

WSR 21-09-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-49—Filed April 7, 2021, 12:09 p.m., effective April 22, 2021]

Effective Date of Rule: April 22, 2021.

Purpose: The purpose of this emergency rule is [to] set recreational halibut seasons in Marine Areas 1 through 10.

Citation of Rules Affected by this Order: Amending WAC 220-314-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The National Marine Fisheries Service has adopted final regulations for Pacific halibut fisheries in 2021 including the season dates described in this rule. This emergency rule revises state rules so they conform to federal rules. Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff; the season could close earlier if quotas are achieved. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 7, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000A Halibut—Seasons—Daily and possession limits.

Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, April 22 through June 30, 2021, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

- (1) **Catch Record Card Area 1 (All depth fishery):**

Open May 6, 9, 13, 16, 20, 23, 27; June 3, 6, 10, 13, 17, 20, 24, and 27, 2021. (Thursdays and Sundays, May 6 through 23. Thursday, May 27. Thursdays and Sundays June 3 through 27.)

(2) **Catch Record Card Area 1 (Nearshore fishery)**; Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

Open May 10, 11, 12, 17, 18, 19, 24, 25, 26, 31; June 1, 2, 7, 8, 9, 14, 15, 16, 21, 22, 23, 28, 29, and 30, 2021. (Mondays through Wednesdays May 10 through June 30.)

(3) **Catch Record Card Area 2:**

Open May 6, 9, 13, 16, 20, 23, 27; June 17, 20, 24, and 27, 2021. (Thursdays and Sundays May 6 through 23. Thursday, May 27. Thursdays and Sundays June 17 through 27.)

(4) **Card Areas 3 and 4:**

Open May 6, 8, 13, 15, 20, 22, 28, 30; June 3, 5, 10, 12, 17, 19, 24, and 26, 2021.

(Thursdays and Saturdays, May 6 through May 22. Friday May 28 and Sunday May 30. Thursdays and Saturdays June 3 through 26.)

(5) **Catch Record Card Area 5:**

Open May 6, 8, 13, 15, 20, 22, 28, 29, 30; June 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26. (Thursdays and Saturdays, May 6 through May 22. Friday through Sunday, May 28 through 30. Thursdays, Fridays, Saturdays, June 3 through 26.)

(6) **Catch Record Card Area 6 through 10:**

Open May April 22, 23, 24, 29, 30; May 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 28, 29, 30; June 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, and 26, 2021 (Thursdays through Saturdays, April 22 through May 22. Friday through Sunday May 28 through 30. Thursdays through Saturdays June 3 through 26.)

(7) **Catch Record Card Areas 11, 12 and 13:** Closed.

[]

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

WSR 21-09-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-50—Filed April 7, 2021, 1:59 p.m., effective April 7, 2021, 1:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000Z; and amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Modifies 2021 commercial select area spring seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact actions of February 16, March 23, 30, and April 7, 2021. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide

the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

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

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

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 7, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000A Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point and South Channel:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 8	Thu (night)	5:30 pm - 9:30 pm	4 hrs
Apr 12	Mon (night)	7:30 pm - 11:30 pm	4 hrs
Apr 20	Tue (morning)	12:30 am - 4:30 am	4 hrs
Apr 23	Fri (morning)	4:00 am - 8:00 am	4 hrs
Apr 27 - Apr 30	Tue, Thur (nights)	7:00 pm - 7:00 am	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights
Jun 17 - Jul 2	Mon, Thu (nights)	7:00 pm - 7:00 am	5 nights

South Channel only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 13	Tue (night)	8:30 pm - 12:30 am	4 hrs
Apr 14 - Apr 15	Thu-Fri (night)	9:30 pm - 1:30 am	4 hrs

(a) Area:

The Tongue Point Winter-Spring Subarea is defined as waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

For summer fisheries, the open waters include the entire Tongue Point Select Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

The South Channel Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets:

Winter season (Through Apr 18): 7-inch minimum mesh size restriction

Spring and Summer seasons (Apr 20 - Jun 18): 9 3/4-inch maximum mesh size restriction

The maximum net length is 1,500 feet (250 fathoms).

In the Tongue Point winter-spring subarea and the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom;

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 19 - Apr 23	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 27 - Apr 30	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights
Jun 17 - Jul 2	Mon, Thu (nights)	7:00 pm - 7:00 am	5 nights

Blind Slough only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 8 - Apr 13	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 14 - Apr 15	Wed-Thu (night)	7:00 pm - 7:00 am	12 hrs

Knappa Slough only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 8 - Apr 9	Thu-Fri (night)	7:00 pm - 7:00 am	12 hrs
Apr 12 - Apr 13	Mon-Tue (night)	7:00 pm - 7:00 am	12 hrs
Apr 14 - Apr 15	Wed-Thu (night)	7:00 pm - 7:00 am	12 hrs

(a) Area:

The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 3, the western (downstream) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

Winter season (through Apr 15): 7-inch minimum mesh size restriction.

Spring and Summer seasons (Apr 19 - Jun 18): 9 3/4-inch maximum mesh size restriction.

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous:

Permanent transportation rules in effect. In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Deep River Select Area:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 8 - Apr 9	Thu-Fri (night)	7:00 pm - 7:00 am	12 hrs
Apr 19 - Apr 23	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 27 - Apr 30	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

(a) Area:

From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

Winter season (through Apr 1): 7-inch minimum mesh size restriction.

Spring and Summer seasons (Apr 19 - Jun 15): 9 3/4-inch maximum mesh size restriction.

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department WAC 220-20-010 (17).

(c) Miscellaneous:

Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

Winter season: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

Spring season: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

(4) Allowable Sales: Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(7) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

[]

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

Reviser's note: The unnecessary underscoring 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.

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-358-03000Z Columbia River seasons below
Bonneville. (21-50)

WSR 21-09-003
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 7, 2021, 3:09 p.m., effective April 7, 2021, 3:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Due to the ongoing national and state emergency relating to COVID-19, the United States Postal Service (USPS) has made temporary changes to its certified mail signature gathering procedures to limit direct contact with recipients. This emergency WAC clarifies that these temporary procedures employed by USPS are acceptable for purposes of certified mail service. The division of child support has filed a CR-101 Preproposal statement of inquiry under WSR 20-09-148 and is currently working with internal and external stakeholders on permanent rule making on this subject.

Citation of Rules Affected by this Order: New WAC 388-14A-2210.

Statutory Authority for Adoption: RCW 26.23.110, 34.05.220, 74.08.090, 74.20A.055.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: USPS certified mail delivery procedures have already been changed. This has had an immediate effect on our ability to serve notices by certified mail. This emergency rule will ensure child support enforcement actions can continue, providing crucial financial resources to clients.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: April 7, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4802.2

NEW SECTION

WAC 388-14A-2210 What is the procedure for service by certified mail during the COVID-19 emergency? (1) Due to the ongoing national and state emergency relating to COVID-19, the united states postal service has made temporary changes to its certified mail signature gathering procedures to limit direct contact with recipients. As long as these special signature gathering procedures remain in effect, the division of child support (DCS) will consider service by certified mail, return receipt requested when required under chapter 388-14A WAC to be successful ten days after the following requirements are satisfied:

(a) The notice is sent by certified mail, return receipt requested, with restricted delivery to the noncustodial or custodial parent DCS is serving; and

(b) The postal service employee signs the receipt on behalf of the individual taking delivery as required by current postal service restricted delivery procedures.

(2) The individual taking delivery under section (1)(b) of this section is presumed to be the subject of service or the authorized agent of the subject.

[]

WSR 21-09-007

EMERGENCY RULES

WASHINGTON STATE UNIVERSITY

[Filed April 8, 2021, 8:20 a.m., effective April 8, 2021, 8:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The university is updating the rules regarding the standards of conduct for students.

Note: This emergency rule-making order was originally filed on August 14, 2020, as WSR 20-17-098 and refiled on December 11, 2020, as WSR 21-01-093. A preproposal for similar permanent rules was filed on October 7, 2020, as WSR 20-20-132, with a proposal filed on December 2, 2020, as WSR 20-24-125, was adopted on March 12, 2021, and a permanent rule-making order was filed on March 15, 2021, and will become effective on April 15, 2021.

Citation of Rules Affected by this Order: New WAC 504-26-231; and amending WAC 504-26-010, 504-26-015, 504-26-020, 504-26-045, 504-26-050, 504-26-120, 504-26-204, 504-26-206, 504-26-209, 504-26-217, 504-26-219, 504-26-220, 504-26-221, 504-26-222, 504-26-223, 504-26-227, 504-26-230, 504-26-401, 504-26-402, 504-26-403, 504-26-409, 504-26-415, 504-26-420, 504-26-425, 504-26-504 504-26-515, and 504-26-525.

Statutory Authority for Adoption: RCW 28B.30.150.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On May 19, 2020, the United States Department of Education (the department) published amendments to its regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The department's amended regulations specify how recipients of federal financial assistance covered by Title IX (which include the university) must respond to allegations of sexual harassment. The department's amended regulations are scheduled to become effective on August 14, 2020. Amendments to the university's standards of conduct for students is required to comply with the department's amended Title IX regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, 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 1, Amended 27, Repealed 0.

Date Adopted: April 8, 2021.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

OTS-2488.2

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-010 Definitions. Words and phrases used in the standards of conduct regardless of their associated gender identity include all genders. Words and phrases used in the standards of conduct in the singular or plural encompass both the singular and the plural, unless the context clearly indicates otherwise. For purposes of the standards of conduct, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who, collectively, are authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(2) Appeals board. The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider appeals from a university conduct board's or conduct officer's determination as to whether a student has violated the standards of conduct and any sanctions (~~imposed~~) assigned.

(3) Brief adjudication. The process by which a conduct officer may adjudicate student conduct matters (~~involving~~) that are not resolving allegations that would constitute Title IX sexual harassment within the university's Title IX jurisdiction, and where possible sanctions (~~, other than matters involving~~) do not include suspension for more than ten instructional days, expulsion, loss of recognition, or revocation of degree. Also referred to as a "conduct officer hearing" or "brief adjudicative proceeding."

(4) CCR. The university's office of compliance and civil rights.

(5) Cheating. Includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the center for community standards. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

~~((5))~~ (6) Complainant. Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint. Any individual, group, or entity, including the university, who submits a complaint alleging that a student or a registered or recognized student organization violated the standards of conduct.

~~((6))~~ (7) Conduct board. The group of students, faculty, and staff, collectively authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.

~~((7))~~ (8) Conduct officer. A university official authorized by the vice president for student affairs to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.

~~((8))~~ (9) Faculty member. For purposes of this chapter, any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

~~((9))~~ (10) Full adjudication. The process by which a conduct board adjudicates matters involving possible suspension of greater than ten instructional days, expulsion, loss of recognition, revocation of degree, or other matters as determined by the university. Also referred to as "formal adjudication," "formal (or full) adjudicative proceeding," or "conduct board hearing."

~~((10))~~ (11) Gender identity. Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

~~((11))~~ (12) Member of the university community. Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

~~((12))~~ (13) Parties. The parties to a student conduct proceeding must include the university and the respondent. The parties in a student conduct matter ~~((implicating Title IX of the Civil Rights Act of 1964))~~ where the allegations, if true, would constitute Title IX sexual harassment within the university's Title IX jurisdiction must also include the complainant(s) ~~((, if the complainant(s) notifies the university in writing that they wish to participate as a party))~~. The university may designate other complainants, individuals, or recognized or registered student organizations as parties to conduct proceedings, or allow individuals or recognized or registered student organizations to intervene in conduct proceedings.

~~((13))~~ (14) Policies. The written rules and regulations of the university as found in, but not limited to, the standards of conduct, university policy manuals, housing and dining policies, academic regulations, and the university's graduate, undergraduate, and professional catalogs and other publications, including electronic publications.

~~((14))~~ (15) Recognized or registered student organization. A group of students, collectively, that has complied with the formal requirements for university recognition or registration.

~~((15))~~ (16) Respondent. A student or recognized or registered student organization alleged to have violated these standards of conduct.

~~((16))~~ (17) Student. Any person taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, even if not enrolled.

~~((17))~~ (18) Title IX. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 and its implementing 34 C.F.R. Part 106.

(19) University. Includes all locations, premises, programs, and operations of Washington State University.

~~((18))~~ (20) University official. Any person employed by the university, performing assigned administrative or professional responsibilities.

~~((19))~~ (21) University premises. All land, buildings, facilities, vehicles, websites, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-010, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-010, filed 6/15/17, effective 7/16/17; WSR 16-08-014, § 504-26-010, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-010, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-010, filed 5/11/11, effective 6/11/11; WSR 07-11-030, § 504-26-010, filed 5/8/07,

effective 6/8/07; WSR 06-23-159, § 504-26-010, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

(a) The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

(i) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

(ii) Negatively impacted the reputation of the university or its students;

(iii) Occurred on the property of recognized or registered student organizations;

(iv) Caused physical, mental, or emotional harm to another; or

(v) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized or registered student organization.

(b) When the university chooses to exercise jurisdiction for off-campus conduct not in connection with a university-sponsored activity, the parties must be notified in writing of the decision and the reasons for the decision, and their right to challenge the decision to the vice president for student affairs or designee. Challenges to jurisdiction must be in writing and filed within five calendar days from the date the notice is sent. In cases implicating Washington State University's executive policy 15, (~~which prohibits discrimination, sexual harassment, and sexual misconduct,~~) the vice president for student affairs or designee must consult with the university's Title IX coordinator.

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual awarding 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. These standards apply to a student's conduct even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organiza-

tion may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a significant number of organization officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

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

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-015, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice present during all stages of a conduct process. Upon a party's request, a list of trained advisors from outside the office of the dean of students (and those offices reporting to the dean of students) who can provide support at no cost to the student is provided. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. (~~Students should select an advisor whose schedule allows for attendance at the scheduled date and time of the informational meeting and/or hearing, because delays are not normally allowed due to scheduling conflicts of the advisor.~~)

(2) Communication with the center for community standards. Advisors and representatives may communicate directly with the center for community standards to receive information on dates and times of meetings, status of conduct processes, and outcomes. As a condition of

participation in the conduct process, the center for community standards may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(3) Advisors in conduct meetings and conduct officer hearings. During any conduct ((process)) meeting or conduct officer hearing, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties.

(4) Advisors in conduct board hearings. As with all other conduct meetings and conduct officer hearings, advisors are not permitted to speak on behalf of parties, except that in conduct board hearings, advisors are permitted to ask relevant cross-examination questions as instructed by a party.

(5) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. In conduct board hearings, questions regarding logistical and administrative issues are to be directed to the presiding officer, who may impose reasonable conditions upon participation of advisors and representatives.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-020, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-045 Evidence. (1) Except as provided in subsection (2) of this section, evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence. ((The sexual history of a complainant is not admissible in a student conduct proceeding except to the extent permitted by evidence rule 412 and RCW 34.05.452 (stating that presiding officers must refer to the Washington rules of evidence as guidelines for evidentiary rulings).))

(2) In conduct board hearings to resolve allegations that, if proven, would constitute Title IX sexual harassment within the university's Title IX jurisdiction, witnesses, including parties, must submit to cross-examination for their written or verbal statements to be considered by the university conduct board.

(3) The sexual history of a complainant is not relevant and not admissible in a student conduct proceeding unless such evidence about the complainant's sexual predisposition or prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(4) Students may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the informa-

tion presented at the hearing. No student must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a student's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-045, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-050 Interim measures. (1) While a student conduct matter is pending, the university may take a number of interim actions or supportive measures in order to ensure the preservation of the educational experience and the overall university environment of the parties. These actions may include, but are not limited to:

- (a) A no-contact order (~~((imposed on))~~) assigned to any party;
 - (b) University housing room change for one or more involved parties; and/or
 - (c) Changes in academic schedules or assignments for any party.
- (2) As stated in the university's housing and dining policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassignments are determined to be necessary by the university.

(3) University departments taking interim or supportive measures must coordinate with the center for community standards, which advises them. For matters involving the university's executive policy 15, (~~((which prohibits discrimination, sexual harassment, and sexual misconduct,))~~) the departments must also consult with (~~((the university's office for equal opportunity))~~) CCR regarding interim or supportive measures. Interim and supportive measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-050, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-120 Training. (1) Board members and presiding officers. Conduct board members, appeals board members, and presiding officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Cultural competency and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) Identifying bias against individuals and against groups;
- (d) Conflict of interest;

- (e) Sexual assault and gender-based violence;
- (f) Alcohol and drug prevention;
- (g) Due process and burden of proof in student conduct matters;
- ((and))
- (h) Sanctioning principles and guidelines;
- (i) Title IX regulatory definitions, jurisdiction, and grievance processes; and
- (j) Relevant and admissible evidence.
- (2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:
 - (a) Alternative dispute resolution;
 - (b) Restorative justice; and
 - (c) All training required of board members (see subsection (1) of this section).
- (3) Renewal of training. Training must be renewed on an annual basis.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-120, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-204 Abuse of others or disruption or interference with the university community. Abuse of others or disruption or interference with the university community (~~includes, but is not limited to~~) is defined as:

- (1) Physical abuse, threats, intimidation, and/or other conduct that threatens, endangers, harms, or undermines the health, safety, or welfare of the university community or any person (~~(, including, but not limited to, domestic or intimate partner violence)~~).
- (2) Conduct that disrupts the university community or prevents any member of the university community from completing their duties.
- (3) Conduct that interferes with or disrupts the university's mission, operations, or activities.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-204, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-204, filed 12/15/14, effective 1/15/15; WSR 14-11-025, § 504-26-204, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-204, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-206 Hazing. (1) No student or recognized or registered student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

- (a) Hazing includes any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include, but are not limited to, the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a recognized or registered student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be (~~imposed~~) assigned, forfeits any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any recognized or registered student organization that knowingly permits hazing by its members or others subject to its direction or control must be deprived of any official recognition or approval granted by the university.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-206, filed 11/19/18, effective 12/20/18; WSR 06-23-159, § 504-26-206, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university website or in hard copy including, but not limited to, Washington State University's alcohol and drug policy, executive policy 15 (~~((policy prohibiting discrimination, sexual harassment and sexual misconduct))~~), and housing and residence life policy.

[Statutory Authority: RCW 28B.30.150. WSR 15-01-080, § 504-26-209, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-209, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-209, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-217 Unauthorized use of electronic or other devices.

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

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-217, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system (~~(including, but not limited to)~~) is defined as:

- (1) Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.
- (2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.
- (3) Disruption or interference with the orderly conduct of a university conduct board proceeding.
- (4) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.
- (5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.
- (6) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.
- (7) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board, any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.
- (8) Failure to comply with or failure to complete any term or condition of any disciplinary sanction(s) (~~(imposed)~~) assigned under the standards of conduct.
- (9) Influencing or attempting to influence another person to commit an abuse of the university conduct system.
- (10) Violation of probation or any probationary conditions.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-219, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-219, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-219, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-219, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-220 ((Discrimination and)) Discriminatory harassment.

~~((Discrimination or discriminatory harassment))~~ (1) Unwelcome, intentional conduct on the basis of race; ((sex/gender)) sex and/or gender; sexual orientation; gender identity((+)) or expression; religion; age; color; creed; national or ethnic origin; marital status; genetic information; status as an honorably discharged veteran or member of the military; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); ((-marital status; genetic information; and/or status as an honorably discharged veteran or member of the military; and as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.)) or immigration or citizenship status, except as authorized by federal or state law, regulation, or government practice, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

(a) Interferes with, or has the potential to interfere with, an individual's ability to participate in WSU employment, education, programs, or activities;

(b) Adversely alters the condition of an individual's WSU employment, education, or participation status;

(c) Creates an objectively abusive employment, program, or educational environment; or

(d) Results in a material or substantial disruption of WSU's operations or the rights of students, staff, faculty, visitors, or program participants.

(2) In determining if conduct is harassing, the totality of the circumstances are assessed including, but not limited to, the following factors:

(a) Severity;

(b) Frequency of the discrimination;

(c) Status of the reporting and responding parties and their relationship to each other;

(d) Physicality, threats, or endangerment; and

(e) Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-220, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-220, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-220, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-221 Sexual misconduct. (1) Sexual misconduct is an egregious form of sex discrimination/sexual harassment. ~~((A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation.))~~ Sexual misconduct ~~((includes sexual assault and other sexual violence.))~~ is defined as:

(a) Sex offense. Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

(b) Rape (except statutory rape). The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(c) Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(d) Sexual assault with an object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(e) Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(f) Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(g) Sexual exploitation, which occurs when a person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:

(i) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person.

(ii) Invading another person's sexual privacy.

(iii) Prostituting another person.

(iv) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where they have a reasonable expectation of privacy.

(v) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection.

(vi) Exposing one's intimate parts in nonconsensual circumstances.

(h) Statutory rape. Sexual intercourse with a person who is under the statutory age of consent.

(i) Sexually based stalking and/or bullying.

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate (~~his or her~~) their unwillingness to engage in sexual activity; or

(c) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

~~(3) ((Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.~~

~~(4) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:~~

~~(a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;~~

~~(b) Invading another person's sexual privacy;~~

~~(c) Prostituting another person;~~

~~(d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;~~

~~(e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;~~

~~(f) Exposing one's intimate parts in nonconsensual circumstances;~~

~~(g) Sexually based stalking and/or bullying.~~

~~(5)) Use of alcohol or other drugs is not a valid defense to a violation of this policy.~~

[Statutory Authority: RCW 28B.30.150. WSR 17-13-049, § 504-26-221, filed 6/15/17, effective 7/16/17; WSR 14-11-025, § 504-26-221, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-221, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-222 Harassment (other than sexual harassment or discriminatory harassment). Harassment is conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermine ((his or her)) their ability to work, study, or participate in ((his or her)) their regular life activities or participate in the activities of the university, and/or actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

[Statutory Authority: RCW 28B.30.150. WSR 14-11-025, § 504-26-222, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-222, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-223 Stalking. (1) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for ((his or her)) their safety or the safety of others; or

(b) ((Fear for harm to his or her property or the property of others; or

(c)) Suffer substantial emotional distress.

(2) ((Stalking includes, but is not limited to, conduct occurring in person, electronically, or through a third party.)) Course of conduct means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(3) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(4) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(5) The use of alcohol or other drugs is not a valid defense to a violation of this policy.

[Statutory Authority: RCW 28B.30.150. WSR 14-11-025, § 504-26-223, filed 5/12/14, effective 6/12/14; WSR 11-11-031, § 504-26-223, filed

5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-223, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-227 Sexual harassment. ((Sexual harassment includes behavior defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.)) Unwelcome, intentional conduct, on the basis of sex and/or gender, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

(1) Interferes with, or has the potential to interfere with, an individual's ability to participate in WSU employment, education, programs, or activities;

(2) Adversely alters the condition of an individual's WSU employment, education, or participation status;

(3) Creates an objectively abusive employment, program, or educational environment; or

(4) Results in a material or substantial disruption of WSU's operations or the rights of students, staff, faculty, visitors, or program participants.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-227, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-227, filed 5/12/14, effective 6/12/14.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-230 Retaliation. ((Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under the standards of conduct (this chapter). Retaliatory behavior includes action or threat of action that could negatively affect another's employment, education, reputation, or other interest. It also includes retaliation as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.))

(1) Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by university policies, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

(2) First amendment activities do not constitute retaliation.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-230, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-230, filed 5/12/14, effective 6/12/14.]

NEW SECTION

WAC 504-26-231 Intimate partner violence. Intimate partner violence is defined as:

(1) Dating violence, which is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the:

(a) Length of the relationship;

(b) Type of relationship; and

(c) Frequency of interaction between the persons involved in the relationship.

(2) Domestic violence, which is defined as a felony or misdemeanor crime of violence committed by:

(a) A current or former spouse or intimate partner of the victim;

(b) A person with whom the victim shares a child in common;

(c) A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(d) A person similarly situated to a spouse of the victim under the domestic or family violence laws of Washington; or

(e) Any other person against an adult or youth victim who is protected from that person's act under the domestic or family violence laws of Washington.

[]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-401 Initiating conduct proceedings. (1) Complaints. Any member of the university community may submit a complaint that a student or recognized or registered student organization violated the standards of conduct. In addition, the university may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to refer the matter for hearing. Except as provided below, after reviewing the initial information, if the conduct officer determines that further conduct proceedings are not warranted, the conduct officer dismisses the matter. If the conduct officer decides not to initiate a conduct proceeding when requested by a complainant, the conduct officer must notify the complainant in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known. A conduct officer cannot dismiss a matter received from CCR where CCR completed a formal investigation implicating Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, regardless of the investigation's outcome. In such cases, the conduct officer must refer the matter to a conduct board hearing, which must be held within sixty days of the date the CCR formal investigation report was received, unless good cause exists to extend the date of the hearing or the matter is resolved through agreement or alternative dispute resolution.

(3) Notice of informational meeting. After reviewing initial information regarding a possible student conduct violation, if the student conduct officer decides conduct proceedings are warranted, the

student conduct officer sends the respondent, or parties as appropriate, written notice of an informational meeting. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the meeting. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 (Interpretation—Policies, procedures, and guidelines) must be provided. Any request to change or extend the time or date of the informational meeting should be addressed to the conduct officer.

(4) Purpose of informational meeting. The purpose of the informational meeting is to provide the respondent with information on the conduct process and their rights and responsibilities, and to determine next steps, if any, in resolving the matter. During the informational meeting, the respondent may provide names of witnesses to the conduct officer to potentially contact. In cases involving Title IX, an informational meeting is also offered to a complainant.

(5) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution. In cases where agreement is not reached directly, before referring the matter to a hearing, the conduct officer must consider, and make a written determination, whether alternative dispute resolution is appropriate to resolve the matter. Alternative dispute resolution must not be used in matters involving sexual misconduct or sexual harassment. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.

(6) Referral for adjudication. Except as provided in subsection (2) of this section, after the informational meeting, if the conduct officer determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing (brief adjudication) in accordance with WAC 504-26-402, or conduct board hearing (full adjudication) in accordance with WAC 504-26-403. In determining which process is appropriate, the conduct officer considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with the center for community standards, and the range of possible sanctions that could be (~~imposed~~) assigned. A student may request that a conduct board hear the case, but the final decision regarding whether to refer the matter to the conduct board for hearing is made by the conduct officer and is not subject to appeal.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-401, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-401, filed 6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-401, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-401, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-401, filed

5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-401, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-401, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-402 Conduct officer hearings (brief adjudications).

(1) The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.

(2) Notice of hearing. The conduct officer must provide the parties with written notice no later than ten calendar days prior to the conduct officer hearing. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the hearing. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided. The notice must also include:

(a) A jurisdiction statement if the alleged behavior occurred off campus and information regarding the right to challenge jurisdiction in accordance with WAC 504-26-015;

(b) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125; and

(c) Any request to extend the time or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(3) Hearing and possible outcomes. Conduct officer hearings are brief adjudications conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows the conduct officer to review available information, hear the parties' view of the matter, render a decision regarding responsibility, and (~~impose~~) assign sanctions, as appropriate.

(a) Before the hearing begins, the conduct officer must inform the respondent that:

(i) All respondents are presumed "not responsible" for pending charges;

(ii) The university must prove all violations by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred; and

(iii) The parties have the right to have an advisor present at the hearing.

(b) Upon conclusion of the hearing, the conduct officer may take any of the following actions:

(i) Terminate the proceeding and enter a finding that the respondent is not responsible for the alleged conduct violation;

(ii) Dismiss the matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information becomes known;

(iii) Find the respondent responsible for any violations and impose sanctions within the limitations described in subsection (1) of this section; or

(iv) Refer the matter to the conduct board.

(4) Notice of decision and right to appeal. The conduct officer notifies the parties in writing of the decision within ten calendar days of the conduct officer hearing. This is the initial order of the university and includes information regarding the parties' right to appeal under WAC 504-26-420.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-402, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-402, filed 6/15/17, effective 7/16/17; WSR 16-08-014, § 504-26-402, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-402, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-402, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-402, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-402, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-402, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-403 Conduct board hearings (full adjudications). (1)

Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board in the discretion of the conduct officer.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than ten calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A request for extension of time is granted only upon a showing of good cause.

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limi-

ted to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Cross-examination. As required by RCW 34.05.449, cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues. ~~((The preferred method of cross-examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. Regardless, in))~~ Cross-examination is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly ((in person or through their representative)). Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer ((may decline to ask)) must instruct parties or witnesses not to answer cross-examination questions that are irrelevant, immaterial, or unduly repetitious. ((All questions submitted by the parties must be retained as part of the agency record, in accordance with RCW 34.05.566.))

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter, except that any sanction of expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization requires a supermajority consisting of no more than one "no" vote.

(9) Notice of decision and right to appeal. Within ten calendar days of the completion of the hearing, the conduct board must issue a decision simultaneously to all parties, which is the initial order of the university and must contain the following:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;

(c) Appropriately numbered findings of fact and conclusions;

~~((b))~~ (d) The sanction(s) and/or remedy(ies) to be ((imposed)) assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);

~~((e))~~ (e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

~~((d))~~ (f) Notice that the initial order becomes final unless an appeal is filed within ((twenty-one)) twenty calendar days of ((service of)) the date the initial order is sent to the parties.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-403, filed 11/19/18, effective 12/20/18; WSR 16-08-014, § 504-26-403, filed

3/28/16, effective 4/28/16; WSR 15-11-041, § 504-26-403, filed
 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-403, filed
 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-403, filed
 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-403, filed 2/6/08,
 effective 3/8/08; WSR 06-23-159, § 504-26-403, filed 11/22/06, effec-
 tive 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or student conduct proceeding relating to alleged standards of conduct violations. An emergency suspension may be (~~imposed~~) assigned at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension.

(a) For matters which would not constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be (~~imposed~~) assigned only in situations when the (~~vice president for student affairs~~) dean of students or campus chancellor (in consultation with the center for community standards), or their designee, has cause to believe that the student:

~~((a))~~ (i) Has violated any provision of the standards of conduct; and

~~((b))~~ (ii) Presents an immediate danger to the health, safety, or welfare of any part of the university community or the public at large. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

(b) For matters which would constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in a situation where the dean of students or campus chancellor (in consultation with the center for community standards), or their designee, has engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:

(i) Has violated any provision of the standards of conduct; and

(ii) Is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment.

(3) Procedure. The (~~vice president for student affairs~~) dean of students or campus chancellor, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), (~~and~~) the policy reasons for the emergency suspension, and the process to challenge the decision. The emergency suspension does not replace the regular hearing process, which must proceed to a conduct officer hearing or conduct board hearing, as applicable, as quickly as feasible. Once a final or-

der is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order is (~~imposed~~) assigned.

(4) Challenge of the decision. The student can challenge the emergency suspension decision within ten calendar days of the date of notice. Challenges are reviewed by the vice president of student affairs or their designee, provided the designee is not the same person who made the original emergency suspension decision. The vice president of student affairs or designee has ten calendar days to respond to the review and can uphold, reverse, or modify the emergency suspension. The submission of a challenge does not stay the emergency suspension decision.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-409, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor must assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the center for community standards in writing, including the allegations, the student's admission, and the sanctions (~~imposed~~) assigned.

(b) If the instructor is unable to meet with the student or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor must make a determination as to whether the student did or did not violate the academic integrity policies. If the instructor finds that the student was in violation, the instructor must provide the student and the center for community standards with a written determination, the evidence relied upon, and the sanctions (~~imposed~~) assigned.

(c) The student has twenty-one calendar days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) (~~imposed~~) assigned to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by their instructor to have violated the academic integrity policies, the academic integrity hearing board must make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policies and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome (~~imposed~~) assigned by the instructor violates the instructor's published policies.

(c) Academic integrity hearing board proceedings.

(i) Any student appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:

(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;

(B) The approximate time and place of the alleged act that forms the factual basis for the violation;

(C) The time, date, and place of the hearing;

(D) A list of the witnesses who may be called to testify, to the extent known; and

(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student must have the right to inspect the documentation.

(ii) Time for hearings.

(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the student has been sent notice of the hearing.

(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to the center for community standards. A request for extension of time is granted only upon a showing of good cause.

(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by (c)(iv) of this subsection:

(A) Academic integrity hearing board hearings are conducted in private.

(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.

(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.

(D) In hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weekdays before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may suggest written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of

the academic integrity hearing board chair, who has the discretion to determine admissibility of information.

(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.

(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.

(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(I) The respondent is notified of the academic integrity hearing board's decision within twenty calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.

(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.

(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

(vi) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the respondent's first offense, the center for community standards ordinarily requires the respondent to attend a workshop separate from, and in addition to, any academic outcomes (~~imposed~~) assigned by the instructor. A hold is placed on the respondent's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, with a recommendation that the respondent be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the respondent's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings must be reported to the responsible instructor and the chair or dean.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-415, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become final (~~(twenty-one)~~) on the twenty-first calendar day(~~s~~) after the date the decision is sent to the parties, unless an appeal is submitted (~~(before that date)~~) within twenty calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order (~~(imposing)~~) assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond, and conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct officer hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) (~~(imposed)~~) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed; or

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond.

(a) The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

(b) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions (~~imposed~~) asigned by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent simultaneously to the parties within twenty calendar days of receipt of the appeal. For appeals of conduct board decisions, the appeals board's decision must be sent simultaneously to the parties within thirty calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to ninety calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

(7) Reconsideration of final orders. Within ten calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or twenty-one calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within twenty-one calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within ten calendar days of the date the order was served.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-420, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the center for community standards website. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) (~~(imposed)~~) assigned for a particular violation. Factors must include, but not be limited to, the following:

- (a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;
- (b) Malicious intent. If a respondent is found to have intentionally selected a victim based upon the respondent's perception of the victim's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct; and
- (c) Impact on victim and/or university community.

(2) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(3) Types of sanctions. The following sanctions may be (~~(imposed upon)~~) assigned to any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be (~~(imposed)~~) assigned for any single violation:

- (a) Warning. A notice in writing to the respondent that the respondent is violating or has violated institutional regulations.
- (b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the student or recognized or registered student organization that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be (~~(imposed)~~) assigned if the student or recognized or registered student organization is found to have violated any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized or registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.
- (c) Loss of privileges. Denial of specified privileges for a designated period of time.
- (d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- (e) Education. The university may require the respondent to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. (~~(Imposition)~~) Assignment of service hours (not to exceed eighty hours per student or per member of a recognized or registered student organization).

(g) University housing suspension. Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the student from a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree, or for other serious violations committed by a student before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions (~~(imposed)~~) assigned, if any.

(m) Trespass. A student may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A recognized or registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing first year students. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a recognized or registered student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student involvement office organizational activities, and center for fraternity and sorority life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions (~~(imposed)~~) assigned by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be (~~(imposed)~~) assigned. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a student who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902.

(s) Remedies. Sanctions designed to restore or preserve a victim's equal access to the university's educational programs or activities.

(4) Academic integrity violations. No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-425, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The vice president for student affairs or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the center for community standards website and in the university's student handbook. A link to the student handbook or center for community standards website must be provided to parties prior to any informational meeting or student conduct hearing and must provide the following information:

- (a) Rights in the student conduct process;
- (b) A clear explanation of what to expect during the process;
- (c) Information regarding legal resources available in the community;
- (d) A statement that respondents are presumed "not responsible";

and

- (e) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045.

(2) Definitions from these standards are incorporated into Washington State University's executive policy 15(~~(, which prohibits discrimination, sexual harassment, and sexual misconduct)~~).

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-504, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-515 Periodic review and assessment. At the end of each academic year, the center for community standards provides a report to the vice president for student affairs which must include, at a minimum, a numerical breakdown of the types of matters handled and the sanctions (~~imposed~~) assigned. The vice president for student affairs must make the report publicly available, provided all personally identifiable or readily ascertainable student information is removed.

The standards of conduct and the student conduct system as a whole are reviewed every three years under the direction of the vice president for student affairs or designee. The student government council is asked to provide recommendations and input on proposed changes. After completion of any adjudication or other resolution of a student conduct matter, the center for community standards must send a survey to all parties requesting feedback on the process. Feedback results must be reviewed, at a minimum, every three years in connection with the periodic review and assessment.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-515, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-525 Good standing. The award of a degree and/or diploma is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any acts of academic or behavioral misconduct and complied with all sanctions (~~((imposed))~~) assigned as a result of the misconduct. The university has the sole authority in determining whether to withhold the degree and/or diploma in cases where the student is not in good standing. The university must deny the award of a degree if the student is dismissed from the university based on their misconduct. Neither diplomas nor transcripts are sent until students have resolved any unpaid fees and resolved any acts of academic or behavioral misconduct and complied with all sanctions (~~((imposed))~~) assigned as a result of misconduct. (See also academic regulation 45 in the university general catalog.)

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-525, filed 11/19/18, effective 12/20/18.]

WSR 21-09-009

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed April 8, 2021, 8:28 a.m., effective April 8, 2021, 8:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-817-120 Examination content, emergency rule.

This adopted emergency rule will extend WSR 21-01-048 filed on December 8, 2020. The dental quality assurance commission (commission) adopted WSR 20-17-038 on August 10, 2020, and WSR 21-01-048 on December 8, 2020, to add the Joint Commission on National Dental Examination's Dental Licensure Objective Structured Clinical Examination (DLOSCE) to the list of allowable practical/clinical examinations and to allow an applicant to pass components of the practical examination using one or more testing agencies, rather than only one agency.

Citation of Rules Affected by this Order: Amending WAC 246-817-120.

Statutory Authority for Adoption: RCW 18.32.0365.

Other Authority: RCW 18.32.040 and 18.32.002.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In response to the novel coronavirus disease (COVID-19), all regional, patient-based clinical dentist examinations were cancelled for 2020 in the United States. Examination restrictions have continued into 2021.

The commission received a request from the University of Washington School of Dentistry and other dental organizations to approve a new nonpatient based clinical exam. The DLOSCE is a practical/clinical examination that is computer-based and does not use live patients. Adding DLOSCE to the list of allowable practical/clinical examinations will allow current graduates the opportunity to obtain Washington state dentist licensure while other examinations are temporarily unavailable.

On June 5, 2020, the commission also determined additional change was necessary to WAC 246-817-120 to allow graduates to obtain manikin-based clinical examination from more than one testing agency. Regional examination testing agencies have developed manikin-based clinical dentist examinations to replace patient-based. However, one or more of the testing agencies are unable to offer all required sections through manikin-based examination. Removing the requirement for all examination content sections to be passed with a single testing agency will provide additional options for new graduates to obtain clinical examinations for Washington state dentist licensure.

Standard rule making takes approximately nine to twelve months. The commission is proceeding with permanent rule making under WSR 21-04-024 filed on January 25, 2021. Patient-based clinical dentist examinations in the United States were cancelled for 2020 due to the COVID-19 pandemic. Examination restrictions have continued into 2021. The continuance of this emergency rule allowing computer-based and manikin-based examinations is needed until the permanent rule can be adopted so that 2020 and 2021 dentist student graduates have the opportunity to obtain Washington state dentist licensure.

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 Nongovernmental 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 1, Repealed 0.

Date Adopted: April 8, 2021.

Aaron Stevens, D.M.D., Chairperson
Dental Quality Assurance Commission

OTS-2209.2

AMENDATORY SECTION (Amending WSR 19-15-094, filed 7/22/19, effective 8/22/19)

WAC 246-817-120 Examination content. (1) An applicant seeking dentist licensure in Washington by examination, must successfully pass a written and practical examination approved by the Dental Quality Assurance Commission (commission).

The examination will consist of:

(a) A written examination. The Integrated National Board Dental Examination, Parts I and II of the National Board Dental Examination, or the Canadian National Dental Examining Board examination will be accepted, except as provided in subsection (4) of this section.

(b) A practical examination containing at least the following sections:

- (i) Restorative;
- (ii) Endodontic;
- (iii) Periodontal;
- (iv) Prosthodontic; and
- (v) Comprehensive treatment planning or diagnostic skills.

(2) (a) The commission accepts the following practical examinations provided the testing agency offers at least the sections listed in subsection (1) (b) of this section:

(i) The Western Regional Examining Board's (WREB) clinical examination;

(ii) The Central Regional Dental Testing Services (CRDTS) clinical examination;

(iii) The Commission on Dental Competency Assessments (CDCA) formally known as Northeast Regional Board (NERB) clinical examination;

(iv) The Southern Regional Testing Agency (SRTA) clinical examination;

(v) The Council of Interstate Testing Agency's (CITA) clinical examination;

(vi) U.S. state or territory with an individual state board clinical examination;

(vii) The Joint Commission on National Dental Examinations dental licensure objective structured clinical examination (DLOSCE); or

(b) The commission will accept the complete National Dental Examining Board (NDEB) of Canada clinical examination as meeting its standards if the applicant is a graduate of an approved dental school defined in WAC 246-817-110 (2) (a).

(3) The applicant must pass all sections listed in subsection (1) (b) of this section of the practical examination with ~~((the same))~~ one or more testing ((agency)) agencies.

(4) The commission will only accept results of approved practical examinations taken within the preceding five years from the date of an application for licensure.

(5) The commission may, at its discretion, give or require an examination in any other subject under subsection (1) (a) and (b) of this section, whether in written or practical form or both written and practical.

[Statutory Authority: RCW 18.32.002, 18.32.0365, and 18.32.040. WSR 19-15-094, § 246-817-120, filed 7/22/19, effective 8/22/19; WSR 17-22-035, § 246-817-120, filed 10/24/17, effective 11/24/17. Statutory Authority: RCW 18.32.0365 and 18.32.040. WSR 16-14-067, § 246-817-120, filed 6/30/16, effective 7/31/16; WSR 08-23-019, § 246-817-120, filed 11/6/08, effective 12/7/08. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-120, filed 10/10/95, effective 11/10/95.]

WSR 21-09-013
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 9, 2021, 8:47 a.m., effective April 11, 2021]

Effective Date of Rule: April 11, 2021.

Purpose: Amend chapters 110-04 and 110-06 WAC to allow the department of children, youth, and families (DCYF) to issue background check clearance authorizations before completing fingerprint-based background checks. Amend WAC 110-06-120 to remove certain crimes that disqualify a subject individual from authorization.

Citation of Rules Affected by this Order: Amending WAC 110-04-0040, 110-04-0080, 110-06-0040, 110-06-0046, and 110-06-120.

Statutory Authority for Adoption: RCW 43.216.065.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-31 amends Proclamation 20-05 and waives and suspends fingerprint-based background checks before a person may be approved to have unsupervised access to children during the COVID-19 pandemic due to the potential risk of exposure to COVID-19 resulting from face-to-face contact in submitting fingerprints, limited access to fingerprinting as entities that receive and process fingerprints limit or suspend operations in order to limit exposure to COVID-19, and the unavailability of law enforcement agencies to process fingerprints during the pandemic. The ability to issue background check clearance authorizations before completing fingerprint-based background checks better enables DCYF to ensure the availability of child welfare service providers as well as stable and quality child care during the COVID-19 pandemic.

The amendment to WAC 110-06-120 temporarily removes crimes that account for thirty-three percent of family, friends, and neighbors being disqualified from participation in working connections child care. The amendment is in accord with the federal disqualifying crimes list, significantly increases the number of individuals who may provide care, and will not pose a safety risk for children in care.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, 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 9, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, (~~(prior to authorizing unsupervised access to children,)~~) the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, (~~(prior to authorizing unsupervised access to children,)~~) the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, (~~(prior to returning a dependent child home,)~~) the department requires a background check on all adults residing in the home, including the parents.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0040, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.030 and 43.43.832. WSR 18-12-101, § 388-06A-0110, filed 6/5/18, effective 7/6/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0110, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

- (a) A review of child protective services case files information or other applicable information system.
- (b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

- (a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.
- (b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint name-based background checks regardless of how long you have resided in Washington.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

(5) Applicants may be approved before the fingerprint-based background check is conducted.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0080, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0150, filed 1/15/15, effective 2/15/15.]

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

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services applying for a first-time background check must complete the DCYF background check application process including, but not limited to:

- (a) Submitting a completed background check application;
- (b) Completing the required fingerprint process; and
- (c) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals qualified by the department to have unsupervised access to children in care who are renewing their applications must:

- (a) Submit the new background check application through DCYF;
- (b) Submit payment of all required fees as provided in WAC 110-06-0044; (())

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section.

(3) Each subject individual completing the DCYF background check process must disclose whether they have:

- (a) Been convicted of any crime;
- (b) Any pending criminal charges; and
- (c) Been subject to any negative action, as defined by WAC 110-06-0020.

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(6) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

[Statutory Authority: RCW 43.216.055, 43.216.065, 42 U.S.C. 9858, et seq. and 45 C.F.R. 98.43. WSR 19-21-064, § 110-06-0040, filed 10/11/19, effective 11/11/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0040, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0040, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0040, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0040, filed 4/30/08, effective 5/31/08.]

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

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) The background check process for license-exempt in-home/relative providers requires:

(a) Submitting a completed background check application; and

(b) Completing the required fingerprint process.

(4) Each subject individual completing the DCYF background check process must disclose:

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether he or she has been subject to any negative actions, as defined by WAC 110-06-0020.

(5) A subject individual must not have unsupervised access to children in care unless he or she has obtained DCYF background check clearance authorization under this chapter.

(6) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(7) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (8) DCYF pays for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0046, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0120 Secretary's list (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify (~~him or her~~) the individual from authorization to care for or have unsupervised access to children receiving early learning services.

(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify (~~him or her~~) the individual from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
((Bail jumping))	Custodial sexual misconduct
	Extortion 2
Child buying or selling	((Forgery))
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	((Identity theft))
Controlled substance homicide	Leading organized crime
Criminal mistreatment	((Malicious explosion 3))
Custodial interference	((Malicious mischief))
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	((Patronizing a prostitute))
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	((Prostitution))
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	((Theft))
Malicious explosion 2	((Theft-welfare))
Malicious harassment	Unlawful imprisonment

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0120, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0120, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 14-13-002, §

170-06-0120, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0120, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0120, filed 4/30/08, effective 5/31/08.]

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

WSR 21-09-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-51—Filed April 9, 2021, 3:22 p.m., effective May 19, 2021]

Effective Date of Rule: May 19, 2021.

Purpose: The purpose of this emergency rule is to set recreational shrimp seasons in Marine Areas 4 east of the Bonilla-Tatoosh line through 13.

Citation of Rules Affected by this Order: Amending WAC 220-330-070.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of open days in the marine areas listed in this section. In addition, this emergency regulation opens the Marine Area 5, 6 and 7 seasons one hour before sunrise to one hour after sunset, which is the default daily start time and times for those areas. Marine Area 13 will remain closed for spot shrimp for conservation reasons. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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 9, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000F Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective May 19, 2021, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Ta-

toosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Area 5: Open May 19 each day, until further notice for all shrimp species.

(2) Marine Areas 6 (excluding the Discovery Bay Shrimp District), 7 West, and 7 East: Open May 19 through 22, June 2 through 5, and June 16 through 19 for all shrimp species.

(3) Marine Area 7 South: Open May 19 through 22 and June 2 through 5 for all shrimp species.

(4) Marine Areas 8-1 and 8-2:

a. Open May 19 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

b. Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on May 19 in Marine Area 8-2.

(5) Marine Area 9: Open May 19 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(6) Marine Area 10 west of a line from West Point to Alki Point: Open May 19 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(7) Marine Area 10 east of a line from West Point to Alki Point: Open May 19 from 9:00 a.m. through 12:00 p.m. for all shrimp species.

(8) Marine Area 11: Open May 19 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(9) Marine Area 12: Open May 19, May 22, June 2, June 5, and June 16 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(10) Discovery Bay Shrimp District: Open May 19 and May 22 from 9:00 a.m. through 3:00 p.m. for all shrimp species.

[]

WSR 21-09-019
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed April 12, 2021, 9:34 a.m.]

The department of children, youth, and families requests to withdraw [rescind] WSR 21-06-007 filed on February 18, 2021.

Please contact Brenda Villarreal at 360-522-3691 if you have any questions or need anything further.

Brenda Villarreal
Rules Coordinator

WSR 21-09-028
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 12, 2021, 1:55 p.m., effective April 12, 2021, 1:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with P.L. 116.260, Supporting Youth and Foster Families through the Pandemic Act 2021, the emergency rules:

- Allow youth who are eligible for extended foster care services to voluntarily reenter the program upon reaching the maximum eligibility age of twenty-one on or after January 27, 2020;
- Allow program participants to remain in the program, regardless of their age, until September 30, 2021; and
- Relieve program participants from being exited from the program for not being able to participate in required education, training, or employment activities or providing documentation of a medical condition that prevents their participation in these activities.

Citation of Rules Affected by this Order: Amending WAC 110-90-0020, 110-90-0040, 110-90-0110, 110-90-0140, 110-90-0160, 110-90-0190, 110-90-0200, 110-145-1305, 110-147-1305, and 110-148-1305.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: P.L: 116-260; Proclamation of the Governor 21-02.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: P.L. 116-260 forbids states from refusing foster care services to persons who, during the COVID-19 pandemic, either have or will become too old to be eligible for services and eliminates certain additional eligibility elements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Nongovernmental 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 12, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0020 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, ~~(, including placement services, while the youth:~~

- ~~(1) Completes a high school or a high school equivalency program;~~
 - ~~(2) Completes a secondary or post-secondary academic or vocational program;~~
 - ~~(3) Participates in a program or activity designed to promote employment or remove barriers to employment;~~
 - ~~(4) Is engaged in employment for eighty hours or more per month;~~
- or
- ~~(5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.)~~

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0020, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0502, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0502, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0502, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0502, filed 3/25/13, effective 4/25/13.]

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0040 Who is eligible for extended foster care? (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW and:

- ~~(a) ((Enrolled in school as described in WAC 110-90-0050;~~
- ~~(b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC 110-90-0060;~~
- ~~(c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 110-90-0070;~~
- ~~(d) Engaged in employment for eighty hours or more per month;~~
- ~~(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC 110-90-0100; or~~
- ~~(f)) Enroll in the extended foster care program; or~~

~~(b) ((Did not enroll))~~ Not enrolled in the extended foster care program; and

(i) Had their dependency dismissed on their eighteenth birthday; and

(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of twenty-one. ~~(; and~~

~~(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.)~~

(2) A dependent youth in the custody of juvenile rehabilitation, the department of corrections, county detention, or jail ~~((who otherwise meets the eligibility criteria in subsection (1)(a) through (f) of this section))~~ may enroll in the extended foster care program.

(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA before the age of twenty-one. ~~((The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.))~~

(4) If the youth was in the extended foster care program through a VPA and was dismissed from the program between January 27, 2020, and September 30, 2021, because the youth reached the age of twenty-one, the youth may reenroll in the extended foster care program through a VPA until September 30, 2021.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0040, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0506, filed 12/12/17, effective 1/12/18; WSR 16-14-065, § 388-25-0506, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0506, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0506, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0506, filed 3/25/13, effective 4/25/13.]

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0110 How does a youth agree to participate in the extended foster care program? (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age twenty-one; or

(b) Establishing a nonminor dependency before reaching age twenty-one if the department denied entry into the program.

(3) An eligible nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one.

(4) An eligible youth as defined in WAC 110-90-0040 requesting to reenter the program may agree to participate by signing a VPA until September 30, 2021, if the youth was dismissed from the program between January 27, 2020, and September 30, 2021, based solely on reaching the age of twenty-one.

(5) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0110, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0528, filed 12/12/17, effective 1/12/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0528, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0528, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0528, filed 3/25/13, effective 4/25/13.]

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care? (1) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth(~~(=~~

~~(1) Has)) has not turned twenty-one.((; and))~~

(2) ~~Meets one of the conditions for eligibility in WAC 110-90-0040 (1)(a) through (e))~~. A youth dismissed from the program between January 27, 2020, and September 30, 2021, only because the youth reached the age of twenty-one may reapply for the extended foster care program until September 30, 2021.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0140, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0140, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416,

and 13.34.030. WSR 18-01-048, § 388-25-0534, filed 12/12/17, effective 1/12/18; WSR 14-13-051, § 388-25-0534, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0534, filed 3/25/13, effective 4/25/13.]

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.

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0160 How does DCYF determine a youth's continuing eligibility for the EFC program? To determine a youth's continuing eligibility for the EFC program, prior to every court review hearing DCYF will determine if the youth continues to:

- (1) Agree to participate in the EFC program;
- ~~(2) ((Meet the eligibility criteria in WAC 110-90-0040 (1)(a) through (f));~~
- ~~(3))~~ (2) Reside in an approved placement; and
- ~~((4))~~ (3) Comply with the youth's responsibilities in WAC 110-90-0190.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0160, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0160, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0540, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0540, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0540, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0540, filed 3/25/13, effective 4/25/13.]

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.

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0190 What must youth do to remain in the EFC program? To remain in the EFC program, unless otherwise authorized by court order, the youth must:

- (1) Agree to participate in the program as expressed in the written EFC agreement;
- (2) ~~((Maintain the standard of eligibility as set by the youth's academic program, employment related program, employment status, or documented medical condition;~~

~~(3))~~ Participate in the case plan, including monthly health and safety visits;

~~((4))~~ (3) Acknowledge that DCYF has responsibility for the youth's care and placement by authorizing DCYF to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, additional necessary services, educational records needed to determine continuing eligibility for the program, medical records related to a documented medical condition for purposes of qualifying for EFC under WAC 110-90-0040 (1)(f); and

~~((5))~~ (4) Remain in the approved foster care placement and follow placement rules as follows:

(a) Stay in the placement identified by DCYF or approved by the court;

(b) Obtain approval from their caseworker and notify their caregiver for extended absences from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and caseworker.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0190, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0190, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0546, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0546, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0546, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0546, filed 3/25/13, effective 4/25/13.]

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

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0200 When is a youth no longer eligible for the EFC program? A youth is no longer eligible for the EFC program and DCYF will ask the court to dismiss the nonminor dependency, when the youth:

~~(1) ((Graduates from high school or equivalency program and has not demonstrated intent to timely enroll in a post-secondary academic or vocational program;~~

~~(2) Graduates from a post-secondary education or vocational program;~~

~~(3) Reaches their twenty-first birthday))~~ Reaches the age of twenty-one or older before January 27, 2020;

~~((4) Is no longer participating or engaging in any of the eligibility criteria under WAC 110-90-0040 (1)(a) through (f);))~~

~~((5))~~ (2) No longer agrees to participate in EFC services; or

((+6)) (3) Fails or refuses to comply with youth responsibilities outlined in WAC 110-90-0190; or

(4) Only after September 30, 2021, a youth who is twenty-one years of age or older will no longer be eligible for the EFC program and DCYF will ask the court to dismiss the nonminor dependency.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0200, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0548, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0548, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0548, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0548, filed 3/25/13, effective 4/25/13.]

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

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(a) Under eighteen years old;

(b) Up to twenty-one years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(c) (~~Up to twenty-one years of age and participates~~) Participating in the extended foster care program;

(d) Up to twenty-one years of age with intellectual and developmental disabilities; or

(e) Up to twenty-five years of age and under the custody of juvenile rehabilitation.

"Child placing agency" or "CPA" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four-hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" or "DCYF" means the department of children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care" means direct, hands-on personal care and supervision to group care children and youth.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour

basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown, the child has left care without the permission of the child's caregiver or DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to

care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and antianxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services for your facility without compensation.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to DCYF and its staff.

"Young child" refers to a child age twelve months through eight years old.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1305, filed 2/7/20, effective 3/9/20.]

WSR 18-14-078, recodified as § 110-145-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1305, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18 [7/1/18])

WAC 110-147-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Business hours" means hours during the day in which business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

"CA" means children's administration.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-147 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years of age;

(2) Up to twenty-one years of age and enrolled in services through the developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) (~~Up to twenty-one years of age and participates~~) Participating in the extended foster care program;

(4) Up to twenty-one years of age with intellectual and developmental disabilities; or

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency" or "(CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services without compensation, for your agency.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

[WSR 18-14-078, recodified as § 110-147-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-147-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1305, filed 12/11/14, effective 1/11/15.]

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18 [7/1/18])

WAC 110-148-1305 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years of age and older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children, and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means either:

(1) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

(2) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-148 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years of age;

(2) Up to twenty-one years of age and enrolled in services through developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) (~~Up to twenty-one years of age and participates~~) Participating in the extended foster care program;

(4) Up to twenty-one years of age with intellectual and developmental disabilities; or

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency or CPA" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned or managed by you.

"Psychotropic medication" means a type of medicine prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, anti-depressant, and anti-anxiety medications.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Washington state patrol fire protection bureau or WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

[WSR 18-14-078, recodified as § 110-148-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1305, filed 12/11/14, effective 1/11/15.]

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 21-09-032

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed April 13, 2021, 10:49 a.m., effective April 13, 2021, 10:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is filing this emergency rule to meet the Centers for Medicare and Medicaid (CMS) milestone requirement 3 regarding the agency's Substance Use Disorder (SUD) Waiver Implementation Plan. Milestone 3 required the agency adopt rules by July 1, 2020, reflecting the requirement that residential treatment facilities 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 71.24.035 and 71.24.520.

Other Authority: 42 U.S.C. 1315, Sec. 1115; RCW 71.24.585.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The agency is filing an emergency rule to ensure continued federal funding by meeting CMS milestone requirement 3 regarding the agency's SUD Waiver Implementation Plan. Milestone 3 required the agency to adopt rules by July 1, 2020, reflecting the requirement that residential treatment facilities offer medication assisted treatment access on-site or facilitate off-site access. The agency is filing this emergency rule while proceeding with the permanent rule-making process. The language is the same as that of the previous emergency filing under WSR 21-01-126. Since the last emergency filing, the agency filed the proposed permanent rule under WSR 21-07-067 and a public hearing is scheduled for April 27, 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 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 13, 2021.

Wendy Barcus
Rules Coordinator

OTS-2523.2

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) 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;

(1) 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 (as defined in 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 substance use disorders (SUD).

(b) Facilitate access to medications specific to the client's diagnosed clinical needs, including medications used to treat SUD.

(c) Not mandate titration of any prescribed medications to treat any SUD as a condition of clients receiving treatment or continuing to receive treatment. Decisions concerning medication adjustment must be coordinated with the prescribing provider and be based on medical necessity.

(d) Coordinate care upon discharge for client to continue medications specific to a client's diagnosed clinical needs, including medications used to treat SUD. See RCW 71.24.585.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. Sec. 1396 (a) (68). WSR 19-20-060, § 182-502-0016, filed 9/26/19, effective 10/27/19. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. 455.432. WSR 15-10-003, § 182-502-0016, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021 and 42 C.F.R. 455. WSR 13-03-068, § 182-502-0016, filed 1/14/13, effective 2/14/13. WSR 11-14-075, recodified as § 182-502-0016, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.080, and 74.09.290. WSR 11-11-017, § 388-502-0016, filed 5/9/11, effective 6/9/11.]

WSR 21-09-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-52—Filed April 13, 2021, 1:49 p.m., effective April 13, 2021, 1:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to modify coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000K and 220-340-45000A; and amending WAC 220-340-420 and 220-340-450.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Mandatory minimum meat recovery requirements for coastal crab will be achieved by the opening dates contained herein. The Washington department of health has determined that while the meat in Dungeness crab in all areas of the Washington coast is safe for human consumption, the viscera from crab caught between the Washington/Oregon border and Point Chehalis, Washington, including Willapa Bay and Grays Harbor, are unsafe for human consumption and have issued a recommendation requiring evisceration of all crab caught in this area. To strengthen the enforcement of an evisceration requirement needed to protect public health, all crab landed into Washington from any west coast area south of Point Chehalis, Washington and Willapa Bay and Grays Harbor must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington (except in Grays Harbor) are below federal action levels and are considered safe for human consumption; landings of crab from this area do not require similar processing restrictions to remove the viscera necessary to protect public health. However, restrictions on where fishermen may fish their gear are needed to ensure that crab are not harvested from areas with high domoic acid in the viscera (south of Point Chehalis, Washington and Willapa Bay and Grays Harbor) and reported as landings from areas where domoic acid in viscera are low (north of Point Chehalis, Washington). Further delaying the opening of the coastal commercial Dungeness crab fishery until domoic acid in crab viscera is below federal action levels, which could take several months, would cause significant economic harm to the coastal crab industry and to the coastal communities dependent on this highly valuable fishery. In addition, delaying the season into spring poses an additional risk to marine mammals including Endangered Species Act (ESA) listed humpback whales and Marine Mammal Protection Act Gray whales which are more abundant off the Washington coast in the spring by increasing the risk of entanglement with commercial crab gear. Emergency rules are necessary to implement a longer gear set period which will allow for safer fishing conditions and improved enforceability of area restrictions when gear is set. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Tribal Special Management Area descriptions conform with recent state/tribal agreements. There is insufficient time to

adopt permanent rules. The Westport Boat Basin is closed to commercial crab fishing to prevent conflicts with vessel traffic in a limited area. New hold inspections will provide flexibility and by allowing fishers to access different markets. This rule makes it clear that any new hold inspection certificate issued will supersede any previous version issued to the same license or vessel to allow accurate tracking.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

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 13, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000L Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful to land, or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel hold inspection certificate numbers are recorded on all shellfish fish receiving tickets completed for coastal Dungeness crab landings until further notice and;

(b) The vessel has a valid Oregon vessel inspection certificate or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with an individual inspection number that includes the letters "EVS" indicating that evisceration is required for all crab sold by this license or the letters "NOR" indicating north of Point Chehalis, WA (46°53.18 N. Lat) (except Grays Harbor) and evisceration is not required.

(c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.

(d) A Washington vessel hold inspection certificate dated on or after March 18, 2021 supersedes any hold inspection certificate previously issued to the same license or associated designated vessel.

(2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) All crab caught north of Point Arena, CA and south of Point Chehalis, WA (46°53.18 N. Lat) including Willapa Bay and Grays Harbor must be delivered to a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) plan and eviscerated or;

(b) Dungeness crab are delivered to a Washington Department of Fish and Wildlife licensed Fish Dealer and/or Wholesale Fish Buyer and transported or sold to a facility with an approved HACCP plan and eviscerated. The vessel inspection number must accompany the crab to the final designation where it will be eviscerated.

(3) It is unlawful to donate, sell or attempt to sell to retailers or consumers live or whole Dungeness crab when caught north of Cape Falcon, OR (45°46'00" N. Lat) and south of Point Chehalis, WA (46°53.18 N. Lat), and Willapa Bay and Grays Harbor.

(4) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning immediately, until 8:00 A.M. April 17, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596

(5) It is unlawful for a vessel to use more than 300 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve, from 8:00 a.m. April 3, 2021, until 8:00 a.m. May 1, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(6) It is unlawful for a vessel to use more than 100 pots in the area between the Copalis River (47°08.00') and Joe Creek (47°12.11') shoreward of a line approximating the 27-fathom depth curve, from 8:00 a.m. April 16, 2021, until further notice. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(7) It unlawful for a vessel to use more than 100 pots in the area between Cape Johnson (47°58.00') and Destruction Island (47°40.50') shoreward of a line approximating the 30-fathom depth curve, from 8:00 am May 1, 2021 until 8:00 am June 1, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(8) Unless otherwise amended all other provisions of the permanent rule remain in effect

[]

Reviser's note: The unnecessary underscoring 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.

NEW SECTION

WAC 220-340-45000B Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section:

- (1) Open area: The area from the WA/OR border (46°15.00) to the US-Canadian border. For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.
- (2) No license or vessel may set gear south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor unless they have been issued a valid Oregon vessel inspection certificate dated on or after February 15, 2021 or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "EVS" indicating that evisceration is required for all crab landed by this license or vessel until further notice.
- (3) Licenses or vessels issued a valid Washington crab vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "NOR" may land crab for live, whole cooked or evisceration.
- (4) It unlawful for licenses and vessels with a vessel inspection number that includes the letters "NOR" to deploy or operate shellfish pots south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor.
- (5) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.
- (6) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 A.M., April 16, 2021, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:
 - (a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.
 - (b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
 - (c) Southwest Corner: 47°12.11' N. Lat. 124°27.33' W. Lon.
 - (d) Southeast Corner (Joe Creek): 47°12.11' N. Lat. 124°12.28' W. Lon.
- (7) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until 8:00 am May 1, 2021. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:
 - (a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.
 - (b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
 - (c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
 - (d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(8) Effective immediately the Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- (a) Northeast Corner (Tatoosh Island)
- (b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.
- (c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.
- (d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(9) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

(10) Unless otherwise amended all other provisions of the permanent rule remain in effect.

[]

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000K Commercial crab fishery—Unlawful acts. (21-44)
- WAC 220-340-45000A Commercial crab fishery—Seasons and areas—Coastal. (21-44)

WSR 21-09-036
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 13, 2021, 2:59 p.m., effective April 13, 2021, 2:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting WAC 388-437-0002 What is the minimum emergency food assistance allotment an assistance unit may receive?, to expand adjustments to food assistance benefit issuances implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302) and updated guidance from Food and Nutrition Services issued on April 1, 2021.

Citation of Rules Affected by this Order: New WAC 388-437-0002.

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

Other Authority: H.R. 6201.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency rule is required to implement provisions from an April 1, 2021, memo issued by Food and Nutrition Service containing new guidance for the Families First Coronavirus Response Act (H.R. 6201, Section 2302) related to the Supplemental Nutrition Assistance Program that supports preservation of the public health, safety, or general welfare through increased access to food assistance.

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 Nongovernmental 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 1, Amended 0, Repealed 0.

Date Adopted: April 13, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4862.1

NEW SECTION

WAC 388-437-0002 What is the minimum emergency food assistance allotment an assistance unit may receive? (1) Beginning April 2021, assistance units (AUs) that receive less than ninety-five dollars in emergency allotments under WAC 388-437-0005(1) will receive a minimum emergency allotment of ninety-five dollars.

(2) This emergency allotment minimum will continue each month as authorized under WAC 388-437-0005(2).

[]

WSR 21-09-046
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 15, 2021, 10:28 a.m., effective April 15, 2021, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] assisted living facilities are not significantly impeded during the hiring process due to an administrator's inability to obtain a certificate of completion of a recognized administrator training as referenced in WAC 388-78A-2521. This will help to increase the number of long-term care administrators necessary to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19. The current rules require administrator training prior to assuming administrator duties or within six months of beginning duties for administrators meeting additional educational requirements. Currently, applicants for assisted living facility administrator positions are unable to obtain the required training.

A CR-101 was filed under WSR 20-17-085 on August 13, 2020. In addition, under the rule development phase of rule making, the department is in discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary. This rule making is necessary to establish a timeframe when the portions of the rules were suspended during the COVID-19 pandemic, and assisted living facilities were not required to comply with the suspended portions of the rules.

Virtual trainings have been developed and implemented for the assisted living facility administrators. Although the available capacity for these trainings has increased, they are limited to semi-annual offerings. Additional time is needed to facilitate additional courses to serve the backlog of applicants requesting this training.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2524(1), 388-78A-2525(1), and 388-78A-2526(1).

Statutory Authority for Adoption: RCW 18.20.090.

Other Authority: None.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in congregate settings, such as assisted living facilities. Administrator training is part of the hiring process and must be completed within a designated timeframe. Currently, applicants for assisted living facility administrator positions are unable to obtain the required training. Although the training will become available, it will not be enough to meet the backlog of administrators needing this training. This circumstance is expected to exacerbate demand for long-term care administrators when the pandemic has already significantly reduced the availability of long-term care workers in the state in recent months. This rule making is necessary to establish a timeframe when the portions of the rules were suspended during the

COVID-19 pandemic, and assisted living facilities were not required to comply with the suspended portions of the rules.

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 Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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 12, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4801.1

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2524 Administrator qualifications—Certification of training, and three years experience. Prior to assuming duties as a boarding home administrator, the individual has ~~((met the following qualifications:~~

~~(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and~~

~~(2) Has)) three years paid experience:~~

~~((a)) (1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or~~

~~((b)) (2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.~~

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2524, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2524, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience. The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1) ~~((1))~~ or (2) ~~((or (3)))~~ of this section:

(1) ~~((Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or~~
~~(2))~~ Has two years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

~~((3))~~ (2) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2525, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2525, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience. The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1) ~~((1))~~ or (2) ~~((or (3)))~~ of this section.

(1) ~~((Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or~~
~~(2))~~ Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable

adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

((~~3~~)) (2) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2526, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2526, filed 1/15/10, effective 2/15/10.]

WSR 21-09-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-53—Filed April 15, 2021, 1:12 p.m., effective April 15, 2021, 1:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to remove evisceration requirements for commercially caught crab coast-wide.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000L and 220-340-45000B; and amending WAC 220-340-420 and 220-340-450.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Washington department of health has determined that Dungeness crab in the areas open to harvest are now safe for human consumption. This allows for the removal of the evisceration requirement for crab in areas listed in previous versions of the regulation. Tribal special management area descriptions conform with recent state/tribal agreements.

The Westport Boat Basin is closed to commercial crab fishing to prevent conflicts with vessel traffic in a limited area.

There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

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.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000M Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning immediately, until 8:00 A.M. April 17, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24

hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596

(2) It is unlawful for a vessel to use more than 300 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve, from 8:00 a.m. April 3, 2021, until 8:00 a.m. May 1, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(3) It is unlawful for a vessel to use more than 100 pots in the area between the Copalis River (47°08.00') and Joe Creek (47°12.11') shoreward of a line approximating the 27-fathom depth curve, from 8:00 a.m. April 16, 2021, until further notice. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(4) It unlawful for a vessel to use more than 100 pots in the area between Cape Johnson (47°58.00') and Destruction Island (47°40.50') shoreward of a line approximating the 30-fathom depth curve, from 8:00 am May 1, 2021 until 8:00 am June 1, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(5) Unless otherwise amended all other provisions of the permanent rule remain in effect

[]

Reviser's note: The unnecessary underscoring 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.

NEW SECTION

WAC 220-340-45000C Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section:

(1) Open area: The area from the WA/OR border (46°15.00) to the US-Canadian border. For the purposes of this section, the waters of

Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 A.M., April 16, 2021, from the area shoreward of a line approximating the 27-fathom depth curve between Joe Creek (47°12.11) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

- (a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.
- (b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
- (c) Southwest Corner: 47°12.11' N. Lat. 124°27.33' W. Lon.
- (d) Southeast Corner (Joe Creek): 47°12.11' N. Lat. 124°12.28' W. Lon.

(3) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until 8:00 am May 1, 2021. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- (a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.
- (b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- (c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- (d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(4) Effective immediately the Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- (a) Northeast Corner (Tatoosh Island)
 - (b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.
 - (c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.
 - (d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.
- (5) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

(6) Unless otherwise amended all other provisions of the permanent rule remain in effect.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000L Commercial crab fishery—Unlawful acts. (21-52)
- WAC 220-340-45000B Commercial crab fishery—Seasons and areas—Coastal. (21-52)

WSR 21-09-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-54—Filed April 15, 2021, 3:10 p.m., effective April 15, 2021, 3:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is reopen sport crabbing seasons coast-wide per permanent rule.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000Z.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Based on recent marine toxin test results the Washington department of health has determined that Dungeness crab along the Washington coast and in Willapa Bay and Grays Harbor are safe for human consumption. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative code is repealed:

WAC 220-330-04000Z Crab—Areas and seasons. (20-45)

WSR 21-09-051
EMERGENCY RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed April 15, 2021, 3:19 p.m., effective April 15, 2021, 3:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and took effect on August 14, 2020. This required emergency updates to the college's student conduct code to be compliant with federal regulations. To this end, the college filed emergency rules on August 13, 2020. See WSR 20-17-068. This filing extends these emergency rules while the college proceeds with permanent rule making. To this end, consistent with RCW 34.05.350(2), the college filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. See WSR 20-23-055. In addition, additional changes are made to the existing student conduct code to harmonize the college's definition of sexual misconduct with the definition required by Title IX.

Citation of Rules Affected by this Order: New WAC 132Q-10-245, 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; and amending WAC 132Q-10-105, 132Q-10-243, and 132Q-10-244.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 10, Amended 3, 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.

John O'Rourke
Grants and Contracts Manager

OTS-2527.1

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURESNEW 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, benefit, 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 ex-

plaining 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 1320-10-607 Initial order. (1) In addition to complying with WAC 1320-10-330, 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 pres-

ident 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 21-09-053

EMERGENCY RULES

WESTERN WASHINGTON UNIVERSITY

[Filed April 16, 2021, 7:53 a.m., effective April 16, 2021, 7:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Western Washington University is adopting a third emergency rule per RCW 34.05.350(2), while actively pursuing adoption of a permanent rule as evidenced by the Preproposal statement of inquiry, CR-101 filed on August 21, 2020, as WSR 20-18-011 as well as continuing to draft revisions, seek legal review and seek feedback from the campus community.

Purpose: Update student conduct code to be in compliance with new Title IX federal regulations from the Department of Education. The new rules went into effect August 14, 2020.

Citation of Rules Affected by this Order: New WAC 516-21-291, 516-21-292, 516-21-293, 516-21-294, 516-21-295, 516-21-296, 516-21-297, 516-21-298, and 516-21-299; and amending WAC 516-21-240 and 516-21-270.

Statutory Authority for Adoption: RCW 28B.35.120(12); 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Federal Title IX regulations require this be implemented by August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 2, 2021.

Jennifer L. Sloan
Rules Coordinator

OTS-2535.1

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-240 Student conduct system. (1) The vice president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice president to the dean of students.

(2) A conduct officer(s) shall be appointed and supervised by the dean of students or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging (~~dis-erimination or sexual violence, which includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to a conduct officer in lieu of the conduct officer's investigation~~) a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, non-consensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(3) Appeal board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Appeal board members shall include a pool of the following:

(a) Four faculty members, appointed by the faculty senate;

(b) Six student members, appointed by the associated students board of directors and/or residence hall association. Student board members must:

(i) Have a cumulative grade point average above 2.0;

(ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and

(iii) Be confirmed by the dean of students; and

(c) Four staff members, generally but not exclusively from the division of enrollment and student services, confirmed by the dean of students.

(4) An appeals board shall be composed of five members and any three persons constitute a quorum of a board. Generally an appeals board will be comprised of faculty, staff, and students, but in some instances may only be comprised of members from two of the three groups. The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint, or involved in the complaint. Board members must be properly trained in accordance with state and/or federal guidance. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.

(5) A staff member appointed by the dean of students may advise the board on technical details of the code and its procedures.

(6) Conduct officers, the appeals board, and the dean of students or authorized designees have full authority to administer a decision under the code.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-240, filed 2/15/17, effective

3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-240, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-270 Proceedings for violations of the code. (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

(a) Review the complaint, investigate and make a finding whether the code was violated and impose sanction(s);

(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; or

(c) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises.

(3) In complaints alleging (~~discrimination and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complaints should be made to Western Washington University's equal opportunity office. An investigation and written report of findings from Western Washington University's equal opportunity office~~) a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes non-consensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(4) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location. Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

(5) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer, including

the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

(6) All notifications under the code are delivered by electronic mail to the students' university email account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

(7) Upon written request to the dean of students office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

(8) A conduct officer's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

(9) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, appeal board chair, or dean of students shall have the discretion to determine admissibility of evidence.

(10) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or appeals board, the complaint may be considered in their absence, and the conduct officer or appeals board may issue a decision based upon that information.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-270, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-270, filed 12/9/11, effective 1/9/12.]

NEW SECTION

WAC 516-21-291 Order of precedence under Title IX. 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 Western Washington University's standard disciplinary procedures, WAC 516-21-240 and 516-21-270, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 516-21-292 Jurisdiction under Title IX. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Western Washington University 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 Western Washington University 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 Western Washington University.

(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), (b), and (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Western Washington University from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Western Washington University's student conduct code, chapter 516-21 WAC.

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX coordinator 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 516-21-293 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, Western Washington University 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 Western Washington University employee conditioning the provision of an aid, benefit, or service of Western Washington University 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 Western Washington University'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 who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(a) The length of the relationship;

(b) The type of relationship; and

(c) 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 516-21-294 Initiation of discipline under Title IX. (1)

Upon receiving the Title IX final 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);

(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) Western Washington University will appoint the party an advisor of Western Washington University'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 516-21-295 Prehearing procedure under Title IX. (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 516-21-250. 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 student conduct officer.

(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 Western Washington University intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 516-21-296 Rights of parties under Title IX. (1) Western Washington University's student conduct procedures, WAC 516-21-250 and 516-21-270 and this supplemental procedure shall apply equally to all parties.

(2) Western Washington University 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 who will conduct all questioning on the party's behalf. 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 Western Washington University's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 516-21-297 Evidence under Title IX. 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 516-21-298 Initial conduct order under Title IX. (1) In addition to complying with WAC 516-21-250 and 516-21-270, the student conduct committee will be responsible for conferring and drafting an initial conduct 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 Western Washington University's educational programs or activities; and

(h) Describes the process for appealing the initial conduct order.

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

[]

NEW SECTION

WAC 516-21-299 Appeals under Title IX. (1) The parties shall have the right to request a review from the initial conduct order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to request a review will be subject to the same procedures and time frames set forth in WAC 516-21-290 (5)(c). Appeals of initial conduct orders under Title IX move directly to the review stage of the student conduct code's proceedings.

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

(3) The vice president of enrollment and student services or their delegate shall serve the final decision on the parties simultaneously.

[]

WSR 21-09-057
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed April 16, 2021, 1:40 p.m., effective April 16, 2021, 1:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To protect a general government and higher education employee's seniority date when leave without pay is taken due to the novel coronavirus 2019 (COVID-19) under the governor's high-risk proclamation, Proclamation 20-46.

Citation of Rules Affected by this Order: Amending WAC 357-46-053 and 357-46-055.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: To align Title 357 WAC with Governor Jay Inslee's Proclamation 20-46, which ensures that certain employees at high risk of suffering severe illness from COVID-19 can take all available leave without risk of any adverse employment action.

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 Nongovernmental 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 2, Repealed 0.

Date Adopted: April 16, 2021.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-3008.1

AMENDATORY SECTION (Amending WSR 05-12-075, filed 5/27/05, effective 7/1/05)

WAC 357-46-053 How is a higher education employee's seniority date determined? For higher education employees, the seniority date is determined as follows:

(1) In accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules.

(2) Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

(3) The seniority date will not be adjusted for the period of leave without pay for employees on leave without pay taken due to the novel coronavirus disease 2019 (COVID-19) under the governor's high risk proclamation #20-46. This subsection is effective until the expiration of proclamation #20-46, issued April 13, 2020, by the governor or any amendment thereto, whichever is later.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-075, § 357-46-053, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;
 (b) Compensable work-related injury or illness leave;
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

(f) Novel coronavirus disease 2019 (COVID-19) under the governor's high risk proclamation #20-46. This subsection is effective until the expiration of proclamation #20-46, issued April 13, 2020, by the governor or any amendment thereto, whichever is later.

(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

~~((2))~~ (3) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;
 (b) Compensable work-related injury or illness leave;
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

(f) Novel coronavirus disease 2019 (COVID-19) under the governor's high risk proclamation #20-46. This subsection is effective un-

til the expiration of proclamation #20-46, issued April 13, 2020, by the governor or any amendment thereto, whichever is later.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-06-007, § 357-46-055, filed 2/20/14, effective 3/24/14; WSR 09-11-063, § 357-46-055, filed 5/14/09, effective 6/16/09; WSR 05-08-135, § 357-46-055, filed 4/6/05, effective 7/1/05.]

WSR 21-09-059

EMERGENCY RULES

WHATCOM COMMUNITY COLLEGE

[Filed April 16, 2021, 3:59 p.m., effective April 16, 2021, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires extension of the emergency updates to the college's student conduct code to be compliant with federal regulations in order for the college to finalize permanent rules.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; chapter 132U-305 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Whatcom Community College is required by the United States Department of Education to remain compliant with the recently adopted Title IX regulations, which took effect on August 14, 2020.

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

Number of Sections Adopted at the Request of a Nongovernmental 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 9, Amended 15, 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 16, 2021.

Barbara Nolze
Administrative Assistant
to Vice President
for Student Services

OTS-2556.1

Chapter 132U-305 WAC
SUPPLEMENTAL TITLE IX PROCEDURES

NEW SECTION

WAC 132U-305-001 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 college's standard disciplinary procedures, WAC 132U-300-030 through 132U-300-140, and WAC 132U-126-001 through 132U-126-100¹ these supplemental procedures shall take precedence.²

¹ Cite to existing student conduct code and procedure.

² To comply with these procedures, college officials must read these supplemental procedures in conjunction with the regular procedures. The regular procedures still apply, even if they are not expressly mentioned in the supplemental procedures. The only time one will not comply with the regular procedures is when they conflict with the supplemental procedures, in which case, the supplemental procedures control.

[]

NEW SECTION

WAC 132U-305-002 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"³ encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the 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.

³ Washington's Law Against Discrimination (WLAD), chapter 49.60 RCW, and Gender Equality in Higher Education Act, chapter 28B.110 RCW, provide broader protection from sexual misconduct than the narrow definitions of "sexual harassment" prohibited under Title IX. Accordingly, institutions will want to retain broader definitions of sexual misconduct that are in their regular student conduct code, as this conduct is still subject to regulation under state law and institutional policies prohibiting gender discrimination.

[]

NEW SECTION

WAC 132U-305-003 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 alle-

gations that the respondent violated other provisions of the college's student conduct code, chapter 132U-126 WAC.⁴

(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.

⁴ Insert citation to the institution's student conduct code.

[]

NEW SECTION

WAC 132U-305-004 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 committee⁵ 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.

⁵ Given the sensitivity and complexity of Title IX matters, institutions may want to consider having hearings heard by a smaller panel of college employees (e.g., two faculty and an administrator) or even a single hearing officer. There is no legal requirement that a student conduct committee hear these cases. Institutions may also want to consider utilizing the same panel or hearing officer to hear both employee and student Title IX discipline cases. Finally, institutions may want to combine resources by retaining and training one hearing officer or committee chair to handle cases at multiple institutions. Any school pursuing these options will want to carefully review and revise the supplemental procedures to reflect these decisions.

[]

NEW SECTION

WAC 132U-305-005 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

132U-300-090. 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 132U-305-006 Rights of parties. (1) The college's student conduct procedures, chapter 132U-126 WAC,⁶ 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 coordinator⁷ will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

⁶ Citation to the institution's student conduct procedures.

⁷ This responsibility could also be assigned to the chair of the student conduct committee. This may invite allegations of bias or conflict of interest. The Title IX coordinator does not have any part in the determination of responsibility, so may be a better choice.

[]

NEW SECTION

WAC 132U-305-007 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 132U-305-008 Initial order. (1) In addition to complying with chapter 132U-126 WAC, 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 college's education programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

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

[]

NEW SECTION

WAC 132U-305-009 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 132U-126-090.⁸

(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.

⁸ Citation to the procedure for appealing an initial order to the president under the institution's student conduct procedure.

[]

WSR 21-09-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-55—Filed April 16, 2021, 4:19 p.m., effective May 1, 2021]

Effective Date of Rule: May 1, 2021.

Purpose: The purpose of this emergency rule is to open salmon seasons in the Quillayute and Sol Duc rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule implements sport harvest opportunity for hatchery Spring Chinook as agreed to under the 2021 co-management Harvest Agreement for Spring and Summer Salmon Fisheries in the Quillayute River System. There is insufficient time to adopt permanent rules.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000J Freshwater exceptions to statewide rules—Coast. Effective May 1 through July 31, 2021 the following provisions of WAC 220-312-020, regarding salmon seasons for Quillayute Sol Duc rivers shall be as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Salmon:

(a) Daily limit 4. No more than 2 adult salmon may be retained. Release wild adult Chinook, wild adult coho and all sockeye salmon.

(b) It is unlawful to use anything other than one single point barbless hook.

2. Sol Duc River (Clallam Co.), from mouth to the concrete pump station at the Sol Duc Hatchery: Salmon:

(a) Effective May 1 through July 15, 2021:

(i) Daily limit 4. No more than 2 adult salmon may be retained. Release wild adult Chinook, wild adult coho and all sockeye salmon.

(ii) It is unlawful to use anything other than one single point barbless hook.

(b) Effective July 16 through July 31, 2021:

(i) Daily limit 4. No more than 2 adult salmon may be retained. Release wild adult Chinook, wild adult coho and all sockeye salmon.

(ii) It is unlawful to use anything other than one single point barbless hook.

(iii) Bait prohibited.

[]

WSR 21-09-061
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 19, 2021, 8:13 a.m., effective April 21, 2021]

Effective Date of Rule: April 21, 2021.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will continue to align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow physicians to delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist. Current state rules specify physicians must perform some tasks. The amendment will permit delegation of those tasks as long as the task is within the scope of practice of the delegate, and the delegate works under the supervision of the physician.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-17-133 on August 18, 2020, to begin the permanent rule-making process. In addition, under the rule development phase of rule making, the department continues with discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-1260.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Current nursing home rules require physicians perform certain tasks. The rules also restrict the frequency of delegation from a physician to a registered nurse practitioner or a physician assistant, depending on the payor source of the resident and whether the bed the resident occupies is certified for medicare, medicaid, or both. The amendment will permit the physician to delegate tasks, even if it is required to be performed by the physician in regulation and regardless of the frequency of the delegation. The amendment does not change the required frequency of physician visits or the requirement for the physician to supervise the delegate. This amendment aligns state rules with federal rules recently amended to permit increased delegation of physician tasks to a registered nurse practitioner or a physician assistant. This amendment provides flexibility for physicians to better prioritize their time and will help to ensure nursing home residents receive assessment and care by a qualified health care provider in a timely manner.

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 Nongovernmental 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 1, Repealed 0.

Date Adopted: April 13, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4803.1

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

- WAC 388-97-1260 Physician services.** (1) The nursing home must ensure that the resident is seen by the physician whenever necessary.
- (2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.
- (3) The nursing home must ensure that:
- (a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;
 - (b) Another physician supervises the medical care of residents when their attending physician is unavailable; and
 - (c) Physician services are provided twenty-four hours per day, in case of emergency.
- (4) The physician must:
- (a) Write, sign and date progress notes at each visit;
 - (b) Sign and date all orders; and
 - (c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.
- (5) Except as specified in (~~subsections~~) subsection (6) (~~(7)~~, and ~~(9)~~) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:
- (a) Licensed by the state;
 - (b) Acting within the scope of practice as defined by state law;
- (~~and~~)
- (c) Under the supervision of, and working in collaboration with the physician; and
 - (d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.
- (6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

~~(7) ((If the resident's primary payor source is medicare, the physician may:~~

~~(a) Alternate federally required physician visits between personal visits by:~~

~~(i) The physician; and~~

~~(ii) An advanced registered nurse practitioner or physician's assistant; and~~

~~(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.~~

~~(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~

~~(9) If the resident's payor source is not medicare or medicaid:~~

~~(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.~~

~~(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~

~~(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.~~

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

~~(11))~~ The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

~~((12))~~ (8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1260, filed 9/24/08, effective 11/1/08.]

WSR 21-09-062
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 19, 2021, 10:22 a.m., effective April 19, 2021]

Effective Date of Rule: April 19, 2021.

Purpose: The department is amending WAC 388-436-0015 Consolidated emergency assistance program (CEAP), 388-436-0040 Excluded income and resources for CEAP, 388-436-0050 Determining financial need and benefit amount for CEAP, and 388-436-0055 What is the disaster cash assistance program (DCAP)?

These amendments are necessary to adjust consolidated emergency assistance and related disaster cash assistance program rules in alignment with the current state of emergency and order from the governor under RCW 74.04.660(6).

Citation of Rules Affected by this Order: Amending WAC 388-436-0015, 388-436-0040, 388-436-0050, and 388-436-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.660, 74.08.090, 74.08A.230.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This filing is necessary to provide economic relief to people affected by the current state of emergency. Per HB 1151 (chapter 9, Laws of 2021) and Proclamation of the Governor 20-63.8, expanded support through family emergency assistance under RCW 74.04.660 has been authorized.

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 Nongovernmental 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 4, Repealed 0.

Date Adopted: April 16, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4855.3

AMENDATORY SECTION (Amending WSR 11-02-037, filed 12/29/10, effective 2/1/11)

WAC 388-436-0015 Consolidated emergency assistance program

(CEAP). (1) CEAP is available to the following:

- (a) A pregnant woman in any stage of pregnancy; or
- (b) Families with dependent children, including families who have stopped receiving their TANF grant under WAC 388-310-1600 so long as:
 - (i) The dependent child is living with a parent or a relative of specified degree as defined under WAC 388-454-0010; or
 - (ii) The dependent child has lived with such a relative within six months of the request for assistance.

(2) Applicants must be residents of Washington state as defined in WAC 388-468-0005.

(3) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:

- (a) Food;
- (b) Shelter;
- (c) Clothing;
- (d) Minor medical care;
- (e) Utilities;
- (f) Household maintenance supplies;
- (g) Necessary clothing or transportation costs to accept or retain a job; or
- (h) Transportation for a minor, not in foster care, to a home where care will be provided by family members or approved caretakers.

(4) Payment under this program is limited to one time within twelve consecutive months for a period covering no more than thirty consecutive days, except when this limitation under RCW 74.04.660(1) is waived by order of the Governor under RCW 74.04.660(6). During the period of time when the Governor's order under proclamation 20-63.8 and subsequent proclamations are in effect, payments will be limited to once a month and applicants must apply each month they need assistance.

(5) The department may discontinue program benefits issuances during periods of time when state funds appropriated for CEAP are exhausted.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.660. WSR 11-02-037, § 388-436-0015, filed 12/29/10, effective 2/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 07-07-103, § 388-436-0015, filed 3/19/07, effective 4/19/07. Statutory Authority: RCW 74.04.050, 74.04.055, and 74.04.057. WSR 04-05-013, § 388-436-0015, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-436-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-436-0040 Excluded income and resources for CEAP. Resources and income listed below will not be considered in determining need or payment for CEAP:

- (1) A home as defined under WAC 388-470-0045;

(2) During the period of time when the Governor's order under proclamation 20-63.8 and subsequent proclamations is in effect, liquid resources as defined in WAC 388-470-0045 valued at six thousand dollars or less;

(3) One vehicle, running and used regularly by the assistance unit, with an equity value not to exceed ~~((one))~~ one thousand five hundred dollars. During the period of time when the Governor's order under proclamation 20-63.8 and subsequent proclamations is in effect, an equity value not to exceed ~~ten~~ thousand ~~((five hundred))~~ dollars);

~~((3))~~ (4) Household furnishings being used by the assistance unit;

~~((4))~~ (5) Personal items being used by members of the assistance unit;

~~((5))~~ (6) Tools and equipment being used in the applicant's occupation;

~~((6))~~ (7) The value of the coupon allotment under the Food Stamp Act of 1977, as amended;

~~((7))~~ (8) Benefits received under the women, infants and children program (WIC) of the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

~~((8))~~ (9) Energy assistance payments;

~~((9))~~ (10) Grants, loans, or work study to a student under Title IV of the Higher Education Amendments or Bureau of Indian Affairs for attendance costs as identified by the institution;

~~((10))~~ (11) Income and resources of an SSI recipient;

~~((11))~~ (12) Livestock when the products are consumed by members of the assistance unit;

~~((12))~~ (13) All resources and income excluded for the TANF program under WAC 388-470-0045 and by federal law.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-436-0040, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-436-0040, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than ninety percent ~~((of))~~ or equal to the temporary assistance for needy families (TANF) payment standard ~~((for households with shelter costs))~~. The net income limit for CEAP assistance units is:

Assistance unit members	<u>Ninety percent net income</u> limit
1	\$327
2	413
3	512
4	603
5	695

Assistance unit members	<u>Ninety percent net income limit</u>
6	789
7	912
8 or more	1,009

(2) During the period of time when the Governor's order under proclamation 20-63.8 and subsequent proclamations is in effect, the assistance unit's nonexcluded income, minus allowable deductions, must be less than or equal to the temporary assistance for needy families (TANF) payment standard. The net income limit for CEAP assistance units is:

<u>Assistance unit members</u>	<u>100 percent net income limit</u>
<u>1</u>	<u>\$363</u>
<u>2</u>	<u>459</u>
<u>3</u>	<u>569</u>
<u>4</u>	<u>670</u>
<u>5</u>	<u>772</u>
<u>6</u>	<u>877</u>
<u>7</u>	<u>1,103</u>
<u>8 or more</u>	<u>1,121</u>

The assistance unit's allowable amount of need is the lesser of:

- (a) The TANF payment standard, based on assistance unit size (~~(7 for households with shelter costs)~~) as specified under WAC 388-478-0020; or
- (b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	\$220	\$280	\$345	\$408	\$469	\$532	\$608	\$672
Shelter	268	339	422	497	571	647	750	828
Clothing	31	39	49	57	66	77	85	97
Minor medical care	186	237	294	345	398	449	524	578
Utilities	91	115	142	166	191	220	254	280
Household maintenance	66	84	105	122	142	161	186	204
Job related <u>clothing and transportation</u>	363	459	569	670	772	877	1,013	1,121
Child related transportation	363	459	569	670	772	877	1,013	1,121

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

- (a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;
- (b) Cash on hand, if not already counted as income; and
- (c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

[Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-436-0050, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-436-0050, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-436-0050, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.660. WSR 09-14-040, § 388-436-0050, filed 6/24/09, effective 7/25/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 08-18-009, § 388-436-0050, filed 8/22/08, effective 9/22/08; WSR 98-16-044, § 388-436-0050, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 08-18-008, filed 8/22/08, effective 9/22/08)

WAC 388-436-0055 What is the disaster cash assistance program (DCAP)? Disaster cash assistance program (DCAP) is paid through the consolidated emergency assistance program (CEAP) and is designed to provide cash assistance to individuals and families without children who face an emergency and do not have the money to meet their basic needs.

(1) DCAP is available if you meet all of the following:

(a) You suffered losses (~~and~~);

(b) You live in an area that has been declared a disaster ((for individuals by)) or where the Governor((-)) has declared a state of emergency;

~~((b) You are not able to live in your home or you cannot return to your home because of the disaster;))~~

~~(c) ((Your home in the disaster area is your primary residence (not a vacation home) and you were living there at the time of the disaster;~~

~~(d-)) You are a resident of Washington state as defined in WAC 388-468-0005;~~

~~((e-)) (d) Your net income is under the limits in WAC 388-436-0050(1); and~~

~~((f-)) (e) You or your family is not eligible for any other program that could meet your need as stated in WAC 388-436-0030.~~

(f) You are not eligible for CEAP because you do not meet the criteria described in WAC 388-436-0015(1).

(2) In the event of a declared disaster, you must also meet the following:

(a) You are not able to live in your home or you cannot return to your home because of the disaster; and

(b) Your home in the disaster area is your primary residence (not a vacation home) and you were living there at the time of the declared disaster.

~~((2-)) (3) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:~~

~~(a) Food;~~

~~(b) Shelter;~~

~~(c) Clothing;~~

~~(d) Minor medical care;~~

~~(e) Utilities;~~

(f) Household maintenance supplies; (~~(e)~~)

(g) Necessary clothing or transportation costs to accept or re-
tain a job; or

(h) Transportation for a minor, not in foster care, to a home
where care will be provided by family members or approved caretakers.

(~~(3)~~) (4) DCAP benefits are available to households only when
the Governor issues an order under RCW 74.04.660(6) extending CEAP
benefits to households without children.

(5) Payments under this program are limited to not more than
thirty consecutive days within a period of twelve consecutive months,
except when this limitation under RCW 74.04.660(1) is waived by order
of the Governor under RCW 74.04.660(6). During the period of time when
the Governor's order under proclamation 20-63.8 and subsequent procla-
mations is in effect, payments will be limited to once a month and ap-
plicants must apply each month they need assistance.

(6) The department may discontinue program benefits issuances
when the state of emergency or disaster declaration ends or when the
Governor's Order under RCW 74.04.660(6) or the authority thereunder
expires or is terminated.

(7) The department may discontinue program benefits issuances
when funds appropriated for DCAP are exhausted.

[Statutory Authority: RCW 74.04.050, 74.04.055, and 2008 c 181 §
301(6). WSR 08-18-008, § 388-436-0055, filed 8/22/08, effective
9/22/08.]