD AND NUTRITION

NEW SECTION

WAC 110-301-0180 Meal and snack schedule. A school-age provider must ensure meals and snacks meet the following requirements:

- (1) Meals and snacks must be served not less than two hours and not more than three hours apart;
- (2) Children in care for five to nine hours:
 - (a) At least one meal and two snacks; or
 - (b) Two meals and one snack.
- (3) Children in care for more than nine hours:
 - (a) Two meals and two snacks; or
 - (b) Three snacks and one meal.
- (4) A snack must be provided for children in care for one to three hours after school; and
- (5) A breakfast or morning snack must be made available to children in care either by the school-age program or the school.

NEW SECTION

WAC 110-301-0185 Menus, milk, and food. To ensure proper nutrition of children in care, a school-age provider must comply with the child nutrition requirements described in this section.

- (1) Meals, snack foods, and beverages provided to children in care must comply with the requirements contained in the most current edition of the CACFP standards, or the *USDA National School Lunch and School Breakfast Program* standards.
 - (a) A school-age provider must have dated menus.
 - (b) Food and beverage substitutions to a scheduled menu must be of equal nutritional value.
 - (c) A school-age provider must only serve water, unflavored milk, or one hundred percent fruit or vegetable juice.
 - (d) A school-age provider must limit the consumption of one hundred percent fruit juice to no more than four to six ounces per day for children five and six years old, and eight to twelve ounces per day for children seven through twelve years old.
- (2) A school-age provider must serve a fruit or vegetable during at least one snack per day. The fruit or vegetable serving may count as one of the two required snack components or be a third snack component.

NEW SECTION

WAC 110-301-0186 Food allergies and special dietary needs. (1) A school-age provider must obtain written instructions (the individual care plan) from the child's health care provider and parent or guardian when caring for a child with a known food allergy or special dietary requirement due to a health condition. The individual care plan pursuant to WAC 110-301-0300 must:

- (a) Identify foods that must not be consumed by the child and steps to take in the case of an unintended allergic reaction;

- (b) Identify foods that can substitute for allergenic foods; and
- (c) Provide a specific treatment plan for the school-age provider to follow in response to an allergic reaction. The specific treatment plan must include the:

- (i) Names of all medication to be administered;
 - (ii) Directions for how to administer the medication;
 - (iii) Directions related to medication dosage amounts; and
 - (iv) Description of allergic reactions and symptoms associated with the child's particular allergies.
- (2) A school-age provider must arrange with the parents or guardians of a child in care to ensure the school-age program has the necessary medication, training, and equipment to properly manage a child's food allergies.

(3) If a child suffers from an allergic reaction, the school-age provider must immediately:

- (a) Administer medication pursuant to the instructions in that child's individual care plan;
- (b) Contact 911 whenever epinephrine or other lifesaving medication has been administered; and
- (c) Notify the parents or guardians of a child if it is suspected or appears that any of the following occurred, or is occurring:

- (i) The child is having an allergic reaction; or
 - (ii) The child consumed or came in contact with a food identified by the parents or guardians that must not be consumed by the child, even if the child is not having or did not have an allergic reaction.
- (4) A school-age provider must review each child's individual care plan information for food allergies prior to serving food to children.

NEW SECTION

WAC 110-301-0190 Parent or guardian provided food and written food plans. (1) A written food plan must be developed by the provider and a child's parent or guardian, signed by all parties, and followed when accommodating a child's:

- (a) Special feeding needs;
 - (b) Special diets;
 - (c) Religious or cultural preferences;
 - (d) Family preferences; or
 - (e) Other needs.
- (2) A school-age provider may allow or require parents or guardians to bring food for their child.
- (3) If a parent or guardian provides meals for their child, a school-age provider must:

- (a) Notify the parent or guardian in writing of the USDA CACFP requirements for each meal; and
 - (b) Supplement a child's meal that does not satisfy USDA CACFP requirements if necessary.
- (4) On special occasions, such as birthdays, a school-age provider may allow parents or guardians to bring in snacks that may not satisfy the nutritional requirements for all children. The snacks provided must be limited to:

- (a) Store purchased fruits and vegetables (uncut);
- (b) Foods prepackaged in the original manufacturer containers; or

(c) Snacks prepared, cooked, or baked at home by parents or guardians of a child in care. Prior to serving, a school-age provider must receive written permission from each child's parent or guardian stating their child may consume food prepared, cooked, or baked by another child's parent or guardian.

NEW SECTION

WAC 110-301-0195 Food service, equipment, and practices. (1) A school-age provider preparing or serving food must comply with the current DOH *Washington State Food and Beverage Workers' Manual* and supervise services that prepare or deliver food to the school-age program.

(2) Snacks and meals must be prepared and served by a school-age provider who possesses a valid and current food worker card pursuant to WAC 110-301-0106(10).

(3) A school-age provider must:

(a) Supply durable and developmentally appropriate individual eating and drinking equipment, or developmentally appropriate single use disposable items;

(b) Clean and sanitize eating and drinking equipment after each use. Water bottles or cups designated for a single child must be cleaned and sanitized daily;

(c) Ensure plastic eating and drinking equipment does not contain BPA (a chemical used in hard plastic bottles and as a protective lining in food and beverage cans) or have cracks or chips;

(d) Use gloves, utensils, or tongs to serve food;

(e) Serve meals or snacks on plates, dishware, containers, trays, or napkins or paper towels, if appropriate. Food should not be served directly on the eating surface; and

(f) Be respectful of each child's cultural food practices.

(4) A school-age provider must:

(a) Serve each child individually or serve family style dining, allowing each child the opportunity to practice skills such as passing shared serving bowls and serving themselves; and

(b) Sit with children during meals, when possible.

NEW SECTION

WAC 110-301-0196 Food sources. (1) Food prepared and served from a school-age program must not be tampered with or spoiled.

(2) Food prepared and served from a school-age program must be obtained from an approved source licensed and inspected by the local health jurisdiction, the Washington state department of agriculture (WSDA), or the USDA. Food items not approved to be served to children in care include:

(a) Meat, fish, poultry, eggs, or milk that has not been inspected by the USDA or WSDA;

(b) Home canned food;

(c) Game meat or other meat that has not been inspected by the WSDA or USDA;

(d) Leftover food that was previously served from outside of the school-age program; or

(e) Food from roadside stands selling without a permit.

(3) Food not prepared on-site by a school-age provider, pursuant to WAC 110-301-0195(2), must be provided by:

(a) A licensed food establishment, kitchen, or catering business that meets food service requirements (chapter 246-215 WAC) and is regularly inspected by a local health jurisdiction;

(b) Parents or guardians for their own children; or

(c) A manufacturer of prepackaged food.

(4) Fruits and vegetables (produce) grown on-site in a garden as part of a school-age program may be served to children as part of a meal or snack. Prior to preparing and serving:

(a) The produce must be thoroughly washed and scrubbed in running cold water to remove soil and other contaminants;

(b) Damaged or bruised areas on the produce must be removed; and

(c) Produce that shows signs of rotting must be discarded.

NEW SECTION

WAC 110-301-0197 Safe food practices. (1) A school-age provider must wash their hands, pursuant to WAC 110-301-0200.

(2) A school-age provider must store, prepare, cook, hold food, and wash dishes, pursuant to WAC 110-301-0195.

(3) For all foods offered by the provider or given to an enrolled child by a parent or guardian, the provider must:

(a) Provide appropriate refrigeration to preserve foods from spoiling. Foods that may be subject to spoiling include, but are not limited to, meats, cooked potatoes, cooked legumes, cooked rice, sprouts, cut melons, cut cantaloupes, milk, and cheese; and

(b) Refrigerate foods requiring refrigeration at 41 degrees Fahrenheit or less and freeze foods required to be frozen at 10 degrees Fahrenheit or less.

(4) Food must be stored as follows:

(a) In original containers or in clean, labeled, dated, and airtight food grade containers, if appropriate;

(b) Food not required to be refrigerated or frozen must not be stored directly on the floor;

(c) In a manner that prevents contamination;

(d) Food and food service items (such as utensils, napkins, and dishes) must not be stored in an area with toxic materials (such as cleaning supplies, paint, or pesticides);

(e) Food that is past the manufacturer's expiration or "best served by" date must not be served to enrolled children; and

(f) Raw meat must be stored in the refrigerator or freezer below cooked or ready to eat foods.

(5) For food requiring temperature control, a school-age program must maintain a food temperature log by using a calibrated and working metal stem-type or digital food thermometer.

(6) Prior to storing leftover food in a refrigerator or freezer, a school-age provider must label the food with the date the leftover food was opened or cooked.

(7) A school-age provider may serve leftover food that originated from the school-age program if the leftover food was not previously served and:

(a) Refrigerated leftover food must be stored and then served again within forty-eight hours of originally being prepared; or

(b) Frozen leftover food must be promptly served after thawing and being cooked.

(8) Frozen food must be thawed by one of the following methods:

(a) In a refrigerator;

(b) Under cool running water inside a pan placed in a sink with the drain plug removed; or

(c) In a microwave if the food is to be cooked as part of the continuous cooking process.

NEW SECTION

WAC 110-301-0198 Food preparation areas. (1) A school-age provider must clean and sanitize food preparation areas and eating surfaces before and after each use, pursuant to WAC 110-301-0241(1).

(2) For any program that does not operate on public or private school premises, the school-age program's food preparation area or kitchen must have:

(a) Walls, counter tops, floors, cabinets, and shelves that are:

(i) Maintained in good repair including, but not limited to, being properly sealed without chips, cracks, or tears; and

(ii) Moisture resistant.

(b) A properly maintained and vented range hood, exhaust fan, or operable window, if applicable; and

(c) A properly maintained and working refrigerator, freezer, or a combination refrigerator and freezer with sufficient space for proper storage and cooling of food.

(3) A school-age provider must:

(a) Clean and sanitize a sink immediately before using it to prepare food to be served to children in care;

(b) Use a colander or other method to prevent food and kitchen utensils from touching the sink basin; and

(c) Clean dishes, pans, and kitchen utensils as follows:

(i) Clean and sanitize with an automatic dishwasher that uses heat or chemicals to sanitize; or

(ii) Handwash, rinse, sanitize, and allow to air dry.

(4) Any program that does not operate on public or private school premises licensed after the date this chapter becomes effective must have:

(a) A handwashing sink separate from dishwashing facilities;

(b) A food preparation sink located in the food preparation area; and

(c) A method to clean and sanitize dishes, pans, kitchen utensils, and equipment in the food preparation area using:

(i) A two-compartment sink and an automatic dishwasher that sanitizes with heat or chemicals; or

(ii) A three-compartment sink method (sink one is used to wash, sink two is used to rinse, sink three contains a sanitizer, and the dishes are allowed to air dry).

(5) A school-age provider may use the kitchen for actively supervised cooking or food preparation activities with children in care.

SECTION VIII

HEALTH PRACTICES

NEW SECTION

WAC 110-301-0200 Handwashing and hand sanitizer. (1) A school-age provider must comply with the following handwashing procedures or those defined by the United States Center for Disease Control and Prevention, and children should strongly be encouraged to:

(a) Wet hands with warm water;

(b) Apply soap to the hands;

(c) Rub hands together to wash for at least twenty seconds;

(d) Thoroughly rinse hands with water;

(e) Dry hands with a paper towel, single-use cloth towel, or air hand dryer;

(f) Turn water faucet off using a paper towel or single-use cloth towel unless it turns off automatically; and

(g) Properly discard paper single-use towels after each use.

(2) A school-age provider must wash and sanitize cloth towels after a single use. Soiled and used towels must be inaccessible to children.

(3) For any program that does not operate on public or private school premises, air hand dryers must have a heat guard (barrier that prevents user from touching heating element) and turn off automatically.

(4) A school-age provider must wash their hands following the handwashing procedures listed above:

(a) When arriving at work;

(b) After assisting with toileting;

(c) After personal toileting;

(d) After attending to an ill child;

(e) Before and after preparing, serving, or eating food;

(f) After handling raw or undercooked meat, poultry, or fish;

(g) Before and after giving medication or applying topical ointment;

(h) After handling or feeding animals, handling an animal's toys or equipment, or cleaning up after animals;

(i) After handling bodily fluids;

(j) After using tobacco or vapor products;

(k) After being outdoors;

(l) After gardening activities;

(m) After handling garbage and garbage receptacles; and

(n) As needed or required by the circumstances.

(5) A school-age provider must direct, assist, teach, and coach children to wash their hands, using the steps listed above:

(a) When arriving at the school-age premises;

(b) After using the toilet;

(c) After outdoor play;

(d) After gardening activities;

(e) After playing with animals;

(f) After touching bodily fluids such as blood or after nose blowing or sneezing;

(g) Before and after eating or participating in food activities including table setting; and

(h) As needed or required by the circumstances.

(6) Hand sanitizers or hand wipes with alcohol may be used for adults and children under the following conditions:

(a) When proper handwashing facilities are not available; and

(b) Hands are not visibly soiled or dirty.

(7) Children must be actively supervised when using hand sanitizers to avoid ingestion or contact with eyes, nose, or mouths.

(a) Hand sanitizer must not be used in place of proper handwashing.

(b) An alcohol-based hand sanitizer must contain sixty to ninety percent alcohol to be effective.

NEW SECTION

WAC 110-301-0205 Child and staff illness. (1) A school-age provider must observe all children for signs of illness when they arrive at the school-age program and throughout the day. Parents or guardians of a child should be notified, as soon as possible, if the child develops signs or symptoms of illness.

(2) If a school-age provider becomes ill, a licensee, program director, or site director must determine whether that person should be required to leave the licensed school-age space.

(3) When a child becomes ill, a school-age provider (or school nurse, if applicable) must determine whether the child should be sent home or separated from others. A provider must supervise the child to reasonably prevent contact between the ill child and healthy children.

(4) An ill child must be sent home or reasonably separated from other children if:

(a) The illness or condition prevents the child from participating in normal activities;

(b) The illness or condition requires more care and attention than the school-age provider can give;

(c) The required amount of care for the ill child compromises or places at risk the health and safety of other children in care; or

(d) There is a risk that the child's illness or condition will spread to other children or individuals.

(5) Unless covered by an individual care plan or protected by the ADA, an ill child, staff member, or other individual must be sent home or isolated from children in care if the ill individual has:

(a) A fever 101 degrees Fahrenheit by any method, and behavior change or other signs and symptoms of illness (including sore throat, earache, headache, rash, vomiting, diarrhea);

(b) Vomited two or more times in the previous twenty-four hours;

(c) Diarrhea where stool frequency exceeds two stools above normal per twenty-four hours for that individual or whose stool contains more than a drop of blood or mucus;

(d) A rash not associated with heat or an allergic reaction;

(e) Open sores or wounds discharging bodily fluids that cannot be adequately covered with a waterproof dressing or mouth sores with drooling; or

(f) A child who appears severely ill, which may include lethargy, persistent crying, difficulty breathing, or a significant change in behavior or activity level indicative of illness.

(6) At the first opportunity, but in no case longer than twenty-four hours of learning that an enrolled child, staff member, or volunteer has been diagnosed by a health care professional with a contagious disease pursuant to WAC 246-110-010(3), a school-age provider must provide written notice to the parents or guardians of the enrolled children, and notify the department and the local health jurisdiction pursuant to WAC 110-301-0475 (2)(d).

(7) A school-age provider must not take ear or rectal temperatures to determine a child's body temperature.

(a) Oral temperatures may be taken for children if single-use covers are used to prevent cross contamination; and

(b) Glass thermometers containing mercury must not be used.

(8) A school-age provider may readmit a child, staff member, or volunteer into the school-age program area with written permission of a health care provider or health jurisdiction stating the individual may safely return after being diagnosed with a contagious disease pursuant to WAC 246-110-010(3).

NEW SECTION

WAC 110-301-0210 Immunizations and exempt children. (1) Before attending a school-age program, a child must be vaccinated against or show proof of acquired immunity for the vaccine-preventable disease, pursuant to chapter 246-105 WAC. A school-age provider may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) Pursuant to WAC 246-105-050, a school-age provider must receive for each enrolled child:

(a) A current and complete DOH-approved certificate of immunization status (CIS) form or an alternative in lieu of CIS pursuant to WAC 246-105-050(3);

(b) A department approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, a school-age provider must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) A school-age provider must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) A school-age provider may accept homeless or foster children into care without the records listed in this section if

the child's parent or guardian, caseworker, or health care provider offers written proof that they are in the process of obtaining the child's immunization records.

(6) A school-age provider must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within a school-age program, a school-age provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the school-age program premises for the duration of the outbreak of that vaccine-preventable disease.

(8) A school-age provider may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

NEW SECTION

WAC 110-301-0215 Medication. (1) **Managing medication.** A medication management policy must include, but is not limited to, safe medication storage, reasonable accommodations for giving medication, mandatory medication documentation, and forms pursuant to WAC 110-301-0500.

(2) **Medication training.** A school-age provider must not give medication to a child if the provider has not successfully completed:

(a) An orientation about the school-age program's medication policies and procedures;

(b) The department standardized training course in medication administration that includes a competency assessment pursuant to WAC 110-301-0106(7) or equivalent training; and

(c) If applicable, a training from a child's parent or guardian (or an appointed designee) for special medical procedures that are part of a child's individual care plan. This training must be documented and signed by the provider and the child's parent or guardian (or designee).

(3) **Medication administration.** A school-age provider must not give medication to any child without written and signed consent from that child's parent or guardian, must administer medication pursuant to directions on the medication label, and must use cleaned and sanitized medication measuring devices.

(a) A school-age provider must administer medication to children in care as follows:

(i) **Prescription medication.** Prescription medication must only be given to the child named on the prescription. Prescription medication must be prescribed by a health care professional with prescriptive authority for a specific child. Prescription medication must be accompanied with medication authorization form that has the medical need and the possible side effects of the medication. Prescription medication must be labeled with:

(A) A child's first and last name;

(B) The date the prescription was filled;

(C) The name and contact information of the prescribing health professional;

(D) The expiration date, dosage amount, and length of time to give the medication; and

(E) Instructions for administration and storage.

(ii) **Nonprescription oral medication.** Nonprescription (over-the-counter) oral medication brought to the school-age program by a parent or guardian must be in the original packaging.

(A) Nonprescription (over-the-counter) medication needs to be labeled with child's first and last name and accompanied with medication authorization form that has the expiration date, medical need, dosage amount, age, and length of time to give the medication. A school-age provider must follow the instructions on the label or the parent or guardian must provide a medical professional's note; and

(B) Nonprescription medication must only be given to the child named on the label provided by the parent or guardian.

(iii) **Other nonprescription medication.** A school-age provider must receive written authorization from a child's parent or guardian and health care provider with prescriptive authority prior to administering if the item does not include age, expiration date, dosage amount, and length of time to give the medication:

(A) Vitamins;

(B) Herbal supplements;

(C) Fluoride supplements; and

(D) Homeopathic or naturopathic medication.

(iv) **Nonmedical items.** A parent or guardian must annually authorize a school-age provider to administer the following nonmedical items:

(A) Sunscreen (aerosol sunscreen is prohibited); and

(B) Hand sanitizers or hand wipes with alcohol.

(v) A school-age provider may allow children to take their own medication (including nonmedical items) with parent or guardian authorization. A school-age staff member must observe and document that the child took the medication (excluding nonmedical items).

(A) School-age children with a valid prescription from a health care provider may be allowed to carry and self-administer asthma medication (inhaler), anaphylaxis medication (epinephrine auto-injector), or insulin (insulin pump) with signed authorization from the child's parent or guardian and health care provider. The authorization form must attest that the child has the skill level and knowledge necessary to use the medication and device as prescribed.

(B) The school-age program must have an individual care plan on-site for each child who self-carries asthma or anaphylaxis medication or insulin in the event of an asthma, anaphylaxis, or diabetes emergency.

(C) School-age program staff must intervene if they observe a child misusing asthma or anaphylaxis medication or insulin, or if a child possesses another child's medication.

(vi) A school-age provider must not give or permit another to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a qualified health care professional.

(b) Medication documentation (excluding nonmedical items). A school-age provider must keep a current written medication log that includes:

- (i) A child's first and last name;
 - (ii) The name of the medication that was given to the child;
 - (iii) The dose amount that was given to the child;
 - (iv) Notes about any side effects exhibited by the child;
 - (v) The date and time of each medication given or reasons that a particular medication was not given; and
 - (vi) The name and signature of the person that gave the medication.
- (c) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements. A school-age provider must comply with the following additional medication storage requirements:
- (i) Medication must be inaccessible to children except as provided for in this subsection (3)(a)(v)(A) of this section;
 - (ii) Controlled substances must be locked in a container or cabinet which is inaccessible to children;
 - (iii) Medication must be kept away from food in a separate, sealed container; and
 - (iv) External medication (designed to be applied to the outside of the body) must be stored to provide separation from internal medication (designed to be swallowed or injected) to prevent cross contamination.
- (d) A school-age provider must return a child's unused medication to that child's parent or guardian. If this is not possible, a provider must follow the FDA recommendations for medication disposal.
- (e) A school-age provider must not accept or give to a child homemade medication, such as sunscreen.

NEW SECTION

WAC 110-301-0220 Bathroom space. (1) For any program that does not operate on public or private school premises, a school-age provider must provide at least one indoor bathroom in the licensed space that has the following:

- (a) A school-age program must have one working flush toilet for every thirty children and staff. One-third of the toilets may be replaced by a urinal.
Toilets for staff may be located outside of licensed space on the premises.
- (b) A school-age program must have one working sink and faucet for every thirty children and staff.
 - (i) A faucet used for handwashing must provide warm running water.
 - (ii) Sinks and faucets must be located inside the bathroom or immediately outside the bathroom.
 - (iii) Sinks and faucets for staff may be outside of licensed space on the school-age premises.
 - (iv) Water controls on bathroom sinks must be accessible for the intended user.
 - (v) Bathroom sinks must not be used as a drinking source or for food preparation.
- (c) A means of providing privacy for children who demonstrate the need for privacy while toileting;
- (d) A toilet paper dispenser for each toilet that is appropriate for the height and size of children;
- (e) An operable window or exhaust fan; and
- (f) An easily cleanable floor.

- (i) Floors must have a washable surface; and
 - (ii) Be resistant to moisture.
- (2) Bathroom floors must be cleaned and disinfected daily, or more often as needed.
- (3) For any program that does not operate on public or private school premises and is equipped with a bathtub or shower, the provider must ensure that:
- (a) The floor covering around it is resistant to slipping; or
 - (b) It is equipped with a grab bar for use when entering and exiting.
- (4) Toilet plungers and toilet brushes must be inaccessible to children.

NEW SECTION

WAC 110-301-0225 Pets and animals. (1) A school-age provider may have pets or other animals on the school-age program premises.

(2) If a school-age provider keeps pets or animals on the school-age program premises:

- (a) The provider must have and follow a pet and animal policy that describes how children will access pets and be kept safe around them, tracks pet immunizations, and gives instructions for handling of pet waste; and
 - (b) Provide written notice to children's parents and guardians that the program has a pet.
- (3) Pets or other animals that have contact with children must:
- (a) Have all required vaccinations, pursuant to local and county regulations;
 - (b) Show no signs of illness, disease, worms, or parasites. If these symptoms appear, the pet or animal must be removed from the licensed space until appropriately treated for the condition; and
 - (c) Be nonaggressive. If the pet or animal exhibits aggressive behavior, the pet or animal must be removed from the licensed space.
- (4) A school-age provider must:
- (a) Make reptiles and amphibians that are not part of the school-age program or activities inaccessible to enrolled children due to the risk of salmonella or other diseases;
 - (b) Require that chickens, ducks, turkeys, doves, pigeons, or other birds are caged, cooped, or penned outside school-age program space when children are in care, at a distance that prevents children from having direct access to the enclosures or waste;
 - (c) Cage indoor birds;
 - (d) Prevent debris from spilling out of a container or cage used for pets and animals, if applicable;
 - (e) Not allow pets and animals in the kitchen during food preparation and ensure pets and animals do not come into contact with food, food preparation, or serving areas while food is served;
 - (f) Not use a sink that is used for cleaning food or utensils to clean pet supplies; and
 - (g) Store pet and animal medication separate from human medication.
- (5) A school-age provider must require:

(a) Animals and pets to go to the bathroom outdoors if the animals do not have a designated indoor litter area. The designated outdoor area must be inaccessible to children in care;

(b) Pet containers and cages to be cleaned and disinfected at least weekly, or more often if needed;

(c) Litter boxes to be kept inaccessible to children and cleaned daily;

(d) Animal waste and litter to be disposed of as soon as possible and the area disinfected;

(e) Indoor and outdoor play space to be cleaned and disinfected where animal or bird waste or vomit is present. This must be done as soon as possible or prior to access by children. Alternatively, animal waste must be inaccessible to children;

(f) Animal waste to be disposed of in a manner that prevents children from coming into contact with the waste material; and

(g) Animal waste, including fish tank water, must be disposed of in unlicensed space or toilets or custodial sinks. Toilets and custodial sink areas must be washed, rinsed, and disinfected after disposal.

NEW SECTION

WAC 110-301-0230 First aid—CPR certification and supplies. (1) School-age program directors, site directors, lead teachers, assistant teachers, and any other school-age provider counted in staff-to-child ratio, or who could potentially be counted in ratio, must have a current pediatric and adult first-aid and CPR certificate, pursuant to WAC 110-301-0106.

(2) A school-age provider must keep a complete first-aid kit in the licensed space, on any off-site trip, and in a vehicle used to transport children in care. A first-aid kit must:

(a) Be stored in a location that is easily accessible to staff;

(b) Be inaccessible to children;

(c) Be separate from food or chemicals;

(d) Be kept clean and sanitary;

(e) Be stored in a manner that prevents contamination; and

(f) Have sufficient supplies for the number of enrolled children and staff consistent with the school-age program's licensed capacity, or sufficient supplies for each room in the licensed space.

(3) A first-aid kit must include:

(a) Disposable nonporous protective nonlatex gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice packs;

(h) A disposable or mercury free thermometer that uses disposable sleeves, or is cleaned and sanitized after each use;

(i) A sling, or a large triangle bandage;

(j) Adhesive tape;

(k) A CPR barrier with a one-way valve or both an adult and pediatric CPR mask with a one-way valve;

(l) A current first-aid manual; and

(m) Hand sanitizer.

NEW SECTION

WAC 110-301-0235 Safe water sources. (1) Hot and cold running water must be directly plumbed to the school-age premises.

(2) A licensee for a program that does not operate on public or private school premises must use a Washington state certified water laboratory accredited by the department of ecology to test the program water supply for lead and copper.

(a) All fixtures used to obtain water for preparing food, drinking, or cooking must be tested prior to licensing approval and at least once every six years;

(b) Testing must be done pursuant to the current EPA standards; and

(c) A copy of the water testing results must be kept on the licensed premises or in the program's administrative office.

(3) If the test results are at or above the current EPA lead action level, a school-age provider must do the following within twenty-four hours:

(a) Consult with the DOH for technical assistance;

(b) Close the school-age program to prevent children from using or consuming water or supply bottled or packaged water to meet the requirements of this chapter;

(c) Notify all parents and guardians of enrolled children of the test results;

(d) Notify the department of the water test results and steps taken to protect the enrolled children; and

(e) Notify the department once lead and copper levels are below the current EPA action level.

(4) If a school-age program space receives water from a private well, the well must comply with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(a) Well water must be tested at least once every twelve months for *E. coli* bacteria and nitrates by a Washington state certified laboratory accredited by the department of ecology to analyze drinking water. To achieve desirable results the test must indicate:

(i) No presence of *E. coli* bacteria; and

(ii) The presence of less than ten parts per million (ppm) for nitrates. If test results for nitrates are greater than five but less than ten ppm, the water must be retested within six months.

(b) If well water tests positive for *E. coli* bacteria, or greater than ten ppm for nitrates, the provider must:

(i) Stop using the well water in the school-age program premises within twenty-four hours;

(ii) Inform the local health jurisdiction, the DOH, and the department of the positive test results; and

(iii) If directed to do so by the department, discontinue school-age program operations until repairs are made to the water system and water tests indicate desirable results pursuant to (a) of this subsection.

(c) If the department determines that school-age program operations may continue while an unsafe water system is

being repaired or while the provider installs treatment, the provider must:

(i) Provide an alternate source of water, approved by the department; and

(ii) Retest until water tests indicate desirable results pursuant to (a) of this subsection.

(5) A school-age provider must notify the department within four hours of when the water connection to a school-age program space is interrupted for more than one hour or the water source becomes contaminated.

(a) The department may require the school-age provider to temporarily close until the water connection is restored or the water source is no longer contaminated; or

(b) The school-age provider must obtain an alternative source of potable water such as bottled or packaged water. The amount of the alternative source of potable water must be sufficient to ensure compliance with the requirements of this chapter for safe drinking water, handwashing, sanitizing, dishwashing, and cooking.

NEW SECTION

WAC 110-301-0236 Safe drinking water. (1) A school-age program's drinking water must:

(a) Be offered multiple times throughout the day and be readily available to children at all times;

(b) Be offered in outdoor play areas and in each classroom;

(c) Be served in a manner that prevents contamination;

(d) Not be obtained from a handwashing sink used with toileting; and

(e) Be served fresh daily or more often as needed.

(2) For any program that does not operate on public or private school premises, drinking fountains at a school-age program must:

(a) Not be attached to handwashing sinks or disabled;

(b) Not be located in bathrooms;

(c) Not be a "bubble type" fountain (the water flow must form an arch);

(d) Be cleaned and sanitized daily or more often as needed; and

(e) Be located above water impervious flooring.

SECTION IX

CLEANING AND SANITATION

NEW SECTION

WAC 110-301-0240 Clean and healthy environment.

(1) School-age program premises and program equipment must be clean and sanitary.

(2) For any program that does not operate on public or private school premises, hard surfaces in a school-age program including, but not limited to, floors (excluding carpet), walls, counters, bookshelves, and tables must be smooth and easily cleanable.

(a) A cleanable surface must be:

(i) Designed to be cleaned frequently and made of sealed wood, linoleum, tile, plastic, or other solid surface materials;

(ii) Moisture resistant; and

(iii) Free of chips, cracks, and tears.

(b) A school-age provider must have at least twenty-four inches of moisture resistant and cleanable material or barrier around sinks, drinking fountains, and toilets.

(3) A school-age provider or their designee must clean all surfaces before sanitizing or disinfecting.

(a) Surfaces must be cleaned with a soap and water solution or spray cleaner and rinsed. If using a spray cleaner, directions on the label must be followed.

(b) Aerosol sprays and air fresheners must not be used during school-age program hours.

(c) If a bleach solution is used for sanitizing or disinfecting, a school-age provider or their designee must use one that is fragrance-free and follow the DOH's current guidelines for mixing bleach solutions for child care and similar environments.

(d) If a school-age provider or their designee uses a product other than bleach, including wipes, to sanitize or disinfect, the product must be:

(i) Approved by the department prior to use;

(ii) Used by trained staff only;

(iii) Registered with the EPA and have safety data sheets (SDSs) available;

(iv) Used in accordance with the manufacturer's label, which must include:

(A) Directions for use;

(B) A description of the safety precautions, procedures, and equipment that must be used for mixing the substitute product concentration, if applicable;

(C) A description of the safety precautions and procedures if the substitute product contacts skin or is inhaled, if applicable; and

(D) A description of the procedures and safety precautions for rinsing cleaned areas and cleaning equipment, if applicable.

(v) Labeled as safe to use on food surfaces if the product will be used to sanitize:

(A) Food contact surfaces; or

(B) Items such as eating utensils or toys used by the child or put into the child's mouth; and

(vi) Fragrance-free.

NEW SECTION

WAC 110-301-0241 Cleaning schedules. (1) A school-age provider must develop and follow a cleaning schedule that includes:

(a) Food preparation areas, tables and chairs, and food service counters, which must be cleaned and sanitized before and after each meal and snack with single use paper towels or one-time use wiping cloths;

(b) Eating utensils, drinking equipment, and dishes, which must be cleaned and sanitized after each use;

(c) Furniture and equipment, which must be cleaned monthly or more often as needed;

(d) Toys, which must be cleaned and sanitized as follows:

(i) Weekly or more often as needed; and

(ii) When a toy comes into contact with a child's mouth or bodily fluids it must be removed from use until it can be cleaned and sanitized prior to reuse;

(e) For any program that does not operate on public or private school premises, appliances used to prepare food, which must be cleaned after each use and sanitized daily or more often as needed;

(f) For any program that does not operate on public or private school premises, refrigerators, which must be cleaned and sanitized monthly or more often as needed; and

(g) For any program that does not operate on public or private school premises, freezers, which must be cleaned and sanitized quarterly or more often as needed.

(2) Machine washable clothes provided by the school-age program must be laundered as needed.

(3) Sinks that are not used for handwashing after toileting or food preparation must be cleaned and sanitized daily or more often as needed.

(4) Toileting areas including, but not limited to, toilets, counters, sinks, and floors must be cleaned and disinfected daily or more often as needed.

(5) Garbage cans and receptacles must be emptied on a daily basis and cleaned and disinfected as needed.

(6) Floors must be cleaned by either sweeping or vacuuming at least once per day or more often as needed. Moisture resistant flooring must be cleaned and sanitized at least once per day or more often as needed. Bathroom flooring must be cleaned, pursuant to WAC 110-301-0220.

(7) For any school-age program that does not operate on public or private school premises, large area rugs or installed carpet must be cleaned at least once every six months, or when visible dirt or stains are present, using a carpet shampoo machine, steam cleaner, or other method that minimizes the exposure of children in care to pathogens and allergens.

A school-age provider must not use dry shampoos or dry chemical sanitizers or disinfectants, unless approved by the department.

(8) Small area rugs must be shaken outdoors or vacuumed daily, and laundered as needed.

(9) Carpets or area rugs soiled with bodily fluids must be cleaned and disinfected with high heat or an EPA registered product. A school-age provider must limit exposure to blood and bodily fluids during cleanup.

(10) Children must not:

(a) Be present when carpets are cleaned or vacuumed unless the provider is spot vacuuming, the vacuum has a HEPA filter, and children are not within the immediate area; or

(b) Use or play on or near carpet areas until dry.

NEW SECTION

WAC 110-301-0245 Laundry and equipment. (1) Laundry and laundry equipment at a school-age program must be inaccessible to children and separated from areas where food is prepared to prevent cross contamination.

(2) Dirty or soiled laundry must be:

(a) Kept separate from clean laundry;

(b) Cleaned with laundry soap or detergent;

(c) Rinsed; and

(d) Sanitized:

(i) With bleach or a similar sanitizer registered by the EPA; or

(ii) By using a "sanitize" setting on a washing machine or dryer that reaches at least 140 degrees Fahrenheit.

(3) A dryer must be vented to the outside of the building or following the manufacturer's specifications.

NEW SECTION

WAC 110-301-0250 Private septic systems. (1) For any program that does not operate on public or private school premises, and is served by a private septic system, the septic system must be designed, constructed, and maintained in accordance with state and local health jurisdiction requirements.

(a) A private septic system must be inspected by a septic system maintenance service provider approved by the local health jurisdiction and monitored on a routine basis. Any deficiencies noted in an inspection report must be corrected with the necessary permits and inspections.

(b) The most recent private septic system pumping and inspection records must be kept on the licensed premises or in the program's administrative office.

(c) If a school-age provider does not have the documentation described in (b) of this subsection, the provider must obtain from the state, local health jurisdiction, or a department approved private company such documentation within six months of the date this section becomes effective.

(d) A school-age provider must notify the department and local health jurisdiction if there is a problem, concern, or malfunction with a private septic system.

(e) If a private septic system problem, concern, or malfunction interferes with the proper care of children and an approved alternative is not available, the state, local health jurisdiction, or department may require a school-age program to close until the system is inspected, repaired, and approved by the local health jurisdiction.

(2) For any program that does not operate on public or private school premises, pursuant to WAC 110-301-0146(2), playground design must not:

(a) Interfere with access to or the operation of a private septic system, including a private septic system's drain field and tanks; or

(b) Be located or placed in a way that impacts the private septic system's drain field or tanks as determined by local officials.

NEW SECTION

WAC 110-301-0255 Pest control. (1) A school-age provider must have a pest control policy that emphasizes prevention and natural, nonchemical, low-toxicity methods where pesticides or herbicides are used as a last resort (i.e., integrated pest management). In areas where local pest control policies are already in place, such as a school district, a school-age program may adopt or amend such policies when developing their own policy.

(2) For any school-age program that does not operate on public or private school premises, a provider must take appropriate steps to safely prevent or control pests that pose a

risk to the health and safety of adults and children in and around the licensed space. Pest control steps must include:

(a) **Prevention.** A provider must take steps to prevent attracting pests including, but not limited to, identifying and removing food and water sources that attract pests.

(b) **Inspection.** Indoor and outdoor areas in and around the licensed space must be inspected for evidence of pests. A provider must document the date and location if evidence is found.

(c) **Identification.** Pests found in the licensed space must be identified and documented so the pest may be properly removed or exterminated.

(d) **Management.** A provider must document steps taken to remove or exterminate pests found in the licensed space.

(e) **Notification.** If pesticides are used, the school-age provider must notify the parents or guardians of enrolled children what pesticide will be applied and where it will be applied no less than forty-eight hours before application, unless in cases of emergency (such as a wasp nest).

(f) **Application.** Pesticide must be applied to school-age program space when children are not present. When pesticide is applied, the school-age provider must comply with chapter 17.21 RCW.

NEW SECTION

WAC 110-301-0260 Storage of hazardous and maintenance supplies. (1) A school-age provider must ensure all poisonous or dangerous substances including, but not limited to, fuels, solvents, oils, laundry, dishwasher, other detergents, sanitizing products, and disinfectants are stored:

(a) In a location that is inaccessible to children;

(b) Separate and apart from food preparation areas, food items, and food supplies;

(c) In their original containers or clearly labeled with the name of the product and the word "poison" or "toxic" if not in the original container; and

(d) In compliance with the manufacturer's directions (including, not storing products near heat sources).

(2) Saws, power tools, lawn mowers, and other maintenance and janitorial equipment must be inaccessible to children.

(3) Storage areas and storage rooms must be inaccessible to children.

(4) For any program that does not operate on public or private school premises, storage areas and storage rooms must:

(a) Have moisture resistant and easily cleanable floors;

(b) Have a designated maintenance or janitorial utility sink, or another method to dispose of wastewater (kitchen sinks must not be used for disposal of wastewater); and

(c) Be kept clean and sanitary.

(5) For any program that does not operate on public or private school premises, storage areas and rooms that contain chemicals, utility sinks, or wet mops must be ventilated to the outdoors with an exterior window or mechanical ventilation to prevent the buildup of odors, fumes, or other hazards.

SECTION X

LEARNING SUPPORTS

NEW SECTION

WAC 110-301-0300 Individual care plan. (1) A school-age provider must develop an individual care plan for each child with special needs. Plans and documentation required under this section must:

(a) Meet the requirements of this section;

(b) Be available for department review;

(c) Have written permission from a child's parent or guardian stating that a visiting health professional may provide services to the child at the school-age program, if applicable;

(d) Have verification that school-age program staff involved with a particular child has been trained on implementing the individual care plan for that child, if applicable;

(e) Be updated annually or when there is a change in the child's special needs; and

(f) Be kept in the child's file.

(2) The individual care plan must be signed by the parent or guardian and may be developed using a department provided template.

(a) The individual care plan must contain:

(i) The child's diagnosis, if known;

(ii) Contact information for the primary health care provider or other relevant specialist;

(iii) A list of medications to be administered at scheduled times, or during an emergency along with descriptions of symptoms that would trigger emergency medication;

(iv) Directions on how to administer medication;

(v) Allergies;

(vi) Food allergy and dietary needs, pursuant to WAC 110-301-0186;

(vii) Activity, behavioral, or environmental modifications for the child;

(viii) Known symptoms and triggers;

(ix) Emergency response plans and what procedures to perform; and

(x) Suggested special skills training, and education for school-age program staff, including specific pediatric first aid and CPR for special health care needs.

(b) A school-age provider must have supporting documentation of the child's special needs provided by the child's licensed or certified:

(i) Physician or physician's assistant;

(ii) Mental health professional;

(iii) Education professional;

(iv) Social worker with a bachelor's degree or higher with a specialization in the individual child's needs; or

(v) Registered nurse or advanced registered nurse practitioner.

(3) A school-age provider's written plan and documentation for accommodations must be informed by any existing:

(a) Individual education plan (IEP);

(b) Individual health plan (IHP);

(c) 504 Plan; or

(d) Individualized family service plan (IFSP).

NEW SECTION

WAC 110-301-0305 Program philosophy and planning. (1) A school-age provider must have a written program philosophy that describes the program of planned daily activities related to child development.

(2) The program philosophy must address all age groups being served and may include:

- (a) How children develop emotionally, socially, cognitively, and physically;
 - (b) What school-age programming looks like or areas of focus within the program;
 - (c) How the provider will meet cultural, dual language learner, and special needs of children attending the school-age program;
 - (d) How to guide learning and social interactions; and
 - (e) The importance of play to a child's learning process.
- (3) Staff must be trained on the program philosophy.
- (4) Program staff responsible for program and activity planning must be given regularly scheduled time to plan and develop the program and activities.

NEW SECTION

WAC 110-301-0310 Concept development and feedback quality. (1) A school-age provider must facilitate activities to support child learning and understanding.

(2) A school-age provider may facilitate child learning and understanding through a variety of techniques such as:

- (a) Using a variety of teaching strategies (different techniques, curricula, or styles) and materials to address different learning styles, abilities, developmental levels, and temperament;
- (b) Helping children enter into and sustain play;
- (c) Encouraging children to participate by asking questions and providing guidance;
- (d) Providing opportunities for children's creativity;
- (e) Linking concepts and activities to one another and to the children's lives and interests;
- (f) Noticing and responding to teachable moments;
- (g) Clarifying and expanding children's understanding;
- (h) Describing and discussing children's learning processes;
- (i) Encouraging children's efforts and persistence;
- (j) Showing tolerance for mistakes;
- (k) Using diverse vocabulary;
- (l) Leading discussions and activities;
- (m) Providing materials during the day, including daily routines such as meals and transitions, to encourage communication in English and children's home languages when possible; and
- (n) Use scaffolding methods to gradually move children toward stronger understanding and greater independence in the learning process.

NEW SECTION

WAC 110-301-0315 Communication modeling and reasoning. (1) A school-age provider must be aware of and responsive to children's developmental, linguistic, cultural, and learning needs.

(2) A school-age provider must be aware of and responsive to children's needs by engaging in activities such as:

- (a) Asking developmentally appropriate questions for the age group and allow children to answer without interruption from the provider;
- (b) Circulating among the children during free choice activities and talking with children about what they are doing;
- (c) A school-age provider must use language to develop and encourage children's reasoning skills by using techniques such as:
 - (i) Talking about logical relationships or concepts during the day including, but not limited to, the daily schedule, the differences and similarities between objects, or people in the program;
 - (ii) Introducing concepts using guiding questions that encourage children to figure out cause and effect relationships;
 - (iii) Providing opportunities for reading and writing activities; and
 - (iv) Asking open-ended questions to help children improve skills and acquire knowledge.
- (d) A school-age provider working with non-English speaking children must encourage language development and acquisition by using techniques such as:
 - (i) Using words in various languages to talk about the program routines;
 - (ii) Reading books out loud or using audio books; and
 - (iii) Playing games in different languages.

NEW SECTION

WAC 110-301-0320 Facilitating child interests, learning, perspective, and productivity. (1) A school-age provider must work to maximize children's interests, engagement with developmentally and culturally responsive activities, and ability to learn from play.

(2) A school-age provider must maximize children's interests, engagement, and abilities by using techniques such as:

- (a) Maximizing learning time with learning materials and products, limiting disruptions during activities, and offering additional choices when activities are completed;
 - (b) Giving clear instructions and directions; and
 - (c) Making opportunities for children to learn during transitions by clearly communicating expectations and keeping transitions to a duration that is developmentally appropriate.
- (3) A school-age provider must offer developmentally and culturally responsive activities that offer a range of auditory, visual, and movement opportunities by using techniques such as:
- (a) Encourage child engagement;
 - (b) Promote each child's self-help and social skills;
 - (c) Organized around child interests and ideas;
 - (d) Allow choice, exploration, and experimentation;
 - (e) Promote active and play-based learning experiences;
 - (f) Allow children freedom to move during activities;
 - (g) Ensure child expression;
 - (h) Utilize interesting and creative materials;

- (i) Offer hands-on opportunities for children;
- (j) Provide opportunity for children to direct their own learning and problem solving rather than teacher-directed activities; and
- (k) Orient and guide children toward learning objectives.

SECTION XI

EMOTIONAL SUPPORT AND CLASSROOM ORGANIZATION

NEW SECTION

WAC 110-301-0325 Creating a climate for healthy child development. (1) When communicating or interacting with children, a school-age provider must maintain a climate for healthy, culturally responsive child development such as:

- (a) Using a calm and respectful tone of voice;
 - (b) Using positive language to explain what children can do and give descriptive feedback;
 - (c) Having relaxed conversations with children by listening and responding to what they say. Adult conversations must not dominate the overall sound of the group;
 - (d) Greeting children upon arrival and departure at the school-age program;
 - (e) Using facial expressions such as smiling, laughing, and enthusiasm to match a child's mood;
 - (f) Using physical proximity in a culturally responsive way to speak to children at their eye level and with warm physical contact including, but not limited to, gently touching a hand or shoulder, and sitting next to a child while communicating;
 - (g) Validating children's feelings and show tolerance for mistakes;
 - (h) Being responsive and listening to children's requests and questions, encouraging children to share experiences, ideas, and feelings;
 - (i) Observing children in order to learn about their families, cultures, individual interests, ideas, questions, and theories;
 - (j) Modeling and teaching emotional skills such as recognizing feelings, expressing them appropriately, accepting others' feelings, and controlling impulses to act out feelings;
 - (k) Representing the diversity found in the school-age program and society, including gender, age, language, and abilities, while being respectful of cultural traditions, values, religion, and beliefs of enrolled families; and
 - (l) Interacting with staff and other adults in a positive, respectful manner.
- (2) A school-age provider must encourage positive interactions between and among children with techniques such as:
- (a) Giving children several chances a day to interact with each other while playing or completing routine tasks;
 - (b) Modeling social skills;
 - (c) Encouraging socially isolated children to find friends;
 - (d) Helping children understand feelings of others; and
 - (e) Including children with special needs to play with others.

NEW SECTION

WAC 110-301-0330 Positive relationships and child guidance. (1) A school-age provider must work to maintain positive relationships with children by using consistent guidance techniques to help children learn. Guidance techniques must adapt a school-age program's environment, routines, and activities to a child's strengths, age and developmental level, abilities, culture, community, and relate to the child's behavior.

- (2) Guidance techniques may include:
- (a) Coaching behavior;
 - (b) Modeling and teaching social skills such as taking turns, cooperation, waiting, self-control, respect for the rights of others, treating others kindly, and conflict resolution;
 - (c) Offering choices;
 - (d) Distracting;
 - (e) Redirecting or helping a child change their focus to something appropriate to achieve their goal;
 - (f) Planning ahead to prevent problems and letting children know what events will happen next;
 - (g) Explaining consistent, clear rules and involving children in defining simple, clear limits;
 - (h) Involving children in solving problems; and
 - (i) Explaining to children the natural and logical consequences related to the child's behavior in a reasonable and developmentally appropriate manner.

NEW SECTION

WAC 110-301-0331 Prohibited behavior, discipline, and physical removal of children. (1) A school-age provider must take steps to prevent and, once aware of, must not tolerate:

- (a) Profanity, obscene language, "put downs," or cultural or racial slurs;
- (b) Angry or hostile interactions;
- (c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;
- (d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;
- (e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;
- (f) Prevent a child from or punish a child for exercising religious rights; or
- (g) Anyone to:
 - (i) Restrict a child's breathing;
 - (ii) Bind or restrict a child's movement unless permitted under WAC 110-301-0335;
 - (iii) Tape a child's nose, mouth, or other body part;
 - (iv) Deprive a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;
 - (v) Force a child to ingest something as punishment such as hot sauce or soap;

(vi) Interfere with a child's ability to take care of their own hygiene and toileting needs;

(vii) Withhold hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

(viii) Expose a child to extreme temperatures as punishment;

(ix) Demand excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

(x) Place the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

(xi) Use a confining space or equipment to punish a child or restrict movement.

(2) A school-age provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically aggressive.

(3) A school-age provider may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, program director, site director, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, a school-age provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If a school-age provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, program director, site director, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child.

NEW SECTION

WAC 110-301-0335 Physical restraint. (1) A school-age provider must have written physical restraint protocols pursuant to WAC 110-301-0490 and implement such protocols only when appropriate and after complying with all requirements of WAC 110-301-0330 and 110-301-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation;

(c) Developmentally appropriate; and

(d) Only performed by a school-age provider trained in the program's child restraint policy, pursuant to WAC 110-301-0490.

(3) A school-age provider must not use bonds, ties, blankets, straps, or heavy weights (including an adult sitting on a child) to physically restrain children.

(4) Licensees, program directors, site directors, and lead teachers or trained staff must remove themselves from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another school-age provider is present. A school-age provider must intervene when the provider observes another staff member or volunteer using inappropriate restraint techniques.

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint, pursuant to WAC 110-301-0475 (2)(f);

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(c) Document the incident in the child's file, including the date, time, school-age program staff involved, duration, and what happened before, during, and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, and the parents or guardians, to address underlying issues and reduce need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

NEW SECTION

WAC 110-301-0340 Expulsion. (1) To promote consistent care and maximize opportunities for child development and learning, a school-age provider must develop and follow expulsion policies and practices, pursuant to WAC 110-301-0486.

(2) A school-age provider may expel a child only if the:

(a) Child exhibits behavior that presents a serious safety concern for that child or others; and

(b) Program is not able to reduce or eliminate the safety concern through reasonable modifications.

(3) If a child is expelled, a school-age provider must:

(a) Review the program's expulsion policy with the parent or guardian of the child;

(b) Provide a record to the parent or guardian about the expulsion and the steps that were taken to avoid expulsion. The record must include the date, time, school-age program staff involved, and details of each incident that led to expulsion; and

(c) Provide information to the parent or guardian of the child that includes, but is not limited to, community-based resources that may benefit the child.

(4) The school-age provider must report to the department when children are expelled. The information must include:

- (a) Child demographic data including, but not limited to, the age, race, ethnicity, and gender of the child;
- (b) The reason the child was expelled; and
- (c) The resources that were provided to the parent or guardian of the child.

SECTION XII

PROGRAM STRUCTURE AND ORGANIZATION

NEW SECTION

WAC 110-301-0345 Supervising children. (1) A school-age provider must only allow the following persons to have unsupervised access to a child in care:

- (a) That child's own parent or guardian;
- (b) Licensees or school-age program staff authorized by the department in chapter 110-06 WAC;
- (c) A government representative including an emergency responder who has specific and verifiable authority for access, supported by documentation; and
- (d) A person authorized in writing or over the phone by that child's parent or guardian such as a family member, family friend, or the child's therapist or health care provider.

(2) A school-age provider must meet capacity, group size, and staff-to-child ratios while children are in care. This includes, but is not limited to:

- (a) Indoor and outdoor play activities;
- (b) Off-site activities;
- (c) During transportation;
- (d) Meal times;
- (e) Evening and overnight care, if applicable; and
- (f) When children are on different floor levels of the school-age program.

(3) A school-age provider must supervise children in care by:

- (a) Scanning the environment looking and listening for both verbal and nonverbal cues to anticipate problems and plan accordingly;
- (b) Visibly checking children on many occasions with little time in between;
- (c) Positioning themselves to supervise all areas accessible to children;
- (d) Attending to children and being aware of what children are doing at all times;
- (e) Being available and able to promptly assist or redirect a child as necessary; and
- (f) Considering the following when deciding whether increased supervision is needed:
 - (i) Ages of children;
 - (ii) Individual differences and abilities of children;
 - (iii) Layout of the indoor and outdoor licensed space and play area;
 - (iv) The risk associated with the activities children are engaged in; and
 - (v) Any nearby hazards including those in the licensed or unlicensed space.

(4) A school-age program staff member may undertake other activities for a temporary time period when not required to be providing active supervision required under subsection

(5)(c) of this section. Such activities include, but are not limited to, cleaning up after an activity or preparing items for a new activity. This school-age staff member must remain in visual or auditory range, and be available and able to respond if needed.

(5) A school-age provider must:

- (a) Not use devices such as audio monitors, video monitors, or mirrors in place of supervision;
- (b) Be able to hear when doors in the immediate area are opened to prevent children from leaving unsupervised;
- (c) Actively supervise children when the children:
 - (i) Interact with pets or animals;
 - (ii) Engage in water or sand play;
 - (iii) Play in an area in close proximity to a body of water;
 - (iv) Use a safe route to access an outdoor play area not immediately adjacent to the school-age program;
 - (v) Engage in planned activities in the kitchen;
 - (vi) Ride on public transportation;
 - (vii) Engage in outdoor play; and
 - (viii) During field trips.

NEW SECTION

WAC 110-301-0350 Supervising children during water activities. (1) During water activities, a school-age provider must meet all supervision requirements of this section and WAC 110-301-0345.

(2) During water activities, a school-age provider must hold or have continuous touch of children with special needs as required.

(3) A school-age provider must have written permission for water activities from each child's parent or guardian.

(4) For water activities on or off the school-age program premises, where the water is more than twenty-four inches deep, a school-age provider must ensure:

- (a) A certified lifeguard is present and on duty; and
- (b) At least one additional staff member than would otherwise be required is present to help actively supervise the children.

(5) A school-age provider must have life-saving equipment readily accessible during water activities if a pool is six feet or more in any direction and two feet or more in depth. Life-saving equipment may include a ring buoy and rope, a rescue tube, or a throwing line and a shepherd's hook that will not conduct electricity.

(6) If a school-age provider takes children off-site to an area with an accessible body of water more than four inches deep (for example, a park with a lake or stream) but children are not engaging in a water activity, there must be:

- (a) At least one more staff person than required in the staff-to-child ratio; and
- (b) At least one attending staff person must be able to swim.

NEW SECTION

WAC 110-301-0354 Indoor school-age program space capacity. (1) To define capacity, licensed indoor school-age program space must have a minimum of thirty-five square feet per child in attendance and further comply with the requirements of this chapter.

(a) Floor space under tables, desks, chairs, and other equipment used as part of children's activities must be included in the overall capacity.

(b) Office or kitchen space that is inaccessible to children and not intended for their use must not be included in the overall capacity.

(2) The following indoor space must not be counted in the overall capacity:

(a) Unlicensed space;

(b) Hallway space that is used for emergency evacuation or is not approved to be used for program activities;

(c) Bathrooms and handwashing sinks;

(d) Laundry areas;

(e) Closets;

(f) Stairways; and

(g) Floor space occupied by shelves, built-in cabinets, file cabinets, desks, or other office equipment not intended to be accessible to children.

(3) A large, licensed indoor gross motor activity space may be used to supplement the requirements of outdoor program space, pursuant to WAC 110-301-0145, if:

(a) The space provides seventy-five square feet per child for the maximum number of children listed on the license or the provider rotates groups of children; and

(b) The space is safe and appropriate for activities otherwise performed in an outdoor play space.

(4) A program may request additional space, such as a library or computer lab, to be licensed without counting in that program's capacity.

NEW SECTION

WAC 110-301-0356 School-age capacity, ratio, and group size. (1) The department issues initial or nonexpiring school-age program licenses. The department will not issue a school-age license to care for more children than permitted by the rules in this chapter. The department may issue a license to care for fewer than the maximum allowable enrolled children. For each school-age program, licenses state the:

(a) Maximum number of children that may be in care at any one time (total capacity);

(b) Licensed capacity for each space within the school-age program licensed for use by children; and

(c) Age range of children allowed in care.

(2) The department determines capacity for a school-age program after considering:

(a) Square footage of the school-age program;

(b) A provider's education and ongoing training;

(c) The age range of children requested or approved by the department;

(d) The amount of developmentally appropriate equipment, materials, and toys a school-age program can provide children to use;

(e) A provider's licensing history with the department; and

(f) The number of qualified staff available to meet staff-to-child ratios.

(3) A licensee must not exceed the total capacity or age range stated on the school-age program license at any time

except as provided in this section. All children on the premises, signed in to the school-age program, on an off-site trip from the school-age program, or being transported by the school-age program staff are counted in capacity including the children of staff.

(a) A licensee must receive department approval to care for a child with special needs, pursuant to WAC 110-301-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 110-301-0300 counts toward capacity but does not count in the staff-to-child ratio.

(c) A child who turns thirteen years old permitted by chapter 110-15 WAC must be counted in both capacity and staff-to-child ratio.

(4) A licensee must provide qualified staff to fulfill staffing requirements, staff-to-child ratios, and group size during operating hours, including off-site activities or when transporting children in care.

(5) In each classroom or well-defined space, the maximum group size of thirty children and ratio of 1:15 staff members to children, including children related to staff or the licensee, must be met.

Group size may exceed thirty children only for special events such as assemblies or performances.

(6) A licensee must conduct activities for each group of children in a specific room or other defined space within a larger area.

(7) A licensee must provide additional staff as described in WAC 110-301-0350 when children are participating in water activities or activities near water.

(8) When only one staff is required to care for the only group of children on-site for up to an hour at the beginning or end of the day, the licensee must ensure:

(a) The staff member provides an appropriate level of supervision at all times to the children in care;

(b) The staff member is free of all other duties while providing care to children; and

(c) A second individual with a cleared background check is on-site and readily available to respond if needed, or the department approves an alternate plan.

NEW SECTION

WAC 110-301-0360 Program and daily schedule. (1) A school-age provider must have an established program and daily schedule that is familiar to children.

(2) A schedule must be designed to meet enrolled children's developmental, cultural, and special needs. The daily schedule must:

(a) Offer a variety of activities to meet children's needs, pursuant to WAC 110-301-0150;

(b) Meet the following daily morning or afternoon active outdoor play time requirements:

(i) Ten minutes for each one hour of programming for children; and

(ii) A program that operates more than six hours a day must provide ninety minutes of active play for children

(thirty minutes of which may be moderate to vigorous indoor activities).

- (c) Include scheduled and consistent times for meal service;
- (d) Include routine transportation times, if applicable; and
- (e) Include evening and overnight care, if applicable.

SECTION XIII

LICENSING PROCESS

NEW SECTION

WAC 110-301-0400 Application materials. (1) After completing a department orientation, an applicant must submit a complete license application packet, pursuant to chapter 43.216 RCW. A complete license application packet includes:

- (a) Professional and background information about the applicant:
 - (i) A completed department application form for a school-age program;
 - (ii) A copy of the applicant's orientation certificate (orientation must be taken within twelve months of license application);
 - (iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;
 - (iv) Liability insurance;
 - (v) Certificate of incorporation, partnership agreement, or similar business organization document, if applicable;
 - (vi) The license fee;
 - (vii) A copy of current government issued photo identification;
 - (viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;
 - (ix) Employer identification number (EIN) if applicant plans to hire staff; and
 - (x) Employment and education verification. For example: Diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.
- (b) Information about the facility to be licensed:
 - (i) A floor plan, including use of proposed licensed and unlicensed space, with identified emergency exits and emergency exit pathways;
 - (ii) Certificate of occupancy for any program that is not located on public or private school premises;
 - (iii) For any program that is not located on public or private school premises, documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;
 - (iv) *E. coli* bacteria and nitrate testing results for well water that is no more than twelve months old, if applicable;
 - (v) A lead or arsenic evaluation agreement for any program that is not located on public or private school premises and is located in the Tacoma smelter plume (counties of King, Pierce, and Thurston); and

(vi) For any program that is not located on public or private school premises, lead and copper test results for drinking water.

- (c) Program days and hours of operation, including closure dates and holiday observances; and
- (d) Information about school-age program staff:
 - (i) List of applicant, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC; and
 - (ii) Resume for applicant, program director, and site director, if applicable.

(2) An applicant must include the following policy documents with the application, which will be reviewed by the department and returned to the applicant:

- (a) Parent and program policies;
 - (b) Staff policies;
 - (c) An emergency preparedness plan; and
 - (d) Health policies.
- (3) An applicant must submit the completed application packet at least ninety calendar days prior to the planned opening of the school-age program. The department will inspect the school-age program space and approve all application submissions required in this chapter prior to issuing a license.
- (a) The ninety calendar days begins when the department receives a complete application packet.
 - (b) Incomplete application packets will be returned to the applicant for completion.
 - (c) An applicant who is unable to successfully complete the application and licensing process within ninety days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ninety days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.
 - (d) An applicant who is unable to meet the application requirements and has not withdrawn their application will be denied a license, pursuant to RCW 43.216.325.

NEW SECTION

WAC 110-301-0401 License fees. (1) The rules establishing licensing fees within this chapter are adopted pursuant to RCW 43.216.300.

- (2) The license fee is nonrefundable and is due:
 - (a) With the applicant's initial license application packet; and
 - (b) Annually thereafter, thirty calendar days prior to the anniversary date of the license.
- (3) Payment must be in the form of a check, credit or debit card, or money order.
- (4) The annual licensing fee for a school-age program is one hundred twenty-five dollars for the first twelve children plus twelve dollars for each additional child, or as otherwise set by the legislature.

NEW SECTION

WAC 110-301-0402 Changing school-age program space or location. (1) A school-age provider must notify the department prior to making a change to school-age program space or unlicensed space that may impact the health, safety,

or welfare of enrolled children. Such changes include, but are not limited to:

- (a)(i) Moving the school-age program to a new physical address;
 - (ii) A school-age provider must submit a complete application, pursuant to WAC 110-301-0400, as soon as the provider plans to move and has an identified new physical address, but not more than ninety calendar days before moving;
 - (b) Moving the school-age program to a different space or building on the same premises;
 - (c) A school-age program altering a planned use of space;
 - (d) Modifying facilities in a way that requires a permit under the Washington state building code or by a local jurisdiction, such as remodeling or renovating school-age program space; and
 - (e) For any program that does not operate on public or private school premises, changing outdoor play areas, such as adding or altering the type of surface or altering stationary climbing or play equipment.
- (2) A school-age provider must submit to the department the new proposed floor plan prior to making changes under subsection (1)(a) through (d) of this section.
- (3) A school-age provider planning a change under subsection (1)(a) and (b) of this section, must not move a school-age program until the department has first inspected the new location and determines it meets the requirements in this chapter and RCW 43.216.305.

NEW SECTION

WAC 110-301-0410 License and program location.

- (1) An applicant for a license under this chapter must be at least eighteen years old.
- (2) A licensee refers to the individual or organization:
- (a) Whose name appears on a license issued by the department;
 - (b) Who is responsible for complying with the standards in this chapter, chapter 43.216 RCW, chapter 110-06 WAC, and other applicable laws and rules; and
 - (c) Who is responsible for training school-age program staff on the foundational quality standards in this chapter.
- (3) School-age program space must be located:
- (a) On a site free from known environmental hazards;
 - (b) In an area where nonemergency services and utilities can serve the school-age program space; and
 - (c) In an area served by emergency fire, medical, and police during the hours the school-age program provides care to children.
- (4) For any program that does not operate on public or private school premises, a school-age provider must prevent enrolled children from being exposed to the following known hazards within and around the licensed premises:
- (a) Lead based paint;
 - (b) Plumbing and fixtures containing lead or lead solders;
 - (c) Asbestos;
 - (d) Arsenic, lead, or copper in the soil or drinking water;
 - (e) Toxic mold; and

(f) Other identified toxins or hazards.

(5) A school-age provider must place address numbers or signage on the outside of the building that contains the school-age program space. The numbers or signage must be legible and plainly visible from the street or road serving the premises.

(6) A license applicant planning to open a school-age program in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) and not on public or private school premises must contact the state department of ecology (DOE), and complete and sign an access agreement with DOE to evaluate the applicant's property for possible arsenic and lead soil contamination.

NEW SECTION

WAC 110-301-0411 License transfer. (1) Pursuant to RCW 43.216.305(1) and subject to this chapter, a full license issued under chapter 43.216 RCW may be transferred to a new licensee in the event of a transfer of ownership of a child care operation. A current licensee or applicant must apply to transfer a license using forms and methods determined by the department.

(2) A full license will remain valid and may be transferred to a new licensee if the:

(a) New licensee meets the requirements in RCW 43.216.305(2); and

(b) Department determines before the license transfer the new licensee's child care operation is substantially similar to or an improvement of the originally licensed child care operation.

(3) To determine whether the new licensee's child care operation is substantially similar to or an improvement of the original child care operation, the department must assess the following factors of the new child care operation:

(a) The physical environment and all anticipated changes or updates;

(b) The qualifications and number of all retained and newly hired staff members;

(c) The program operations and all anticipated changes or updates;

(d) The relation or connection, if any, between the original and new licensee; and

(e) Whether the new child care operation is able to comply with the licensing requirements described in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(4) The department will determine and disclose to the current licensee and new licensee whether the license is in good standing prior to transferring the license.

(5) At the request of the current licensee or the new licensee, the department will disclose the following license information from the last four years to one or both parties:

(a) A description of any valid complaints;

(b) A description of any instances that the department found noncompliance with the requirements contained in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC;

(c) Safety plans (historical or in effect);

(d) Facility licensing compliance agreements (historical or in effect); and

(e) Enforcement actions levied or pending against this license.

(6) The current licensee or new licensee has the right to appeal the department's denial of a license transfer application by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules detailed in chapter 110-03 WAC.

NEW SECTION

WAC 110-301-0415 Zoning, codes, and ordinances.

(1) The department adopts and incorporates by reference the Washington state building code (chapter 19.27 RCW).

(2) Facility modifications must comply with WAC 110-301-0402.

(3) For any program that does not operate on public or private school premises, school-age program space must comply with the Washington state building code or local building code as enacted at the time of licensure.

(4) Prior to licensing, an applicant whose school-age program does not operate on public or private school premises must contact state, city, and local agencies that regulate the school-age program. A school-age provider must obtain regulations and comply with the direction given by such agencies. These agencies may include, but are not limited to, the Washington state department of labor and industries, the Washington state fire marshal, the Washington state DOH, and local health jurisdictions.

(5) Prior to licensing, an applicant whose school-age program does not operate on public or private school premises must:

(a) Have a certificate of occupancy issued by the local building, planning, or zoning department, or a local equivalent if locality does not have the certificate of occupancy; and

(b) Be inspected and approved by the state fire marshal.

NEW SECTION

WAC 110-301-0420 Prohibited substances. (1) Chapter 70.160 RCW prohibits smoking in public places and places of employment.

(2) Pursuant to RCW 70.160.050, a school-age provider must:

(a) Prohibit smoking, vaping, or similar activities in licensed indoor space, even during nonbusiness hours;

(b) Prohibit smoking, vaping, or similar activities in licensed outdoor space unless:

(i) Smoking, vaping, or similar activities occurs during nonbusiness hours; or

(ii) In an area for smoking or vaping tobacco products that is not a "public place" or "place of employment," as defined in RCW 70.160.020.

(c) Prohibit smoking, vaping, or similar activities in motor vehicles used to transport enrolled children;

(d) Prohibit smoking, vaping, or similar activities by any provider who is supervising children, including during field trips;

(e) Prohibit smoking, vaping, or similar activities within twenty-five feet from entrances, exits, operable windows, and vents, pursuant to RCW 70.160.075; and

(f) For any program that does not operate on public or private school premises, post "no smoking or vaping" signs. Signs must be clearly visible and located at each building entrance used as part of the school-age program.

(3) A school-age provider must:

(a) Prohibit any person from consuming or being under the influence of alcohol on licensed space during business hours;

(b) Prohibit any person within licensed space from consuming or being under the influence of illegal drugs or prescription drugs to the extent that it interferes with the care of children as required by this chapter;

(c) Store any tobacco or vapor products, or the packaging of tobacco or vapor products in a space that is inaccessible to children;

(d) Prohibit children from accessing cigarette or cigar butts or ashes;

(e) Store any cannabis or associated paraphernalia out of the licensed space and in a space that is inaccessible to children; and

(f) Store alcohol in a space that is inaccessible to children (both opened and closed containers).

(4) A school-age provider must prohibit any person from using, consuming, or being under the influence of cannabis in any form on licensed space.

NEW SECTION

WAC 110-301-0425 Initial, nonexpiring, dual licenses, and license modification. (1) The department may issue an initial license when a school-age program applicant demonstrates compliance with health and safety requirements of this chapter but may not be in full compliance with all requirements, pursuant to RCW 43.216.315.

(a) An initial license is valid for six months from the date issued.

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years.

(c) The department must evaluate the school-age provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements of this chapter during the period of initial licensure, pursuant to RCW 43.216.305.

(3) A licensee must submit annual compliance documents, and must do so at least thirty calendar days prior to that provider's licensing anniversary date. A provider's anniversary date is the date the first initial license was issued. The required annual compliance documents are:

(a) The annual nonrefundable license fee; and

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed school-age program;

(ii) The intent to cease operation as a licensed school-age program;

(iii) A change in the school-age program's operational hours or dates; and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background check applications as determined by the department's established schedule, pursuant to RCW 43.216.270; and

(d) For each individual required to have a background check clearance, the school-age provider must verify current background checks or require the individual to submit a background check application at least thirty calendar days prior to the anniversary date.

(4) If a licensee fails to meet the requirements for continuing a nonexpiring license by their anniversary date, the licensee's current license expires. The school-age provider must submit a new application for licensure, pursuant to RCW 43.216.305(3).

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practices, pursuant to RCW 43.216.305 (4)(a).

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license resulting from a failure to comply with the requirements of this section.

(7) A licensee must have department approval to hold dual licenses (for example: A school-age program license and another care giving license, certification, or similar authorization).

(8) If the department determines that a licensee is not meeting all applicable requirements and regulations the:

(a) Department and licensee may agree to modify the school-age program license;

(b) Licensee may give up one of the licenses, certifications, or authorizations; or

(c) Department may suspend, deny, or revoke the school-age license, pursuant to RCW 43.216.325.

(9) A school-age provider must report within twenty-four hours:

(a) To the department and local authorities: A fire or other structural damage to the school-age program space or other parts of the premises;

(b) To the department:

(i) A retirement, termination, death, incapacity, or change of the program director or site director, or change of ownership or incorporation of a provider;

(ii) When a provider becomes aware of a charge or conviction against themselves, a staff person, or applicable household member, pursuant to WAC 110-06-0043;

(iii) When a provider becomes aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves or a staff person; and

(iv) Any changes in the school-age program hours of operation to include closure dates.

(10) Prior to increasing capacity of a school-age program, the licensee, program director, or site director must request and be approved to increase capacity by the department.

(11) The licensee, program director, or site director must have state fire marshal or department approval and comply with local building ordinances following a significant change under WAC 110-301-0402 (1)(a) through (d), if applicable.

(12) The licensee, program director, or site director must notify the department within thirty calendar days when liability insurance coverage under RCW 43.216.700 has lapsed or been terminated.

ity insurance coverage under RCW 43.216.700 has lapsed or been terminated.

NEW SECTION

WAC 110-301-0435 Waiver from department rules—WAC. (1) The department cannot waive a requirement of state law (RCW) or federal law.

(2) Pursuant to RCW 43.216.065, the department may approve a waiver from a rule in this chapter if it does not jeopardize the health, safety, or welfare of the children in care.

(3) A school-age provider's request for a waiver from a rule in this chapter must be:

(a) Submitted in writing to the department;

(b) Approved in writing by the department secretary or the secretary's designee prior to the school-age provider implementing the waiver from the rule; and

(c) For a specific program need or child.

(4) A granted waiver may be time specific or may remain in effect for as long as the school-age provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted waiver if a licensing rule which was considered in granting the waiver is materially altered or amended.

NEW SECTION

WAC 110-301-0436 Variance from department rules—WAC. (1) The department cannot provide variance from a requirement in state (RCW) or federal law.

(2) Upon written request of an applicant, licensee, program director, or site director the department may grant a variance from a rule in this chapter if the proposed program alternative does not jeopardize the health, safety, or welfare of the children in care.

(3) A request for variance from a rule in this chapter must be:

(a) Submitted in writing to the department;

(b) Approved in writing by the department secretary or the secretary's designee prior to the school-age provider implementing the variance from the rule; and

(c) For a specific program approach or methodology.

(4) A granted variance may be time specific or may remain in effect for as long as the school-age provider continues to comply with the conditions of the variance. If the variance from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted variance if a licensing rule which was considered in granting the variance is materially altered or amended.

NEW SECTION

WAC 110-301-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and provider rights. (1) At the department's discretion, when a school-age provider is in violation of this chapter or chapter 43.216 RCW, a facility licensing compliance agreement

(FLCA) may be issued in lieu of the department taking enforcement action. The FLCA must contain:

(a) A description of the violation and the law or rule that was violated;

(b) A proposed plan from the provider or a designee to comply with the law or rule;

(c) The date the violation must be corrected, determined by:

(i) The seriousness of the violation;

(ii) The potential threat to the health, safety, and well-being of the children in care; and

(iii) The number of times the school-age program has violated rules in this chapter or under chapter 43.216 RCW.

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) The signature of the department licenser and the licensee.

(2) A school-age provider must return a copy of the completed FLCA to the department after corrective action has been completed and by the date indicated.

(3) A school-age provider may request an internal review process regarding the violation of department rules pursuant to RCW 43.216.395.

(4) In an enforcement action against a school-age program or provider, the provider has the right to refuse to:

(a) Accept or sign a FLCA.

(b) Agree to a probationary license.

(5) If a school-age provider refuses a FLCA or probationary license, this may result in any of the following enforcement actions:

(a) Modification of the license;

(b) Noncontinuation of a nonexpiring license;

(c) Suspension of the license;

(d) Revocation of the license; or

(e) Civil penalties.

(6) The department may place a school-age provider on nonreferral status, pursuant to RCW 43.216.325(4), in addition to or in lieu of an enforcement action under this chapter.

(7) A probationary license may be issued to a school-age provider or program operating under a nonexpiring license as part of a corrective action plan. Prior to issuing a probationary license, the department must refer the program or provider for technical assistance, pursuant to RCW 43.216.320 (2).

(8) A department decision to issue a probationary license is based on a school-age program or provider's:

(a) Negligent or intentional noncompliance with the licensing rules;

(b) History of noncompliance with licensing rules;

(c) Current noncompliance with licensing rules;

(d) Fire safety inspection or health and sanitation inspection report that failed to gain approval;

(e) Use of unauthorized space for the school-age program;

(f) Inadequate supervision of children;

(g) Understaffing for the number of children in care;

(h) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation or personal hygiene practices; and

(i) Any other factors relevant to the specific situation and consistent with the intent or purpose of chapter 43.216 RCW.

(9) When the department issues a probationary license, the school-age provider must:

(a) Provide notice of the probationary license and a copy of the department's probationary licensing agreement to the parents or guardians of enrolled children within five business days of receiving the probationary license;

(b) Provide documentation to the department that parents or guardians of enrolled children have been notified within ten business days of receiving the probationary license;

(c) Inform new parents or guardians of the probationary status before enrolling their children into care;

(d) Return the school-age program's nonexpiring license to the department; and

(e) Post documentation of the approved written probationary license as required by RCW 43.216.687.

(10) Pursuant to RCW 43.216.689, a school-age provider must have inspection reports and notices of enforcement actions for the past three years readily available for review by the department, parents, guardians, and the public.

NEW SECTION

WAC 110-301-0443 Enforcement actions, notice, and appeal.

(1) Pursuant to RCW 43.216.325, the department is authorized to take enforcement actions when a school-age provider fails to comply with this chapter or chapter 43.216 RCW. Enforcement actions are taken pursuant to RCW 43.216.020, 43.216.065, and 43.216.250. Enforcement actions include civil monetary penalties (fines) and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) A school-age provider subject to an enforcement action has the right to appeal by requesting an adjudicative proceeding (or "hearing") pursuant to chapter 110-03 WAC, DCYF hearing rules.

(3) The department must issue a notice of violation to a school-age provider when taking enforcement actions. A notice of violation must be sent by certified mail or personally served and must include:

(a) The reason why the department is taking the action;

(b) The rules the provider failed to comply with;

(c) The provider's right to appeal enforcement actions;

and

(d) How the provider may appeal and request a hearing.

(4) Fines must not exceed two hundred fifty dollars per day per violation for a school-age program, or as otherwise set by the legislature. Fines may be:

(a) Assessed and collected with interest for each day a violation occurs;

(b) Imposed in addition to other enforcement actions; and

(c) Withdrawn or reduced if a school-age provider comes into compliance during the notification period.

(5) A school-age provider must pay fines within twenty-eight calendar days after receiving a notice of violation unless:

(a) The office of financial recovery establishes a payment plan for the provider; or

(b) A later due date is specified on the notice of violation, pursuant to RCW 43.216.335(2); or

(c) The provider requests a hearing, pursuant to chapter 110-03 WAC, DCYF hearing rules and RCW 43.216.335(3).

(6) The department may suspend or revoke a license if a school-age provider fails to pay a fine within twenty-eight calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for renewal, the department may elect not to continue the license for failure to pay a fine.

SECTION XIV

RECORDS, POLICIES, REPORTING AND POSTING

NEW SECTION

WAC 110-301-0450 Parent or guardian handbook and related policies. (1) A school-age provider must supply to each parent or guardian written policies regarding the school-age program. Each enrolled child's record must have signed documentation stating the parent or guardian reviewed the handbook and school-age program policies.

(2) A school-age provider must have and follow formal written policies in either paper or electronic format, including:

- (a) A nondiscrimination statement;
- (b) A family engagement and partnership communication plan;
- (c) A parent or guardian's permission for photography, videotaping, or surveillance of their child;
- (d) Alcohol, tobacco, cannabis use and prohibition of illegal drugs;
- (e) Program philosophy pursuant to WAC 110-301-0305, and how this philosophy is implemented;
- (f) Child guidance plan, which includes restraint policies and forbidding corporal punishment;
- (g) Expulsion policy;
- (h) School-age program staff-to-child ratios and classroom or age grouping types offered, if applicable;
- (i) If the school-age program offers any of the following, they must include a policy for each that applies to their program:
 - (i) Care for children with specific or special needs;
 - (ii) Dual language learning;
 - (iii) Religious and cultural activities, including how holidays will be celebrated;
 - (iv) Transportation and off-site field trips;
 - (v) Water activities; and
 - (vi) Evening and overnight care, if applicable.
- (j) Program days and hours of operation, including closure dates and observed holidays;
- (k) Enrollment and disenrollment requirements;
- (l) Fees and payment plans;
- (m) Sign-in and sign-out requirements;
- (n) Information required for the child's record, including:
 - (i) The importance and plan for keeping the information current;
 - (ii) A plan to keep the child's information confidential; and

(iii) Who may legally access the child's information.

(o) What parents or guardians must supply for their child, if applicable (for example: Extra clothing);

(p) Permission for a parent or guardian's access to areas of the school-age program during business hours;

(q) Termination of services policy;

(r) Emergency preparedness plan;

(s) The school-age provider and program staff's duty to report incidents including reporting suspected child abuse, neglect, sexual abuse, or maltreatment;

(t) Description of where the parent or guardian may find and review the school-age program's:

(i) Health policy;

(ii) Staff policies;

(iii) Consistent care policy;

(iv) Menus;

(v) Liability insurance;

(vi) Inspection reports and notices of enforcement actions, if applicable; and

(vii) Other relevant program policies.

NEW SECTION

WAC 110-301-0455 Attendance records. (1) A school-age provider may keep a child in care up to a maximum of ten hours each day. If needed, the maximum time may be extended based upon the parent or guardian's work, an agreed upon alternate schedule, or travel to and from the school-age program.

(2) A school-age provider must keep daily child attendance records, either in paper or electronic format, for each child (including the children of staff in the program). These records must be easily accessible and kept on-site or in the program's administrative office for department review. These records must clearly document:

(a) The name of the child;

(b) The date of care;

(c) Child arrival and departure times from the school-age program;

(d) Signature or electronic signature of parent, guardian or other authorized person at the time of arrival and departure; and

(e) A staff signature when a child leaves the school-age program to attend school or participate in off-site activities not offered by the school-age program.

(3) A school-age provider must keep daily staff attendance records for each classroom or group of children. These attendance records must be on paper or in an electronic format and clearly document:

(a) The name of each staff member (including staff assigned to care for children with special needs and one-on-one care) and volunteers;

(b) The number of children in each classroom or with each group of children;

(c) The staff-to-child ratio;

(d) The date; and

(e) Start and end times of the assigned staff or volunteers.

(4) If the attendance records are kept electronically, the electronic system must:

(a) Record either an electronic signature, swipecard, personal identification number (PIN), biometric reader, or similar action by the parent, guardian, or authorized person when signing the child in or out of care (or staff notation of who picked up or dropped off along with time in and out if authorized person does not have electronic signature, swipe card, PIN, biometric reader or similar action);

(b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against disproof of the electronic records;

(c) Be able to produce an authentic, verifiable and uniquely identified written record for each transaction;

(d) Be able to authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;

(e) Be able to capture an electronic record for each transaction conducted;

(f) Be able to retain the electronic record in an accessible form for their legal minimum retention period;

(g) Be able to search and retrieve electronic records in the normal course of business; and

(h) Be able to perform in an accurate, reliable, and consistent manner in the normal course of business.

(5) Electronic attendance records must contain information necessary to reproduce the entire electronic record and associated signatures in a form that permits a person viewing or printing the entire electronic record to verify the:

(a) Contents of the electronic record;

(b) Person signing the electronic record; and

(c) Date signatures were executed.

NEW SECTION

WAC 110-301-0460 Child records. (1) A school-age provider must keep current individualized enrollment and health records for all enrolled children, including children of staff, updated annually or as often as enrolled children's health records are updated.

(a) A child's record must be kept in a confidential manner but in an area easily accessible to staff.

(b) A child's parent or guardian must be allowed access to all of their own child's records.

(2) Each child's enrollment record must include the following:

(a) The child's birth date;

(b) An enrolled child's parent or guardian's phone number, address, and contact information for reaching the family while the child is in care;

(c) Emergency contact information. If no emergency contact is available, a written and signed emergency contact plan may be accepted;

(d) Names and phone numbers of persons authorized to pick up enrolled children;

(e) A plan for special or individual needs of the child, if applicable, including parent or guardian signature, pursuant to WAC 110-301-0300;

(f) Signed parent or guardian permissions, pursuant to WAC 110-301-0450 as applicable for:

(i) Field trips;

(ii) Transportation;

(iii) Bathing, if the program uses a bathtub or shower described in WAC 110-301-0220(3);

(iv) Water activities including swimming pools or other bodies of water; and

(v) Photo, video, or surveillance activity.

(g) The beginning and end enrollment date for children no longer in the school-age program's care;

(h) Physical restraint documentation pursuant to WAC 110-301-0335, if applicable;

(i) Expulsion information, documentation, and steps taken to avoid expulsion, if applicable; and

(j) Termination of services documentation and communication.

(3) Each child's health record and the information described in subsection (2)(a) through (e) of this section must be available to staff for medical administration or emergencies.

(4) A health record is required for every child who is enrolled and counted in a school-age program's capacity. A health record must include:

(a) An immunization record, pursuant to WAC 110-301-0210;

(b) The child's health history including any known health conditions and the child's individual care plan, if applicable;

(c) A medication authorization and administration log, pursuant to WAC 110-301-0215, if applicable;

(d) Documentation of special medical procedure training by parent or guardian, if applicable;

(e) Medical and dental care provider names and contact information or what facility the parent or guardian would prefer for treatment;

(f) Dates of the child's last physical and dental exams, if available;

(g) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian;

(h) Signed parent or guardian permission for visiting health professionals who provide direct services to children at the school-age program;

(i) An incident or injury report, pursuant to 110-301-0475, that includes:

(i) The date and description of the child's incident or injury;

(ii) Treatment provided to the child while in care;

(iii) The names of the school-age program staff providing the treatment; and

(iv) Evidence that a copy of the incident or injury report was given to the child's parent or guardian.

(j) Documentation that a provider reported food poisoning or contagious diseases to the local health jurisdiction or the DOH, if applicable.

NEW SECTION

WAC 110-301-0465 Retaining facility and program records. (1) A school-age provider must keep the records required in this chapter for a minimum of three years unless otherwise indicated.

(2) Attendance records must be kept for a minimum of five years.

(3) Facility and program records from the previous twelve months must be easily accessible and kept on-site or in the program's administrative office for department or other state agency's review.

(4) Records older than twelve months must be provided within two weeks of a written request by the department.

(5) A school-age provider must keep the following records available for department review:

- (a) The parent or guardian handbook;
- (b) Food temperature logs pursuant to CACFP, if applicable;
- (c) Child incident and illness logs;
- (d) Vaccination records for pets or animals that are housed in the school-age program, accessible to children during program operating hours, or both;
- (e) Car insurance policy, if applicable;
- (f) Program planning schedule;
- (g) Documents from department visits (inspections, monitoring, compliance agreements, and safety plans); and
- (h) Waivers or variances from department rules, if applicable.

(6) For any program that does not operate on public or private school premises, a school-age provider must keep the following records available for department review:

- (a) Furniture and play equipment forms and specifications;
- (b) Chromated copper arsenate test results, if applicable;
- (c) Annual fire inspection by qualified fire professional, if applicable;
- (d) Monthly inspection to identify fire hazards and elimination of such hazards;
- (e) Monthly testing of smoke and carbon monoxide detectors;
- (f) Monthly fire extinguisher inspection and annual maintenance;
- (g) Lead and copper testing results;
- (h) Private well and septic systems inspection and testing results, if applicable;
- (i) Cleaning log for large area rugs or carpets;
- (j) Pesticide use (seven years); and
- (k) Tacoma smelter inspection results.

NEW SECTION

WAC 110-301-0470 Emergency preparedness plan.

(1) A school-age provider must have and follow a written emergency preparedness plan. The plan must be reviewed and approved by the department prior to when significant changes are made. Emergency preparedness plans must:

- (a) Be designed to respond to fire, natural disasters, and other emergencies that might affect the school-age program;
- (b) Be specific to the school-age program and able to be implemented during hours of operation;
- (c) Address what the provider would do if the provider has an emergency and children may be left unsupervised;
- (d) Address what the school-age program must do if parents or guardians are not able to get to their children for up to three days;

(e) Must follow requirements in chapter 212-12 WAC, Fire marshal standards, and the state fire marshal's office requirements;

(f) Be reviewed at program orientation, annually with all school-age program staff with documented signatures, and when the plan is updated; and

(g) Be reviewed with parents or guardians when a child is enrolled and when the plan is updated.

(2) The written emergency preparedness plan must cover at a minimum:

(a) Disaster plans, including fires that may require evacuation:

(i) An evacuation floor plan that identifies room numbers or names of rooms, emergency exit pathways, and emergency exit doors;

(ii) Methods to be used for sounding an alarm and calling 911;

(iii) Actions to be taken by a person discovering an emergency;

(iv) How the school-age provider will evacuate children, especially those who cannot walk independently. This may include children with disabilities, functional needs requirements, or other special needs;

(v) Where the alternate evacuation location is;

(vi) What to take when evacuating children, including:

(A) First-aid kits;

(B) Copies of emergency contact information;

(C) Child medication records; and

(D) Individual children's medication, if applicable.

(vii) How the provider will maintain the required staff-to-child ratio and account for all children;

(viii) How parents or guardians will be able to contact the school-age program; and

(ix) How children will be reunited with their parents or guardians after the event.

(b) Earthquake procedures including:

(i) What a provider will do during an earthquake;

(ii) How a provider will account for all children; and

(iii) For any program that does not operate on public or private school premises, how a provider will coordinate with local or state officials to determine if the licensed space is safe for children after an earthquake.

(c) Public safety related lockdown scenarios where an individual at or near a school-age program is harming or attempting to harm others with or without a weapon. This plan must include lockdown of the school-age program or shelter-in-place steps including:

(i) How doors and windows will be secured to prevent access, if needed; and

(ii) Where children will safely stay inside the school-age program.

(d) How parents or guardians will be contacted after the emergency ends.

(3) A school-age provider must keep on the premises a three-day supply of food, water, and life-sustaining medication for the licensed capacity of children and current staff for use in case of an emergency. If a program is located in a public or private school building with an existing three-day supply of food and water that would sustain the school-age program's licensed capacity of children and staff, the school-age

provider may submit to the department documentation from the school verifying the school agrees to allow the school-age program to access and use the three-day supply of food and water in an emergency.

(4) A school-age provider must practice and record emergency drills with staff and children as follows:

(a) Fire and evacuation drill once each calendar month;
 (b) Earthquake, lockdown, or shelter-in-place drill once every three calendar months;

(c) Emergency drills must be conducted with a variety of staff and at different times of the day, including in the evening and during overnight hours if the school-age program offers care for children during those hours; and

(d) Drills must be recorded on a department form and include:

(i) The date and time of the drill;
 (ii) The number of children and staff who participated;
 (iii) The length of the drill; and
 (iv) Notes about how the drill went and how it may be improved.

(5) In areas where local emergency plans are already in place, such as school districts, a school-age program may adopt or amend such procedures when developing their own plan.

NEW SECTION

WAC 110-301-0475 Duty to protect children and report incidents. (1) Pursuant to RCW 26.44.030, when a school-age provider has reasonable cause to believe that a child has suffered abuse or neglect, that provider must report such incident, or cause a report to be made, to the proper law enforcement agency or the department. "Abuse or neglect" has the same meaning here as in RCW 26.44.020.

(2) A school-age provider must report by telephone to the listed individuals, department, and other government agencies when the provider knows or has reason to know of an act, event, or occurrence described in (a) through (f) of this subsection.

(a) Law enforcement or the department at the first opportunity, but in no case longer than forty-eight hours:

(i) The death of a child while in the school-age program's care or the death from injury or illness that may have occurred while the child was in care;

(ii) A child's attempted suicide or talk about attempting suicide;

(iii) Any suspected physical, sexual or emotional child abuse;

(iv) Any suspected child neglect, child endangerment, or child exploitation;

(v) A child's disclosure of sexual or physical abuse; or

(vi) Inappropriate sexual contact between two or more children.

(b) Emergency services (911) immediately, and to the department within twenty-four hours:

(i) A child missing from care, triggered as soon as staff realizes the child is missing;

(ii) A medical emergency that requires immediate professional medical care;

(iii) A child who is given too much of any oral, inhaled, or injected medication;

(iv) A child who took or received another child's medication;

(v) A fire or other emergency;

(vi) Poisoning or suspected poisoning; or

(vii) Other dangers or incidents requiring emergency response.

(c) Washington poison center immediately after calling 911, and to the department within twenty-four hours:

(i) A poisoning or suspected poisoning;

(ii) A child who is given too much of any oral, inhaled, or injected medication;

(iii) A child who took or received another child's medication; or

(iv) The provider must follow any directions provided by Washington poison center.

(d) The local health jurisdiction or the DOH immediately, and to the department within twenty-four hours about an occurrence of food poisoning or reportable contagious disease as defined in WAC 246-110-010(3);

(e) The department at the first opportunity, but in no case longer than twenty-four hours, upon knowledge of any person required by chapter 110-06 WAC to have a change in their background check history due to:

(i) A pending charge or conviction for a crime listed in chapter 110-06 WAC;

(ii) An allegation or finding of child abuse, neglect, maltreatment, or exploitation under chapter 26.44 RCW or chapter 110-30 WAC;

(iii) An allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) A pending charge or conviction of a crime listed in the secretary's list in chapter 110-06 WAC from outside Washington state, or a "negative action" as defined in RCW 43.216.010.

(f) A child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within twenty-four hours, about using physical restraint on a child as described in WAC 110-301-0335.

(3) In addition to reporting to the department by phone or email, a school-age provider must submit a written incident report of the following on a department form within twenty-four hours:

(a) Situations that required an emergency response from emergency services (911), Washington poison center, or the DOH;

(b) Situations that occur while children are in care that may put children at risk including, but not limited to, inappropriate sexual touching, neglect, physical abuse, maltreatment, or exploitation; and

(c) A serious injury to a child in care.

(4) A school-age provider must immediately report to the parent or guardian:

(a) Their child's death, serious injury, need for emergency or poison services; or

(b) An incident involving their child that was reported to the local health jurisdiction or the DOH.

NEW SECTION

WAC 110-301-0480 Transportation and off-site activity policy. (1) A school-age provider must have and follow a transportation and off-site activity policy for personal or public transportation service, or nonmotorized travel offered to children in care.

(a) The transportation and off-site activity policy must include routine trips, which must not exceed two hours in a vehicle per day for any individual child.

(b) Written parent or guardian authorization to transport the parent or guardian's child. The written authorization must be:

- (i) A specific event, date, and anticipated travel time;
- (ii) A specific type of trip (for example, transporting to and from school, or transporting to and from a field trip); or
- (iii) A full range of trips a child may take while in the school-age provider's care.

(c) Written notices to parents or guardians, to be given at least twenty-four hours before field trips are taken.

(2) During travel to an off-site activity, a school-age provider must:

(a) Have the health history, appropriate medication (if applicable), emergency information, and emergency medical authorization forms accessible for each child being transported;

(b) Have a phone to call for emergency help;

(c) Have a complete first-aid kit;

(d) Maintain the staff-to-child ratio and active supervision requirements;

(e) Have current first aid and CPR certification pursuant to WAC 110-301-0106(9);

(f) Take attendance using a roll call or other method that assures all children are accounted for each time children begin and end travel to an off-site activity, and every time children enter and exit a vehicle; and

(g) Never leave children unattended in the vehicle.

(3) When a school-age provider supplies the vehicle to transport children in care, the program and provider must:

(a) Follow chapter 46.61 RCW, Rules of the road, and other applicable laws regarding child restraints and car seats;

(b) Assure that the number of passengers does not exceed the seating capacity of the vehicle;

(c) Maintain the vehicle in good repair and safe operating condition;

(d) Maintain the vehicle temperature at a comfortable level to children;

(e) Assure the vehicle has a current license and registration as required by Washington state transportation laws;

(f) Assure the vehicle has emergency reflective triangles or other devices to alert other drivers of an emergency;

(g) Assure the driver has a valid driver's license for the type of vehicle being driven and a safe driving record for at least the last five years;

(h) Prevent any driver with a known condition that would compromise driving, supervision, or evacuation capabilities from operating program vehicles; and

(i) Have a current insurance policy that covers the driver, the vehicle, and all occupants.

NEW SECTION

WAC 110-301-0485 Termination of services policy. (1) A school-age provider must have and follow a termination of services policy.

(2) A school-age provider may terminate a child's services due to that child's parent or guardian's inability to meet the expectations and requirements of the school-age program. Expectations and requirements of the program may include unpaid bills, continual late arrivals, or a parent, guardian or family member's inappropriate or unsafe behavior in or near school-age program space.

NEW SECTION

WAC 110-301-0486 Expulsion policy. (1) A school-age provider must have and follow an expulsion policy, pursuant to WAC 110-301-0340.

(2) An expulsion policy must:

(a) Provide examples of behavior that could lead to expulsion from the school-age program;

(b) Detail steps the provider takes to avoid expelling a child including, but not limited to, environmental and staffing changes;

(c) Detail how the provider communicates to the parent or guardian of a child the steps taken under (b) of this subsection; and

(d) Include information that may benefit an expelled child including, but not limited to, community based resources.

NEW SECTION

WAC 110-301-0490 Child restraint policy. (1) A school-age provider must have and follow a child restraint policy that contains behavior management and practices, pursuant to WAC 110-301-0335.

(2) A restraint policy must be:

(a) Appropriate for children's developmental level, abilities, and language skills;

(b) Directly related to the child's behavior; and

(c) Designed to be consistent, fair, and positive.

(3) Program directors, site directors, lead teachers and other appropriate staff members must be trained annually in the program's child restraint policy.

(4) Only trained staff may restrain a child in care in accordance with WAC 110-301-0335.

NEW SECTION

WAC 110-301-0495 Consistent care policy. A school-age program must have and follow a policy that promotes the consistent care of children with a goal of building long-term, trusting relationships.

NEW SECTION

WAC 110-301-0500 Health policy. (1) A school-age provider must have and follow a written health policy reviewed and approved by the department that includes the topics listed in subsection (2) of this section. The health pol-

icy must be reviewed and approved by the department when changes are made, and as otherwise necessary.

(2) A school-age program's health policy must meet the requirements of this chapter including, but not limited to:

(a) A prevention of exposure to blood and bodily fluids plan;

(b) Meals, snacks, and food services including guidelines for food allergies and food brought from home;

(c) Handwashing and hand sanitizer use;

(d) Observing children for signs of illness daily;

(e) Exclusion and return of ill children, staff, or any other person in the program space;

(f) Contagious disease notification;

(g) Medical emergencies, injury treatment and reporting;

(h) Immunization tracking;

(i) Medication management, storage, administration and documentation;

(j) Care for pets and animals that have access to licensed space and the health risks of interacting with pets and animals;

(k) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, toiletting equipment, and laundry will be cleaned, sanitized and disinfected;

(l) Pest control policies; and

(m) Caring for children with special needs or health needs, including allergies, as listed in the child's record.

NEW SECTION

WAC 110-301-0505 Postings. (1) Postings listed in subsection (2) of this section that are part of a school-age program must be clearly visible to parents, guardians, and school-age program staff.

(2) Postings on school-age premises must include:

(a) The school-age program license, pursuant to WAC 110-301-0010;

(b) Floor plan with emergency routes and exits identified in each school-age program area, pursuant to WAC 110-301-0400 (1)(b)(i) and 110-301-0470 (2)(a)(i);

(c) Dietary restrictions, known allergies, and nutrition requirements, if applicable, in a location easily accessible for staff but not available to those who are not parents or guardians of the enrolled child, pursuant to WAC 110-301-0186 (1);

(d) Handwashing practices at each handwashing sink, pursuant to WAC 110-301-0200(1);

(e) Pesticide treatment, if applicable, pursuant to RCW 43.216.280 and 17.21.410 (1)(d);

(f) Emergency numbers and information including, but not limited to:

(i) 911 or emergency services number;

(ii) Name, address, and directions from the nearest arterial street or nearest cross street to the facility;

(iii) The department's toll-free number;

(iv) Washington poison center toll-free number; and

(v) The department's child protective services.

(g) The location of emergency medical information for children and staff;

(h) A notice of any current or pending enforcement action, including probationary licenses pursuant to RCW 43.216.687. Notice must be posted:

(i) Immediately upon receipt; and

(ii) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer.

(i) "No smoking" and "no vaping" signs, pursuant to WAC 110-301-0420 (2)(f);

(j) A copy of a department approved waiver or variance from a rule of this chapter, if applicable. Waivers or variances must be posted for parent or guardian view when related to the overall program (not related to any specific child), and as long as the waiver or variance is approved;

(k) Notice that insurance coverage has lapsed or been terminated, if applicable, pursuant to RCW 43.216.700; and

(l) Any other information listed in RCW 43.216.687.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-305-0001 Authority.

WAC 110-305-0005 Intent.

WAC 110-305-0010 Definitions.

WAC 110-305-0050 Special needs accommodations.

WAC 110-305-1000 License required.

WAC 110-305-1001 License transfers.

WAC 110-305-1035 Fire inspection/certification.

WAC 110-305-1050 The licensee.

WAC 110-305-1075 Child care subsidy.

WAC 110-305-1100 Tribal or military regulated or operated child care—Certification for payment.

WAC 110-305-1125 Orientation required.

WAC 110-305-1200 Background checks.

WAC 110-305-1250 Licensing process—Application materials and fees.

WAC 110-305-1275 Licensing process—Application processing.

WAC 110-305-1325 Background check fees.

WAC 110-305-1350 Liability insurance coverage.

WAC 110-305-1360 Lead and arsenic hazards—Tacoma smelter plume.

WAC 110-305-1370 Safe water sources.

WAC 110-305-1410 Department inspection.

WAC 110-305-1430 Initial license.

WAC 110-305-1450 Nonexpiring license.

WAC 110-305-1525 Change in circumstances.

WAC 110-305-1625 Exception to rule.

WAC 110-305-1710 Program director.

WAC 110-305-1715	Site coordinator.	WAC 110-305-2700	Emergency flashlight.
WAC 110-305-1720	Lead teachers.	WAC 110-305-2725	Portable heaters and generators.
WAC 110-305-1730	Program assistants.	WAC 110-305-2775	Telephone.
WAC 110-305-1735	Volunteers.	WAC 110-305-2825	Fire evacuation plan.
WAC 110-305-1745	Staff meetings.	WAC 110-305-2850	Disaster plan.
WAC 110-305-1750	Tuberculosis.	WAC 110-305-2875	Fire, disaster training for staff and volunteers.
WAC 110-305-1775	Basic STARS training.	WAC 110-305-2900	Emergency drills.
WAC 110-305-1800	Ongoing training.	WAC 110-305-2925	Record of emergency drills.
WAC 110-305-1820	Program provided training.	WAC 110-305-2975	Additional method to sound an alarm.
WAC 110-305-1825	First-aid and cardiopulmonary resuscitation (CPR) certification.	WAC 110-305-3000	Fire extinguishers.
WAC 110-305-1850	HIV/AIDS training—Bloodborne pathogens plan.	WAC 110-305-3200	Health plan.
WAC 110-305-1925	Assistants and volunteers—Supervision.	WAC 110-305-3210	Contagious disease procedure.
WAC 110-305-2000	Recordkeeping—Records available to the department.	WAC 110-305-3250	Immunization tracking.
WAC 110-305-2025	Child records—Confidentiality.	WAC 110-305-3275	Accepting a child who does not have current immunizations.
WAC 110-305-2050	Child records—Contents.	WAC 110-305-3300	Immunizations—Exemption.
WAC 110-305-2075	Staff records.	WAC 110-305-3315	Medication management.
WAC 110-305-2125	Child attendance records—Staff-to-child ratio records.	WAC 110-305-3325	Medication storage.
WAC 110-305-2150	Facility records.	WAC 110-305-3375	Medication permission.
WAC 110-305-2175	Materials that must be posted.	WAC 110-305-3425	Medication requirements.
WAC 110-305-2200	Reporting incidents to 911 (emergency services).	WAC 110-305-3450	Sedating a child prohibited.
WAC 110-305-2225	Reporting incidents to Washington poison center.	WAC 110-305-3475	Prescription medication.
WAC 110-305-2250	Reporting incidents to a child's parent or guardian and the department.	WAC 110-305-3525	Nonprescription medications.
WAC 110-305-2275	Other incident reporting to the department.	WAC 110-305-3550	Children taking their own medication.
WAC 110-305-2300	Reporting to DSHS children's administration intake.	WAC 110-305-3575	Injuries requiring first aid only.
WAC 110-305-2325	Notifiable conditions.	WAC 110-305-3600	Injuries or illness requiring professional medical treatment.
WAC 110-305-2350	Policies.	WAC 110-305-3625	Handwashing procedure.
WAC 110-305-2375	Parent/guardian policies (handbook).	WAC 110-305-3635	When handwashing is required.
WAC 110-305-2400	Program/operations policies.	WAC 110-305-3650	Hand sanitizers.
WAC 110-305-2425	Staff policies.	WAC 110-305-3700	Carpets.
WAC 110-305-2450	Off-site activity policy.	WAC 110-305-3850	Cleaning laundry.
WAC 110-305-2575	Combustible and flammable materials.	WAC 110-305-3875	Cleaning and sanitizing toys.
WAC 110-305-2600	Furnaces, other heating devices and appliances with hot surfaces.	WAC 110-305-3925	Cleaning, sanitizing, and disinfecting table.
WAC 110-305-2625	Electrical motors.	WAC 110-305-3950	Pest control.
WAC 110-305-2675	Open flame devices, candles, matches and lighters.	WAC 110-305-4000	Lead, asbestos, arsenic and other hazards.
		WAC 110-305-4025	Drugs and alcohol.
		WAC 110-305-4050	No smoking.
		WAC 110-305-4075	First-aid kit.
		WAC 110-305-4100	Poisons, chemicals and other substances.

WAC 110-305-4200	Toys, equipment, and recalled items.	WAC 110-305-5800	Orientation for staff.
WAC 110-305-4225	Indoor licensed space—Minimum space.	WAC 110-305-6000	Interactions with children.
WAC 110-305-4250	Indoor temperature.	WAC 110-305-6025	Prohibited interactions.
WAC 110-305-4275	Fans, air conditioning or cross ventilation.	WAC 110-305-6050	Guidance and discipline.
WAC 110-305-4300	Window coverings.	WAC 110-305-6075	Positive options for discipline.
WAC 110-305-4350	Electrical outlets, cords and power strips.	WAC 110-305-6100	Separating a child from the group.
WAC 110-305-4360	Area lighting.	WAC 110-305-6125	Preventing harmful or aggressive acts.
WAC 110-305-4375	Lighting safety.	WAC 110-305-6150	Prohibited actions.
WAC 110-305-4475	Emergency exit pathways.	WAC 110-305-6175	Using alternate methods before using physical restraint.
WAC 110-305-4550	Windows.	WAC 110-305-6200	Physical restraint—Prohibited uses or methods.
WAC 110-305-4625	Toileting facility.	WAC 110-305-6225	Physical restraint—Holding method allowed.
WAC 110-305-4635	Handwashing sinks.	WAC 110-305-6250	Notice and documenting use of physical restraint.
WAC 110-305-4650	Bathroom floors.	WAC 110-305-6275	Abuse and neglect—Protection and training.
WAC 110-305-4700	Water temperature.	WAC 110-305-6400	Off-site activities—Parent or guardian permission.
WAC 110-305-4725	Guns and other weapons.	WAC 110-305-6425	Off-site activity supervision.
WAC 110-305-4750	Storage for each child's belongings.	WAC 110-305-6450	Off-site activity—Emergency information and supplies.
WAC 110-305-4800	Pet and other animal policy.	WAC 110-305-6475	Transportation.
WAC 110-305-4850	Pet and other animal health and safety.	WAC 110-305-6500	Using public transportation.
WAC 110-305-4875	Pets and other animals interacting with children.	WAC 110-305-6550	Typical daily schedule.
WAC 110-305-4900	Pet and other animal wastes.	WAC 110-305-6575	Activities to promote child growth and development.
WAC 110-305-4925	Licensed outdoor space.	WAC 110-305-6600	Equipment and play materials.
WAC 110-305-4950	Playground equipment—Ground cover—Fall zones.	WAC 110-305-6625	Art materials.
WAC 110-305-5000	Play equipment.	WAC 110-305-6650	Screen time.
WAC 110-305-5050	Bouncing equipment prohibited.	WAC 110-305-6675	Screen time—Limitations.
WAC 110-305-5100	Outdoor supervision.	WAC 110-305-6775	Diversity.
WAC 110-305-5125	Outdoor areas and daily physical activities.	WAC 110-305-7500	Food and milk must meet USDA guidelines.
WAC 110-305-5150	Water safety and activity.	WAC 110-305-7515	Menus and dietary restrictions.
WAC 110-305-5175	Wading pools—Defined—Supervision.	WAC 110-305-7525	Parent or guardian-provided food.
WAC 110-305-5200	Swimming pools defined—Barriers and supervision.	WAC 110-305-7530	Food sources.
WAC 110-305-5225	Bodies of water or water hazards on the licensed premises.	WAC 110-305-7575	Drinking water.
WAC 110-305-5250	Bodies of water outside and near licensed space.	WAC 110-305-7580	Drinking fountains.
WAC 110-305-5600	Staff-to-child ratio.	WAC 110-305-7625	Meal and snack schedule.
WAC 110-305-5625	Capacity.	WAC 110-305-7650	Serving foods.
WAC 110-305-5725	Groups.	WAC 110-305-7675	Food worker card.
WAC 110-305-5750	Supervising children.	WAC 110-305-7680	Safe food handling.
		WAC 110-305-7700	Washing dishes.

- WAC 110-305-7725 Food containers and utensils.
 WAC 110-305-7750 Food preparation area.
 WAC 110-305-7800 Food storage.
 WAC 110-305-7825 Satellite kitchens.
 WAC 110-305-8000 Facility licensing compliance agreements.
 WAC 110-305-8010 Nonreferral status.
 WAC 110-305-8025 Time period for correcting a violation.
 WAC 110-305-8050 Civil monetary penalties (fines).
 WAC 110-305-8060 When fines are levied.
 WAC 110-305-8075 Fines—Payment period.
 WAC 110-305-8100 Notice of fine—Posting.
 WAC 110-305-8125 Failure to pay a fine—Department action.
 WAC 110-305-8150 Denial, suspension, revocation, modification or noncontinuation of a license.
 WAC 110-305-8175 Violations—Enforcement action.
 WAC 110-305-8225 Notice of license denial, suspension, revocation, or modification.
 WAC 110-305-8250 Probationary license.
 WAC 110-305-8275 Probationary license—Cause.
 WAC 110-305-8300 Issuing a probationary license.
 WAC 110-305-8325 Refusing a FLCA or probationary license.
 WAC 110-305-8350 Providing unlicensed care—Notice.
 WAC 110-305-8375 Unlicensed care—Fines and other penalties.
 WAC 110-305-8400 Hearing process.

WSR 21-10-036**PERMANENT RULES****DEPARTMENT OF****RETIREMENT SYSTEMS**

[Filed April 28, 2021, 8:56 a.m., effective May 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify how any remaining contributions and prorated monthly benefit will be distributed following a member's death, if there is no ongoing survivor benefit.

Citation of Rules Affected by this Order: New WAC 415-02-260 What happens to my monthly retirement benefit when I die?; and repealing WAC 415-112-715 Who gets the balance of my monthly retirement allowance if I die partway through a month?

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 21-07-143 on March 24, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 28, 2021.

Tracy Guerin
Director

NEW SECTION

WAC 415-02-260 What happens to my monthly retirement benefit when I die? If a survivor benefit will not be paid on your account, a prorated portion of your defined benefit for the month of your death will be paid to your estate. Any contributions that have not been paid in retirement benefits will be paid to your beneficiary. If your named beneficiaries have all predeceased you, remaining contributions will be paid to your estate. Amounts you owe the department, if any, will be subtracted from your account prior to payments being made to your beneficiary or estate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-112-715 Who gets the balance of my monthly retirement allowance if I die partway through a month?

WSR 21-10-037**PERMANENT RULES****HEALTH CARE AUTHORITY**

[Filed April 28, 2021, 9:40 a.m., effective May 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority is revising this section to mirror language in WAC 388-106-1910 to alleviate confusion caused by the discrepancies in the language between the two sections.

Citation of Rules Affected by this Order: Amending WAC 182-513-1620.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-07-112 on March 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 28, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-11-123, filed 5/22/19, effective 6/22/19)

WAC 182-513-1620 Tailored supports for older adults (TSOA)—Presumptive eligibility (PE). (1) A person may be determined presumptively eligible for tailored supports for older adults (TSOA) services upon completion of a prescreening interview.

(2) The prescreening interview may be conducted by either:

(a) The area agency on aging (AAA); or

(b) A home and community services intake case manager or social worker.

(3) To receive services under presumptive eligibility (PE), the person must meet:

(a) Nursing facility level of care under WAC 388-106-0355;

(b) TSOA income limits under WAC 182-513-1635; and

(c) TSOA resource limits under WAC 182-513-1640.

(4) The PE period begins on the date the determination is made and:

(a) Ends on the last day of the month following the month of the PE determination if a full TSOA application is not completed and submitted by that date; or

(b) Continues through the date the final TSOA eligibility determination is made if a full TSOA application is submitted before the last day of the month following the month of the PE determination.

(5) If the person applies and is not determined financially eligible for TSOA, there is no overpayment or liability on the part of the applicant for services received during the PE period.

(6) The medicaid agency or the agency's designee sends written notice as described in WAC 182-518-0010 when PE for TSOA is approved or denied.

(7) A person may receive (~~only one PE period~~) services under presumptive eligibility only once within a (~~consecutive~~) twenty-four-month period.

(8) If the department of social and health services establishes a waitlist for TSOA services under WAC 388-106-1975, then PE does not apply.

WSR 21-10-038

PERMANENT RULES

RENTON TECHNICAL COLLEGE

[Filed April 28, 2021, 10:01 a.m., effective May 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Department of Education (DOE) issued updated Title IX rules on May 22, 2020, which take effect August 14, 2020, forward. The updated rules incorporate new Title IX student conduct code requirements that necessitate Renton Technical College, chapter 495E-110 WAC, amending WAC 495E-110-230 through 495E-110-310, and repealing WAC 495E-110-170 through 495E-110-200 of the student conduct code and hearing procedure, no later than August 14, 2020, to remain in compliance with the updated DOE requirements.

Citation of Rules Affected by this Order: New WAC 495E-110-225, 495E-110-230, 495E-110-240, 495E-110-250, 495E-110-260, 495E-110-270, 495E-110-280, 495E-110-290, 495E-110-300 and 495E-110-310; and repealing WAC 495E-110-170, 495E-110-180, 495E-110-190, and 495E-110-200.

Statutory Authority for Adoption: Title IX of Education Amendments of 1972; RCW 28B.50.140.

Adopted under notice filed as WSR 21-05-051 on February 12, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 0, Repealed 4; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 21, 2021.

Eduardo Rodriguez
Vice President of
Administration and Finance

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures

is the responsibility of the vice president of student affairs or their designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-020 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits (or attempts to commit), or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or ((disruption)) disruptive conduct.** ((Obstruction or disruption of)) Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) ~~((Any))~~ Instruction, research, administration, disciplinary proceeding, or other college ~~((activity))~~ activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** ((Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

~~(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

~~(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that~~

person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.) Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this section, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, ~~((or theft or misuse of, real or personal property or money of:~~

(a) The college or state; or

(b) Any student or college officer, employee, or organization; or

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has ~~been stolen~~) misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the ~~((direction))~~ directive of a college officer or employee who is acting in the legitimate performance of ~~((his or her))~~ their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in ~~((his or her))~~ their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, or sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale ~~((; or being observably under the influence))~~ of marijuana or the psychoactive compounds found in marijuana ~~((and))~~ intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug including, anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff. There are designated smoking areas on campus.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of ~~((her/his person's))~~ their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; ((genetic information)) creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined

in the supplemental procedures to this code. (Supplemental Title IX student conduct procedures.)

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct ~~((of a sexual nature))~~, including, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently ~~((serious))~~ severe, persistent, or pervasive as to:

(i) Deny or limit ~~((, and that does deny or limit, based on sex,))~~ the ability of a student to participate in or benefit from the college's educational program ~~((or that))~~;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse ~~((is any))~~. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact ~~((is any intentional))~~. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) ~~((Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For

consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this chapter, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes

the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; ((genetic information)) creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) Retaliation. ((Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment-)) Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** ((Safety violation includes any)) Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college ((shall proceed with)) reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-040 Disciplinary sanctions and terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) **Disciplinary warning((+)).** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand((+)).** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation((+)).** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension((+)).** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal((+)).** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution((+)).** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of

monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation**~~((:))~~. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing**~~((:))~~. A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college;

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order**~~((:))~~. ~~((A student may be directed to have no physical, verbal, and/or written contact with another individual.))~~ An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

STUDENT HEARING PROCEDURES

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-050 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises~~((; to conduct that occurs))~~;

(b) At or in connection with college-sponsored activities~~((;))~~; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disci-

plinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs ~~((off-campus))~~ off campus.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-060 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include~~((s))~~ all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) A "complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. ~~((The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

(4)) (5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((s))~~ (6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

~~((s))~~ (7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((s))~~ (8) "Respondent" is the student against whom disciplinary action is initiated.

~~((s))~~ (9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

~~((9))~~ (10) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).

(11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students(-)" for purposes of this chapter.

~~((10))~~ (12) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code. ~~((The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~

~~(11))~~ (13) "The president" is the president of the college. The president is authorized to:

(a) Delegate any ~~((and all of his or her))~~ of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-070 Initiation of disciplinary actions. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing ~~((him or her))~~ them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

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

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written deci-

sion setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 495E-110-040.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

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

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-080 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((twenty-one))~~ ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

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

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

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

- (a) An opportunity to be informed of the agency's view of the matter; and
- (b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon ~~((both the parties))~~ the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((twenty-one))~~ ten days

of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten days of service of the initial decision.

(2) The president shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-110 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president; and
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator, appointed on a yearly basis, shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member (~~((pursuant to RCW 34.05.425 (4))~~)).

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-120 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~(, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control~~)).

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date (~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)~~). The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any

witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee), and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of ~~((his/her))~~ their choice. ~~((A))~~ The respondent, in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ~~((his or her))~~ their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-130 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she select~~((s))~~, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available

to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-140 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve

a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-150 Appeal from student conduct committee initial decision. (1) A (~~(respondent)~~) party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office or designee within (~~(twenty-one)~~) ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to (~~(all parties)~~) the party and the student conduct officer within (~~(forty-five)~~) twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 15-11-013, filed 5/8/15, effective 6/8/15)

WAC 495E-110-160 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included ~~((that warns the student that his or her))~~ warning the respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if ~~((the respondent))~~ they enter~~(s)~~ the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or officers who may be bound or protected by it.

~~(6) ((During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.~~

~~(7) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.~~

~~(8) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.~~

~~(9) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.~~

~~(10) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or officers who may be bound or protected by it.))~~ In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT))
SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495E-110-225 Sexual misconduct proceedings.

Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

NEW SECTION

WAC 495E-110-230 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Sec. 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 495E-110-010 through 495E-110-220, these supplemental procedures shall take precedence.

NEW SECTION

WAC 495E-110-240 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 495E-110-250 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 495E-110-030.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 495E-110-260 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495E-110-270 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 495E-110-120. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 495E-110-280 Rights of parties. (1) The college's student conduct procedures and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 495E-110-290 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 495E-110-300 Initial order. In addition to complying with WAC 495E-110-140, the student conduct committee will be responsible for conferring and drafting an initial order that:

(1) Identifies the allegations of sexual harassment;

(2) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(3) Makes findings of fact supporting the determination of responsibility;

(4) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(5) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(6) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(7) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities;

(8) Describes the process for appealing the initial order to the college president; and

(9) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495E-110-310 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495E-110-150.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495E-110-170 Supplemental sexual misconduct procedures.
- WAC 495E-110-180 Supplemental definitions.
- WAC 495E-110-190 Supplemental complaint process.
- WAC 495E-110-200 Supplemental appeal rights.

WSR 21-10-050

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 29, 2021, 8:08 a.m., effective May 30, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency revised this section to eliminate the requirement for date and signature from the medicaid client or the client's designee upon delivery of medical equipment and supplies in order to avoid contact between the client and delivery person. The agency currently has emergency rules, filed under WSR 20-23-038, striking this requirement. Once the public health emergency ends, the agency will conduct rule making to add this requirement back into the rule.

Citation of Rules Affected by this Order: Amending WAC 182-543-2200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-07-012 on March 4, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 29, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-2200 Proof of delivery. (1) When a provider delivers an item directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information. All of the following apply:

(a) The agency requires a delivery slip as proof of delivery. The proof of delivery slip must:

(i) ~~((Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client);~~

~~((ii)))~~ Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

~~((iii)))~~ ~~((ii))~~ For medical equipment that may require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to the agency, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or the client's authorized representative; or

(ii) For nondurable medical supplies for which the agency has established a monthly maximum, on or after the date the item was received by the client or the client's authorized representative.

(2) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must furnish proof of delivery that the client received the equipment and/or supply, when the agency requests that information.

(a) If the provider uses a delivery/shipping service, the tracking slip is the proof of delivery. The tracking slip must include:

(i) The client's name or a reference to the client's package or packages;

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) If the provider/supplier does the delivering, the delivery slip is the proof of delivery. The delivery slip must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name or names of the items being shipped; and

(iv) For medical equipment that may require future repairs, the serial number.

(c) When billing the agency, use:

(i) The shipping date as the date of service on the claim if the provider uses a delivery/shipping service; or

(ii) The actual date of delivery as the date of service on the claim if the provider/supplier does the delivery.

(3) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(4) Providers must obtain prior authorization when required before delivering the item to the client. The item must be delivered to the client before the provider bills the agency.

(5) The agency does not pay for medical equipment and related items furnished to the agency's clients when:

(a) The medical professional who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of medical equipment and related items.

WSR 21-10-051

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 29, 2021, 8:12 a.m., effective May 30, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency revised these sections as allowed in the Consolidated Appropriations Act of 2021 extension of spousal impoverishment protections through September 30, 2023, and updated the time frame for institutionalization for roads to community living (RCL) from ninety days to sixty days.

Citation of Rules Affected by this Order: Amending WAC 182-513-1100, 182-513-1215, 182-513-1220, 182-513-1235, and 182-513-1660.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Consolidated Appropriations Act of 2021, H.R. 133, Division CC, Title II, Sec. 204 (b)(1)(A) and Sec. 205.

Adopted under notice filed as WSR 21-07-033 on March 9, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: April 28, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-24-065, filed 11/27/19, effective 12/28/19)

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. See chapter 182-500 WAC for additional definitions.

"**Adequate consideration**" means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

"**Administrative costs**" or "**costs**" means necessary costs paid by the guardian including attorney fees.

"**Aging and long-term support administration (AL TSA)**" means the administration within the Washington state department of social and health services (DSHS).

"**Alternate living facility (ALF)**" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) An adult family home (AFH) licensed under chapter 70.128 RCW.

(b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) A behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

(h) A staffed residential facility licensed under chapter 74.15 RCW.

(i) A group care facility for medically complex children licensed under chapter 74.15 RCW.

(j) A facility for children and youth twenty years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

"Assets" means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

"Clothing and personal incidentals (CPI)" means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

"Community options program entry system (COPEs)" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

"Continuing care retirement community" means an entity which provides shelter and services under continuing

care contracts with its members and which sponsors or includes a health care facility or a health service.

"Dependent" means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Developmental disabilities administration (DDA) home and community based (HCB) waiver" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCB waivers:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

"Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

"Home and community based (HCB) waiver programs authorized by home and community services (HCS)" means medicaid HCB waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCB waivers: Community options program entry system (COPEs), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

"Home and community based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Institutional services" means services paid for by Washington apple health, and provided:

(a) In a medical institution;

(b) Through an HCB waiver; or

(c) Through programs based on HCB waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is legally married to a person who is not in a medical institution.

"Life care community" see continuing care community.

"Likely to reside" means the agency or its designee reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports (LTSS)" includes institutional and noninstitutional services authorized by the department.

"Medicaid personal care (MPC)" means a medicaid state plan home and community based service under chapter 388-106 WAC.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

"Noninstitutional medicaid" means any apple health program not based on HCB waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for thirty days or more under chapter 182-513 WAC.

"Nursing facility level of care (NFLOC)" is under WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

"Penalty period" or "period of ineligibility" means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

"Room and board" means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

"Short stay" means residing in a medical institution for a period of twenty-nine days or fewer.

"Special income level (SIL)" means the monthly income standard that is three hundred percent of the supplemental security income (SSI) federal benefit rate.

"Spousal impoverishment protections" means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through ~~((December 31, 2018))~~ September 30, 2023, services authorized under 1115 and 1915(k) of the Social Security Act.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

"State spousal resource standard" means the minimum CSRA standard for a CS or SIPC spouse.

"Third-party resource (TPR)" means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

"Transfer" means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

"Uncompensated value" means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

AMENDATORY SECTION (Amending WSR 18-06-031, filed 2/28/18, effective 3/31/18)

WAC 182-513-1215 Community first choice (CFC)—Eligibility. (1) A client who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the client is:

- (a) Eligible for a noninstitutional Washington apple health (medicaid) program which provides categorically needy (CN) or alternative benefits plan (ABP) scope of care;
 - (b) Through ~~((December 31, 2018))~~ September 30, 2023, a spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1220; or
 - (c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.
- (2) A client whose only coverage is through one of the following programs is not eligible for CFC:
- (a) Medically needy program under WAC 182-519-0100;
 - (b) Premium-based children's program under WAC 182-505-0215;
 - (c) Medicare savings programs under WAC 182-517-0300;
 - (d) Family planning program under WAC 182-505-0115;
 - (e) Take charge program under WAC 182-532-0720;
 - (f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;
 (h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

(i) State-funded long-term care (LTC) for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 do not apply to CFC applicants, unless the client is applying for long-term services and supports (LTSS) that are available only through one of the HCB waivers under chapter 182-515 WAC.

(4) Home equity limits under WAC 182-513-1350 do apply.

(5) Post-eligibility treatment of income rules do not apply if the client is eligible under subsection (1)(a) or (b) of this section.

(6) Clients eligible under subsection (1)(a) or (b) of this section, who reside in an alternate living facility (ALF):

(a) Keep a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pay up to the room and board standard under WAC 182-513-1105 except when CN eligibility is based on the rules under WAC 182-513-1205.

(7) A client who receives CFC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in an ALF.

(8) Post-eligibility treatment of income rules do apply if a client is eligible under subsection (1)(c) of this section.

(9) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

(10) PNA, MNIL, and room and board standards are found at (~~www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 18-06-031, filed 2/28/18, effective 3/31/18)

WAC 182-513-1220 Community first choice (CFC)—Spousal impoverishment protections for noninstitutional Washington apple health clients. (1) This section is effective through (~~December 31, 2018~~) September 30, 2023.

(2) The agency or its designee determines eligibility for community first choice (CFC) using spousal impoverishment protections under this section, when an applicant:

(a) Is married to, or marries, a person not in a medical institution;

(b) Meets institutional level of care and eligibility for CFC services under WAC 388-106-0270 through 388-106-0295;

(c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program:

(i) Due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both; or

(ii) In an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and

(d) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(3) The agency or its designee determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's or recipient's separate income and not the income of the applicant's or recipient's spouse.

(4) The agency or its designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

(a) For the applicant or recipient, the resource standard is \$2000.

(b) Before determining countable resources used to establish eligibility for the applicant, the agency allocates the state spousal resource standard to the SIPC spouse.

(c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (9) of this section applies.

(5) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2000 to the SIPC spouse.

(6) A redetermination of the couple's resources under subsection (4) of this section is required if:

(a) The SIPI spouse has a break in CFC services of at least thirty consecutive days;

(b) The SIPI spouse's countable resources exceed the standard under subsection (4)(a) of this section; or

(c) The SIPI spouse does not transfer the amount under subsection (5) of this section to the SIPC spouse by the end of the month of the first regularly scheduled eligibility review.

(7) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(8) If the applicant lives in an ALF, has separate countable income at or below the standard under WAC 182-513-1205(2), and is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(9) If the applicant is employed and has separate countable income at or below the standard under WAC 182-511-1060, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(10) Once a person no longer receives CFC services for thirty consecutive days, the agency redetermines eligibility without using spousal impoverishment protection, under WAC 182-504-0125.

(11) If the applicant's separate countable income is above the standards under subsections (7), (8), and (9) of this section, the applicant is not eligible for CFC services under this section.

(12) The spousal impoverishment protections under this section expire on ~~((December 31, 2018))~~ September 30, 2023.

(13) Standards are found at ~~((http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources))~~ www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1235 Roads to community living (RCL). (1) Roads to community living (RCL) is a demonstration project authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

(2) Program rules governing functional eligibility for RCL are described in WAC 388-106-0250 through 388-106-0265. RCL services are authorized by the department.

(3) A person must have a stay of at least ~~((ninety))~~ sixty consecutive days in a qualified institutional setting such as a hospital, nursing home, or residential habilitation center, to be eligible for RCL. The ~~((ninety-day))~~ sixty-day count excludes days paid solely by medicare, must include at least one day of medicaid paid inpatient services immediately prior to discharge, and the person must be eligible to receive any categorically needy (CN), medically needy (MN), or alternate benefit plan (ABP) medicaid program on the day of discharge. In addition to meeting the ~~((ninety-day))~~ sixty-day criteria, a person who is being discharged from a state psychiatric hospital must be under age twenty-two or over age sixty-four.

(4) Once a person is discharged to home or to a residential setting under RCL, the person remains continuously eligible for medical coverage for three hundred sixty-five days unless the person:

- (a) Returns to an institution for thirty days or longer;
- (b) Is incarcerated in a public jail or prison;
- (c) No longer wants RCL services;
- (d) Moves out-of-state; or
- (e) Dies.

(5) Changes in income or resources during the continuous eligibility period do not affect eligibility for RCL services. Changes in income or deductions may affect the amount a person must pay toward the cost of care.

(6) A person approved for RCL is not subject to transfer of asset provisions under WAC 182-513-1363 during the continuous eligibility period, but transfer penalties may apply if the person needs HCB waiver or institutional services once the continuous eligibility period has ended.

(7) A person who is not otherwise eligible for a noninstitutional medical program must have eligibility determined using the same rules used to determine eligibility for HCB waivers. If HCB rules are used to establish eligibility, the person must pay participation toward the cost of RCL services. HCB waiver eligibility and cost of care calculations are under:

(a) WAC 182-515-1508 and 182-515-1509 for home and community services (HCS); and

(b) WAC 182-515-1513 and 182-515-1514 for development disabilities administration (DDA) services.

(8) At the end of the continuous eligibility period, the agency or its designee redetermines a person's eligibility for other programs under WAC 182-504-0125.

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1660 Medicaid alternative care (MAC) and tailored supports for older adults (TSOA)—Spousal impoverishment.

(1) The medicaid agency or the agency's designee determines financial eligibility for medicaid alternative care (MAC) or tailored supports for older adults (TSOA) using spousal impoverishment protections under this section, when an applicant or recipient:

(a) Is married to, or marries, a person who is not in a medical institution; and

(b) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program or the TSOA program due to:

(i) Spousal deeming rules under WAC 182-512-0920 for MAC;

(ii) Exceeding the resource limit in WAC 182-512-0010 for MAC, or the limit under WAC 182-513-1640 for TSOA; or

(iii) Both (b)(i) and (ii) of this subsection.

(2) When a resource test applies, the agency or the agency's designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

(a) Resource standards:

- (i) For MAC, the resource standard is \$2,000; or
- (ii) For TSOA, the resource standard is \$53,100.

(b) Before determining countable resources used to establish eligibility for the applicant, the agency or the agency's designee allocates the state spousal resource standard to the SIPC spouse.

(c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for MAC or TSOA services is established.

(3) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2,000 (for MAC) or \$53,100 (for TSOA) to the SIPC spouse.

(4) Income eligibility:

(a) For MAC:

(i) The agency or the agency's designee determines countable income using the SSI-related income rules under chapter 182-512 WAC, but uses only the applicant or recipient's income;

(ii) If the applicant's or recipient's countable income is at or below the SSI categorically needy income level (CNIL), the applicant or recipient is considered a SIPI spouse and is income eligible for noninstitutional CN coverage and MAC services;

(iii) If the applicant is employed and the applicant's countable income is at or below the standard under WAC 182-511-1060, the applicant is considered a SIPI spouse and is income eligible for noninstitutional CN coverage under the health care for workers with disabilities (HWD) program and MAC services.

(b) For TSOA, see WAC 182-513-1635.

(5) Once a person no longer receives MAC services, eligibility is redetermined without using spousal impoverishment protections under WAC 182-504-0125.

(6) If the applicant's separate countable income is above the standards described in subsection (4) of this section, the applicant is not income eligible for MAC or TSOA services.

(7) The spousal impoverishment protections described in this section are time-limited and expire on ~~((December 31, 2018))~~ September 30, 2023.

(8) Standards described in this chapter are located at ~~((www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources))~~ www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

WSR 21-10-059

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed April 30, 2021, 8:59 a.m., effective May 31, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule change allows persons under twenty-five years of age to renew their driver license/Identocard online.

Citation of Rules Affected by this Order: Amending WAC 308-104-019.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.120.

Adopted under notice filed as WSR 21-04-139 on February 2, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 28, 2021.

Ellis Starrett
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-09-032, filed 4/9/15, effective 5/10/15)

WAC 308-104-019 Renewal of driver's license or identocard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identocard renewal may apply by electronic commerce if permitted under this section.

(1) A person whose valid driver's license is about to expire may be allowed to renew by electronic commerce if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is ~~((at least twenty-four and))~~ not more than seventy years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that he or she has had no mental or physical condition or is not taking any medication which could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) A person whose valid identocard is about to expire may renew by electronic commerce if the person:

(a) Is eligible to renew his or her identocard by electronic commerce under the provisions of RCW 46.20.117 (3)(b); and

(b) ~~((Is at least twenty-four years of age; and~~

~~(e)))~~ Has previously been issued a digital identocard.

(4) A person applying for identocard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 21-10-060

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed April 30, 2021, 2:48 p.m., effective May 31, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-828-370 HIV/AIDS prevention and information education requirements, for audiologists, speech-language pathologists, speech-language pathology assistants, and hearing aid specialists.

ESHB 1551 (chapter 76, Laws of 2020) repealed RCW 70.24.270. This removed the requirement for HIV/AIDS education and training for emergency medical personnel, health professionals, and health care facility employees. As a result, the board of hearing and speech repealed the requirement for HIV/AIDS training in WAC 246-828-370.

Citation of Rules Affected by this Order: Repealing WAC 246-828-370.

Statutory Authority for Adoption: RCW 18.35.161.

Other Authority: ESHB 1551 (chapter 76, Laws of 2020).

Adopted under notice filed as WSR 21-01-045 on December 8, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: April 30, 2021.

Roberta A. Jackson, Chair
Board of Hearing and Speech

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-828-370 HIV/AIDS prevention and information education requirements.

WSR 21-10-064
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed April 30, 2021, 3:49 p.m., effective May 31, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The fish and wildlife commission approved new rule language that establishes the department's nonlethal pursuit training pass program in order to effectively manage and train hound handlers and their dogs to be agents of the state in responding to cougar-human conflict. The new rule language requires that an applicant meet certain criteria in

order to qualify for joining this nonlethal training program, as well as procedures for participation once in the program. A limited number of individuals will be selected and approved through an extensive application process, which includes a background check of every applicant. This program is monitored and administered through the department's enforcement program.

Citation of Rules Affected by this Order: New WAC 220-412-130 Nonlethal pursuit training pass program.

Statutory Authority for Adoption: RCW 77.15.245, 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.077, and 77.12.047.

Adopted under notice filed as CR-101 filed as WSR 19-16-150 on August 7, 2019; CR-102 filed as WSR 20-21-065 on October 15, 2020.

Changes Other than Editing from Proposed to Adopted Version: Six changes were considered and adopted by the fish and wildlife commission and included the following:

(a) An additional section, subsection (4), proscribes what shall occur following the discharge of a firearm during a training session: "If a firearm is discharged at any point during a training activity, the training pass granted pursuant to subsection (11) shall be placed on hold until reinstated by the department captain or training area sergeant. Before a training pass may be reinstated or reissued, WDFW Police shall investigate the circumstances of the discharge to determine if it was unlawful or a result of not meeting the best practices of dog handling." The adopted amendment clarifies how the training pass holder will be temporarily unable to engage in any training opportunities until Washington department of fish and wildlife police conducts an investigation and determines why the firearm was discharged. This language and protocol were originally included in the affidavit of conduct that any participant would be required to read, sign, and abide by. But the Commission wished to emphasize the protocol following a firearm discharge by including it in the rule, rather than only in the affidavit.

(b) An additional section, subsection (5), addresses requirements for a participant who purchases a cougar tag: "A nonlethal pursuit training pass program participant who purchases a cougar harvest tag in Washington state cannot fill a cougar tag seventy-two hours before or after a training exercise." The adopted amendment mitigates a concern that a training pass holder will utilize the program to enhance their personal cougar hunting opportunities by seeking out cougar as part of a dog-handling exercise, then returning to the location without dogs to hunt. The nonlethal pursuit training program is not intended to aid recreational hunting in any way. The added requirements are consistent with the seventy-two hour cougar harvest reporting process, which requires the hunter to report their cougar harvest within seventy-two hours.

(c) The addition of geographic limitations of training passes, subsection (10): "Training passes issued by the department for training activities shall be geographically limited to no more than nine training passes at a time per WDFW region, and no more than three training passes at a time per enforcement detachment." The adopted amendment responds to public testimony expressing concerns that the program would concentrate training pass holders and training activi-

ties in certain areas of the state. The department considered the public concerns and suggested the addition, recognizing that a concentration of training pass activities could overwhelm enforcement staff in those areas approving and overseeing trainings. Further, the recommended change embraces the need to disperse working dog handlers statewide and have dog handlers familiar with the variety of regions in Washington, as the department's need for working dog handlers occurs statewide. The approved language in the rule provides an "up to" number to generate a ceiling or cap per region and detachment. This should spread training activity more evenly across the state and improve the quality of oversight by department staff.

(d) The addition of restriction of training passes for certain GMUs, subsection (11): "The department captain shall restrict training pass scope for certain Game Management Units (GMUs) during big game hunting seasons when prudent." The adopted amendment gives the department discretion to limit the scope of training pass activities in certain GMUs during big game hunting seasons, a concern raised by some public comments and commissioners. Specifically, this change addresses concerns that recreational hunting and training pass activities could overlap and prove not to be compatible. With this discretion and flexibility, the department can use adaptive communication and management to generate an active balance between these different uses, hunting and nonlethal pursuit training, and maintain that balance and public safety during these seasons and in these locations.

(e) The additional requirement that training pass participant carry pepper spray or an air horn, subsection (12): "Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that nonlethal means are available to mitigate wildlife interactions." The adopted amendment further explains the nonlethal pursuit training pass program is nonlethal and prioritizes the ethical treatment of working dogs and wildlife. Training pass holders may not kill or injure domestic or wild animals while engaged in the training activity, unless necessary for self-defense. There are inherent risks in wildland activities involving big game and wildlife, and therefore a need for personal protection—public comments and the commission recognizes this. This addition does not just encourage, but requires effective nonlethal tools be available to any program participant for their protection in the case of wildlife interactions with working dogs during the training.

(f) An additional section, subsection (14), prohibiting a training pass holder from pursuing kittens or cougars with kittens: "As a best practices in dog handling, training pass holders shall not knowingly engage in the pursuit of spotted kittens or cougars with spotted kittens. Upon any observation of tracks of more than one cougar or visually observing the presence of spotted kittens during a training exercise, the handler shall terminate the current training pass activity and report the observations to the training area sergeant. The sergeant may choose to subsequently limit future training activities in the area." The adopted amendment addresses public comments that a nonlethal pursuit training activity could lead to injury or death to juvenile cougar (kittens). Avoiding pursuit of cougar kittens, or cougars raising juveniles, is a best practice among dog handlers, but this language explicitly

adopts that best practice as a prohibition. The prohibition requires dog handlers to be aware of visual clues or tracks indicating the presence of kittens with an adult cougar; if there are indications of kittens, the dog handler shall not engage in a training pursuit. This language further defines the responsibility the handler will take if kittens are located and reporting requirements to the agency.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 29, 2021.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

NEW SECTION

WAC 220-412-130 Nonlethal pursuit training pass program. (1) In order to effectively manage and train hound handlers and their dogs to be agents of the state used for cougar conflict response, the department establishes the nonlethal pursuit training pass program.

(2) The nonlethal pursuit training pass program emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goal of the nonlethal pursuit training pass program includes improving dog handler/department relations, effective detection of target species when requested by the department, and the ethical treatment of working dogs and wildlife. The yearly application cost to be considered for placement on the list of screened nonlethal pursuit handlers shall be twenty-five dollars and will cover the cost of an application review and a background check. This cost will occur annually when renewing an application to be on the list of screened nonlethal pursuit handlers. The WDFW enforcement program shall determine the nonlethal pursuit program's requirements and curriculum in consultation with stakeholders including, but not limited to, working dog handlers and wildlife conservation organizations in Washington state.

(3) Working dog handlers are held to the highest ethical standards as these individuals may be asked to perform as agents of the state under RCW 77.12.077. As such, they may be ambassadors for the department and the working dog community. Criteria to be considered include the following:

(a) Currently own and train working dogs on scent detection and tracking;

(b) Maintain health records of working dogs;

- (c) An active working knowledge of predator detection and pursuit training techniques;
- (d) Hold a current driver's license;
- (e) Up-to-date vehicle registration and vehicle insurance for any vehicle used to transport working dogs;
- (f) Understanding of best practices in dog handling equipment and proper usage; and
- (g) Working knowledge of terrain navigation and digital mapping equipment.

Initial approved applicants on the list of screened nonlethal pursuit handlers and individuals reapplying to be approved on the list of screened nonlethal pursuit handlers must annually submit to a criminal background check, and the department shall deny entry into the nonlethal pursuit training pass program to those applicants who have:

- Been convicted within the last ten years of any criminal offense under chapter 77.15 RCW (WDFW enforcement), 76.48 (specialized forest products), or 16.52 (animal cruelty) RCW;
- Been found to have committed, or to have paid, any infraction for a violation of chapter 77.15 RCW except recreational fishing under RCW 77.15.160, in the last ten years;
- Been convicted within the last ten years of any crime of dishonesty;
- Been convicted of any felony, or released from custody pursuant to any felony conviction, within the last ten years;
- Been convicted of, or been found to have committed, any criminal or civil violation where the department obtains a report from the citing authority that alleges the applicant was deceptive, untruthful, or obstructed a law enforcement officer in the course of the officer's duties, other than violations of RCW 46.61.050 and 46.61.400, within the last ten years;
- Been convicted of unlawful possession of a firearm under RCW 9.41.040, or has been convicted of any felony offense and the applicant has not successfully petitioned to have the applicant's firearm rights restored, or is otherwise ineligible to possess a firearm for any reason provided in RCW 9.41.040;
- A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in Washington or in another state.

An applicant must disclose to WDFW at the time of application whether the applicant is aware of any pending criminal charges in any municipal, state, or federal court. The department may defer approval or denial on an application until such criminal charges have been adjudicated.

The department may, based on the results of a criminal background check or based on information it has received involving active investigations or pending charges, deny an application, at its discretion, if it believes the applicant does not meet the high ethical standards of the program, or would not be a suitable state agent or ambassador for the department and the working dog community.

(4) If a firearm is discharged at any point during a training activity, the training pass granted pursuant to subsection (11) of this section shall be placed on hold until reinstated by the department captain or training area sergeant. Before a training pass may be reinstated or reissued, WDFW police shall investigate the circumstances of the discharge to deter-

mine if it was unlawful or a result of not meeting the best practices of dog handling.

(5) A nonlethal pursuit training pass program participant who purchases a cougar harvest tag in Washington state cannot fill a cougar tag seventy-two hours before or after a training exercise.

(6) An individual who holds a current nonlethal pursuit training pass and is found to have any of the invalidating circumstances addressed in subsections (3) through (5) of this section, shall be removed from the program and the training pass revoked. If the department learns of a new pending criminal charge or incident involving a current training pass applicant which could lead to an invalidating circumstance addressed in subsections (3) through (5) of this section, the department may suspend the training pass applicant's participation in the program until resolution of the charge or incident.

(7) Nonlethal pursuit training pass applicants will be required to complete an agency affidavit which specifies that the applicant has read, understands, and will comply with the program rules and ethical standards required of the program. This affidavit must be signed, dated, and returned along with a copy of the applicant's driver's license, current proof of vehicle liability insurance, and a copy of a valid hunting license. Submission of false or fraudulent information is grounds for removal from the program.

(8) The enforcement program nonlethal pursuit training pass program coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about nonlethal pursuit program participants and determine whether such complaints have merit and/or warrant enforcement or administrative action.

(9) Any person who has been denied initial admission into the nonlethal pursuit training pass program, or renewal of his or her application to be placed on the list of screened nonlethal pursuit handlers, has the right to an administrative hearing to contest the agency action pursuant to chapter 34.05 RCW. An applicant denied a training pass may request an informal review within thirty days of receipt of the application denial. The request for an informal review shall be served on the chief of the enforcement program in writing. The chief may ask the applicant and department for additional information before ruling on the informal appeal, and shall respond to the informal appeal in writing. The applicant shall have initiated the formal appeal no later than thirty days from receipt of the notice of denial of the training pass, or thirty days from receipt of the decision on the informal review, whichever is later. Date of receipt shall be five days after any written notice or decision is mailed to the applicant. Initial nonlethal pursuit training pass applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

(10) Training program enrollment - The department will authorize no more than fifty valid training pass holders to participate in the program annually on a statewide basis. Training passes issued by the department for training activities shall be geographically limited to no more than nine

training passes at a time per WDFW region, and no more than three training passes at a time per enforcement detachment.

(11) Prior to engaging in any nonlethal pursuit training activity, a member of the nonlethal pursuit training pass program shall obtain from the department captain with oversight responsibility for the area proposed to be used for training a nonlethal pursuit training pass, which will be in via paper or electronic format. A nonlethal pursuit training pass, issued at the captain's discretion, will be issued for a period of up to thirty days, with an option for a thirty-day renewal at the request of the training pass holder. This training pass will detail the time frame and geographic scope of the training area that is acceptable to the captain and the training pass holder. Prior to engaging in a training exercise within the limitations of the training pass, the training pass holder will communicate with a department sergeant with oversight of the training area. The training pass holder shall keep the department sergeant apprised of regular training activities, and the sergeant shall keep the training pass holder apprised of any operational or logistical concerns or restrictions. A department captain may, at any time, change the geographic scope or time frame of the training pass to address management or emergent needs, and retains the discretion to terminate a training pass. The department captain shall restrict training pass scope for certain game management units (GMU's) during big game hunting seasons when prudent.

(12) Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that nonlethal means are available to mitigate wildlife interactions.

(13) Training pass holders will be allowed to have up to four immediate family members present while participating in a training exercise with a nonlethal pursuit training pass. "Immediate family member" shall be limited to spouses and domestic partners, children and step-children, siblings, parents, and step-parents. Additionally, the owner of real property who has granted permission to the training pass holder to use said lands for a training exercise with a nonlethal pursuit training pass may be present with the training pass holder or may designate a representative in writing. Corporate landowners may designate security personnel or contractors to accompany a training pass holder participating in a training exercise with a nonlethal pursuit training pass. A department sergeant with oversight of the training area may authorize, in advance, additional observers of a training pass holder participating in a training exercise with a nonlethal pursuit training pass.

(14) As a best practices in dog handling, training pass holders shall not knowingly engage in the pursuit of spotted kittens or cougars with spotted kittens. Upon any observation of tracks of more than one cougar or visually observing the presence of spotted kittens during a training exercise, the handler shall terminate the current training pass activity and report the observations to the training area sergeant. The sergeant may choose to subsequently limit future training activities in the area.

(15) Training pass holders shall maintain a logbook of training activities under the nonlethal pursuit training program. Logbooks shall be made using a template made by the

department to be uploaded online or downloaded and printed. Entries in the logbook shall include:

(a) Training pass holder's name, names of those accompanying or observing the training exercise, and number of dogs trained or participating;

(b) Date and location of the training, including the names of any roads traveled, trails traveled, or routes taken. The entry shall specify the owners of any land traversed;

(c) If any cougars were detected, the logbook must contain the corresponding GPS coordinates; and

(d) The discharge of any firearms, identification of the firearms, and the person responsible for the discharge.

Logbooks are required to be completed for each training trip before leaving the field. Logbook pages must be provided to the department through an online reporting system or post-marked within ten days following any calendar month in which the training pass activity took place.

WSR 21-10-081

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 3, 2021, 11:19 a.m., effective June 3, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending this section to meet the Centers for Medicare and Medicaid Services milestone requirement 3 regarding the agency's Section 1115 Substance Use Disorder (SUD) Waiver Implementation Plan. Milestone 3 requires the adoption of rules reflecting the requirement that residential treatment facilities that provide SUD services offer medication assisted treatment access on-site or facilitate off-site access.

Citation of Rules Affected by this Order: Amending WAC 182-502-0016.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 71.24.035, 71.24.520, 71.24.585; 42 U.S.C. 1315 (Sec. 1115).

Adopted under notice filed as WSR 21-07-067 on March 16, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 3, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-20-060, filed 9/26/19, effective 10/27/19)

WAC 182-502-0016 Continuing requirements. (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, medicaid agency billing instructions, provider alerts issued by the agency, and other written directives from the agency;

(c) Inform the agency of any changes to the provider's application or contract including, but not limited to, changes in:

(i) Ownership (see WAC 182-502-0018);

(ii) Address or telephone number;

(iii) The professional practicing under the billing provider number; or

(iv) Business name.

(d) Retain a current professional state license, registration, certification or applicable business license for the service being provided, and update the agency of all changes;

(e) Inform the agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, disciplinary decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;

(h) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC 182-502-0010 (2)(j) for information on the agency's screening process;

(i) Pass any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;

(j) Maintain professional and general liability coverage to the extent the provider is not covered:

(i) Under agency, center, or facility professional and general liability coverage; or

(ii) By the Federal Tort Claims Act, including related rules and regulations.

(k) Not surrender, voluntarily or involuntarily, the provider's professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(l) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information including, but not limited to, disclosures;

(ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(n) Comply with the employee education requirements regarding the federal and the state false claims recovery laws, the rights and protections afforded to whistleblowers, and related provisions in Section 1902 of the Social Security Act (42 U.S.C. 1396a(68)) and chapter 74.66 RCW when applicable. See WAC 182-502-0017 for information regarding the agency's requirements for employee education about false claims recovery.

(2) A provider may contact the agency with questions regarding its programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the agency's programs.

(3) The agency may refer the provider to the appropriate state health professions quality assurance commission.

(4) In addition to the requirements in subsections (1), (2), and (3) of this section, to continue to provide services for eligible clients and be paid for those services, residential treatment facilities that provide substance use disorder (SUD) services (also see chapter 246-337 WAC) must:

(a) Not deny entry or acceptance of clients into the facility solely because the client is prescribed medication to treat SUD;

(b) Facilitate access to medications specific to the client's diagnosed clinical needs, including medications used to treat SUD;

(c) Make any decisions regarding adjustments to medications used to treat SUD after individual assessment by a prescribing provider;

(d) Coordinate care upon discharge for the client to continue without interruption the medications specific to the client's diagnosed clinical needs, including medications used to treat SUD. See RCW 71.24.585.

WSR 21-10-083
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed May 3, 2021, 11:23 a.m., effective June 3, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending this section due to some clients receiving long-term services and supports who have accumulated resources under requirements described in section 6008 of the Families First Coronavirus Response Act (FFCRA) that may result in their loss of coverage when the public health emergency (PHE) ends. The proposed rules allow the client to spend down these excess resources over twelve months beginning the month following the end of the PHE. Additionally, the interim rule with comment published by the Centers for Medicare and Medicaid Services that is being codified in 42 C.F.R. 433.400 requires action on changes in circumstances for these clients, which had been prohibited under FFCRA.

Citation of Rules Affected by this Order: Amending WAC 182-512-0550.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 C.F.R. 433.400.

Adopted under notice filed as WSR 21-07-122 on March 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 3, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-23-063, filed 11/15/19, effective 1/1/20)

WAC 182-512-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a person who is blind or disabled to fulfill a self-sufficiency plan approved by the agency.

(2) Retroactive payments from SSI or old age, survivors, and disability insurance (OASDI), including benefits a person receives under the interim assistance reimbursement

agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the person, the person's spouse, or any other person financially responsible for the person;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) OASDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (11) of this section as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) The excluded resources described in WAC 182-512-0770 and other resources of American Indians/Alaska Natives that are excluded by federal law.

(6) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(7) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(8) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(9) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(10) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(11) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(12) Tax refunds and earned income tax credit refunds and payments are excluded as resources for twelve months after the month of receipt.

(13) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(14) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The person intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are available resources when not used within the allowable time periods.

(15) Insurance proceeds or other assets recovered by a Holocaust survivor.

(16) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed persons, known as Keogh plans).

(17) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(18) SSA- or division of vocational rehabilitation (DVR)-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled persons to set aside resources necessary for the achievement of the plan's goals, are excluded.

(19) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(20) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(21) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(22) The following are among assets that are not resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets.

(23) Resources accumulated in a separate account, designated by the client, that result from work activity during the client's enrollment in apple health for workers with disabilities (HWD) program under chapter 182-511 WAC.

(24) Limited to clients who have been or continue to be subject to participation as defined in WAC 182-513-1100 during the public health emergency (PHE), resources accumulated due to not increasing participation in response to section 6008(b) of the Families First Coronavirus Response Act (FFCRA) are excluded for:

(a) The duration of the PHE; and

(b) A period of twelve months after the PHE ends.

(25) Resources listed in the program operations manual system (POMS), not otherwise excluded under this section, are excluded (see SSA POMS Section SI 01130.050 <http://secure.ssa.gov/apps10/poms.nsf/lnx/0501130050>).

WSR 21-10-097

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed May 5, 2021, 9:01 a.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Purpose: This rule-making order amends chapter 16-218 WAC, Hops—Certification and analysis—Fees, by:

- Increasing all fees related to the certification of hops by approximately forty-five percent;
- Updating section titles to move away from the current question and answer format; and
- Modifying the language to improve readability.

Citation of Rules Affected by this Order: Amending WAC 16-218-015, 16-218-025, 16-218-035, and 16-218-040.

Statutory Authority for Adoption: RCW 22.09.020 and 22.09.790.

Adopted under notice filed as WSR 21-01-205 on December 23, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 5, 2021.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

WAC 16-218-015 ~~((What fees does the department charge))~~ **Fees for the certification of hops**~~((?))~~. (1) Based upon standards established by the Federal Grain Inspection Service of the United States Department of Agriculture, the Washington state department of agriculture's (department) fees for the certification of hops are:

Type of Inspection and Other Service	Fee Charged for Inspection and Other Service
(a) Official lot inspections and certification for baled hops.	((One dollar and twenty-five cents)) \$1.81 per bale with a minimum charge of ((thirty dollars)) \$44.00 per lot for official inspection and grading with certification.
(b) Official lot inspection and/or certification for alternative methods of packaging hops, or other services for which no fee has been established.	A contract fee may be negotiated, based on the agency's costs to furnish the services.
(c) Submitted sample inspections and certification.	((One hundred fifty dollars)) \$217.50 for an unofficial sample submitted for grading with certification of a quantity not to exceed 100,000 lbs. of dried hops.
(d) Appeal inspections.	The Federal Grain Inspection Service in Portland, Oregon establishes the charges for appeal inspections, and payments for such inspections must be made to them. Department time for sampling, handling and administration regarding appeal inspections will be assessed at the sampler hourly rate.

(2)(a) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

- (i) Each bale can be properly stenciled; and
- (ii) Samples can be drawn from the bales selected by the inspector.

(b) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for grading analysis.

(3) The department may perform official lot inspection and/or certification of hops packaged by alternative methods (e.g., hops not baled prior to processing) subject to conditions specified in a written agreement between the department and the person(s) requesting the service.

(4)(a) Submitted samples provided by a grower or dealer for grading analysis must be representative of the lot(s) and the hop material.

(b) Submitted samples ~~((are))~~ must be delivered to the laboratory.

AMENDATORY SECTION (Amending WSR 08-17-024, filed 8/12/08, effective 9/12/08)

WAC 16-218-025 ~~((What does the department charge))~~ **Fees for chemical analysis regarding brewing values and additional constituents in raw hops, hop extract, hop pellets and hop powder**~~((?))~~. (1) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

(a) Each bale can be properly stenciled (not done for brewing value only sampling); and

(b) Samples can be drawn from the bales selected by the inspector.

(2) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for chemical analysis, simultaneous with grading analysis.

(3) Brewing value samples are obtained from a representative composite of the official samples drawn for grade analysis.

(4) Brewing value samples not sampled simultaneously for grade analysis will be charged at the same fee per bale.

(5) When department personnel officially sample hops, a brewing value certificate will be issued when the chemical analysis is done.

(6)(a) Submitted brewing value samples provided by a grower or dealer for chemical analysis must be representative of the lot(s).

(b) Submitted samples ~~((are))~~ must be delivered to the laboratory.

(7) Submitted brewing value certificates will be issued for submitted samples when the chemical analysis is done.

(8) Department fees for the chemical analyses of officially sampled raw hops are:

Type of Analyses	Fee	Minimum Fee
(a) ASBC spectrophotometric with moisture	((0.35)) \$0.50 per bale	((30.00)) \$50.00 per sample

Type of Analyses	Fee	Minimum Fee
(b) ASBC spectrophotometric/conductometric or EBC conductometric without moisture	((\\$0.30)) \$0.44 per bale	((\\$30.00)) \$44.00 per sample
(c) Mebak, Zurich, Verzele, Ganzlin, or conductometric	((\\$0.60)) \$0.87 per bale	((\\$60.00)) \$87.00 per sample

(9) Department fees for chemical analyses of submitted raw hops, hop extract, hop pellets or hop powders are:

Type of Analyses	Fee
(a) ASBC spectrophotometric	((\\$30.00)) \$44.00
(b) ASBC conductometric	((\\$30.00)) \$44.00
(c) EBC conductometric	((\\$30.00)) \$44.00
(d) EBC conductometric (Wollmer, Zurich, Mebak, Verzele, Ganzlin, or Resins (hard or soft))	((\\$60.00)) \$87.00
(e) H ₂ O	((\\$10.00)) \$14.50
(f) Total oil	((\\$25.00)) \$36.00
(g) Wort test, particle size	((\\$10.00)) \$14.50

(10)(a) The department will assess hourly charges for analytical chemistry work if no other fee has been established.

(b) Hourly charges are set by written agreement and shall be based on the costs incurred to conduct the analysis, such as:

- Labor
- Laboratory equipment
- Chemicals and materials
- Administration and overhead.

AMENDATORY SECTION (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

WAC 16-218-035 (~~What does the department charge~~) **Fees for issuing export certificates for hops and hop products**(~~(?)~~). The department charges the following fees for issuing certificates related to hops and hop products:

Type of Certificate	Fee for Each Certificate
(1) State phytosanitary certificates	((\\$25.00)) \$36.00

Type of Certificate	Fee for Each Certificate
(2) Other certificates attesting to origin, compliance with standards of other states or nations or specifications of contracts, or conditions of production or processing	((\\$20.00)) \$29.00

AMENDATORY SECTION (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

WAC 16-218-040 (~~When are the~~) **Payment of fees and charges** (~~required by this chapter due to the department?~~). (1) The department will bill (~~you~~) for (~~the~~) services (~~it renders~~) rendered.

(2) The fees and charges billed (~~to you~~) are due to the department within thirty days of the statement date.

(3) If the department does not receive (~~your~~) payment within thirty days of the statement date, the department may:

(a) Withhold (~~its~~) services (~~from you~~) until (~~your~~) the delinquent account is paid; and

(b) Accept only cash payments (~~from you~~) for future services rendered.

(4) The department assesses a penalty of twelve percent per annum on all delinquent account balances.