

WSR 21-08-081
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 7, 2021, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-135.

Title of Rule and Other Identifying Information: Chapter 392-380 WAC Public school pupils—Immunization requirement and life-threatening health condition.

Hearing Location(s): On May 11, 2021, at 1:00 p.m. Webinar via Zoom (call-in option will be available). Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom. There will be no physical location for the hearing. For information on registering and participating, please visit the superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospirulemaking-activity> [<https://www.k12.wa.us/policy-funding/ospirulemaking-activity>]. Questions, email kristin.murphy@k12.wa.us.

Date of Intended Adoption: May 14, 2021.

Submit Written Comments to: Annie Hetzel, School Health Services, OSPI, P.O. Box 47200, Olympia, WA 98504, email Annie.hetzel@k12.wa.us, fax 360-664-3028, by May 11, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by May 4, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule amendments to chapter 392-380 WAC is to clarify the procedural and substantive due process requirements governing the exclusion of children from schools pursuant to RCW 28A.210.120 and 28A.210.320.

Reasons Supporting Proposal: Rules adopted by the Washington state board of health, in August 2020, regarding school immunization requirements increase the possibility that students may be excluded from school due to noncompliance with these requirements. This, coupled with the current lack of clarity in chapter 392-380 WAC regarding procedural and substantive due process safeguards for students who are excluded from school due to noncompliance with immunization requirements, create a need to amend the chapter.

Statutory Authority for Adoption: RCW 28A.210.160 and 28A.210.320(3).

Statute Being Implemented: RCW 28A.210.120 and 28A.210.320.

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

Name of Proponent: OSPI, [governmental].

Name of Agency Personnel Responsible for Drafting and Implementation: Annie Hetzel, OSPI, 600 Washington Street S.E., Olympia, 360-725-6054.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed

amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

April 7, 2021
Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2569.1

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(~~(6)~~).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(~~(1)~~).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(~~(2)~~).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC (~~(246-100-166(5))~~) 246-105-060(2)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260(2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to:

(i) Submit a schedule of immunization(~~(7)~~) or a certificate of exemption as prescribed in WAC 246-105-050; or

(ii) Maintain the conditions for conditional status attendance prescribed in WAC 246-105-060; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is

required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall (~~mean parent, legal guardian, or other adult in loco parentis~~) have the same meaning as in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-020, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by ((a)) the student's parent(~~, guardian or other adult in loco parentis~~).

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-045, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-050 Written notice prior to exclusions from school.

~~((1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.~~

~~(2) The written notice for public school students shall:~~

~~(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.~~

~~(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.~~

~~(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.~~

~~(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.~~

~~(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.)~~ **(1) Written notice.**

Before excluding a student from school for failure to comply with WAC 392-380-045, a school must provide written notice of the exclusion to the student's parents in person, by mail, or by email. The written notice must include:

(a) The school's decision to exclude the student from school, effective immediately upon the parents' receipt of the notice.

(b) The duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with RCW 28A.210.080, a medication or treatment plan in accordance with RCW 28A.210.320, or until a chief administrator determines that the student is no longer excluded from school.

(c) Notice of the applicable laws, including a copy of the applicable laws.

(d) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.210.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(e) The student's and parents' right to a hearing to challenge the decision under WAC 392-380-080, including where and to whom the hearing must be requested and a description of the hearing process.

(2) Language assistance. The school must ensure the written notice is provided in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with commu-

nication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-050, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-080 Prehearing and hearing process. (~~((1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.~~

~~(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.)~~ (1) Requesting a hearing. A student or the parent may request a hearing to the chief administrator orally or in writing.

(2) Notice. Within one school day after receiving the hearing request, unless otherwise agreed to by the parents, the chief administrator must provide the parents written notice in person, by mail, or by email of the time, date, and location of the hearing.

(3) Hearing. The school must hold a hearing within three school days from the date the school's chief administrator received the hearing request, unless otherwise agreed to by the parents. At the hearing, the chief administrator must provide the parents an opportunity to explain how their student is in compliance with school attendance requirements under WAC 392-380-045.

(4) Hearing decision. The chief administrator must deliver a written hearing decision to the parents in person, by certified mail, or by email within two school business days after the hearing. The written decision must include:

(a) The decision to affirm or reverse the exclusion;

(b) If the decision to exclude the student is affirmed, the duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with WAC 392-380-045(1) or a medication or treatment plan in accordance with WAC 392-380-045(3); and

(c) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.219.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(5) Language assistance. The school must ensure the notice, hearing proceedings, and written hearing decision are in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-080, filed 5/25/07, effective 6/25/07.]