

**WSR 21-13-127
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed June 22, 2021, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-112.

Title of Rule and Other Identifying Information: Chapter 392-401 WAC, Statewide definition of absence, excused and unexcused.

Hearing Location(s): On July 27, 2021, at 11:00 a.m., webinar via Zoom (call-in option will be available).

Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by webinar via Zoom (with a call-in option).

There will be no physical location for the hearing. For information on registering and participating, please visit the office of superintendent of public instruction's (OSPI) website at k12.wa.us/policyfunding/ospi-rulemaking-activity. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: July 30, 2021.

Submit Written Comments to: Krissy Johnson, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email krissy.johnson@k12.wa.us, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by July 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Through this proposed rule, OSPI intends to (1) establish a definition of absence from synchronous and asynchronous instruction, (2) establish excused absences that pertain only during times of emergency school facility closures where districts are required to provide synchronous and asynchronous, and (3) establish the minimum criteria of a district's multi-tiered system of support for attendance.

Reasons Supporting Proposal: These proposed rules regarding absences are a continued effort to support school districts in addressing the challenge of chronic absenteeism, improving learning outcomes and success in school for all students, and supporting the whole child. Because health and safety considerations for staff and students related to the COVID-19 pandemic may continue to require school districts to provide instruction remotely for a subset of families for health and safety reasons, OSPI proposes these rules to adjust the statewide definition of absence to reflect districts' ongoing need to provide remote learning for the 2021-22 school year and beyond.

Statutory Authority for Adoption: RCW 28A.300.046, 28A.225.015, 28A.225.018, and 28A.225.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Krissy Johnson, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6045.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

June 22, 2021
Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3114.1

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-005 Purpose. Attendance is a critical building block for student learning. Attendance is a leading indicator of equity that signals areas for system and school improvement or when students might need additional support.

The purpose of this chapter is to ~~((provide a definition of))~~:

(1) Define student absence ~~((to))~~ for school districts ~~((that))~~ in order to support ~~((s))~~ accurate and consistent attendance data collection across the state; and

(2) Establish the minimum criteria of a multitiered system of support for attendance that each school district must implement in order to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy as required under chapter 28A.225 RCW.

~~((This effort will))~~ These rules support the state and school districts to address the challenge of chronic absenteeism, ~~((in an effort to improve))~~ improving learning outcomes and success in school for all students and ~~((to support))~~ supporting the whole child.

[Statutory Authority: RCW 28A.300.046. WSR 18-11-011, § 392-401-005, filed 5/3/18, effective 8/1/18.]

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school. Additional authority for this chapter is in RCW 28A.225.015, 28A.225.018, and 28A.225.020, which require the superintendent of public instruction to adopt rules pertaining to required actions on the part of school districts to address barriers to student attendance and truancy.

[Statutory Authority: RCW 28A.300.046. WSR 18-11-011, § 392-401-010, filed 5/3/18, effective 8/1/18.]

NEW SECTION

WAC 392-401-011 Scope and application. (1) This chapter applies to common school districts, charter public schools, and state-tribal education compact schools.

(2) This chapter does not apply to students enrolled in an alternative learning experience and claimed for state funding pursuant to WAC 392-121-182.

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NEW SECTION

WAC 392-401-012 General definitions. (1) "Asynchronous instruction" means instruction prepared by a certificated teacher that occurs away from the physical school setting without two-way interactive communication.

(2) "In-person instruction" is when instructional activity is planned and delivered under the supervision of school district staff and on school grounds.

(3) "Parent" has the same meaning as in WAC 392-172A-01125.

(4) "Synchronous online instruction" means scheduled real-time instruction between the student and a certified teacher or a district staff supervised by a certified teacher that provides opportunities for live two-way interactive communication online.

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AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-015 Definition of ((absent or)) absence from in-person instruction. ~~((1))~~ A student is absent from in-person instruction when ~~((they are))~~ the student is:

~~((a))~~ (1) Not physically present on school grounds; and

~~((b))~~ (2) Not participating in the following activities at an approved location:

~~((i))~~ (a) Instruction; or

~~((ii))~~ (b) Any instruction-related activity; or

~~((iii))~~ (c) Any other district or school approved activity that is regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

~~((2))~~ Students shall not be absent if:

~~(a)~~ They have been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;

~~(b)~~ Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

~~(c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.~~

~~(3) A full day absence is when a student is absent for fifty percent or more of their scheduled day.~~

~~(4) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.)~~

[Statutory Authority: RCW 28A.300.046. WSR 18-11-011, § 392-401-015, filed 5/3/18, effective 8/1/18.]

NEW SECTION

WAC 392-401-016 Definition of absence from synchronous and asynchronous instruction. (1) A student is absent from synchronous online instruction when the student does not log in to the synchronous meeting/class.

(2) A student is absent from asynchronous instruction when there is no evidence that the student accessed the planned asynchronous activity.

(3) Evidence of student participation in asynchronous activities must occur daily, within a twenty-four-hour time frame of when the participation is planned or expected.

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NEW SECTION

WAC 392-401-018 Daily attendance taking. School districts must take daily attendance for all enrolled students whether the instructional modality is in-person, synchronous or asynchronous.

For secondary schools, attendance must be taken daily in each course with planned instruction. In elementary schools, attendance must be taken at least twice a day.

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AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-020 Excused absences. (1) Absences due to the following reasons must be excused:

~~((1))~~ (a) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible;

~~((2))~~ (b) Family emergency including, but not limited to, a death or illness in the family;

~~((3))~~ (c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

- ~~((4))~~ (d) Court, judicial proceeding, court-ordered activity, or jury service;
- ~~((5))~~ (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
- ~~((6))~~ (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;
- ~~((7))~~ (g) Absence directly related to the student's homeless or foster care/dependency status;
- ~~((8))~~ (h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;
- ~~((9))~~ (i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;
- ~~((10))~~ (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;
- ~~((11))~~ (k) Absences due to a student's migrant status; ~~((and~~
- ~~(12))~~ (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and
- (m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.
- (2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:
- (a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;
- (b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;
- (c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and
- (d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.
- (3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the ~~((above))~~ criteria in subsections (1) and (2) of this section and school district policy for an excused absence. ~~((Districts may define additional categories or criteria for excused absences.))~~

[Statutory Authority: RCW 28A.300.046. WSR 18-11-011, § 392-401-020, filed 5/3/18, effective 8/1/18.]

NEW SECTION

WAC 392-401-038 Data reporting. School districts must report student absences to the office of superintendent of public instruction

through the comprehensive education data and research system (CEDARS) as provided in the CEDARS data manual.

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NEW SECTION

WAC 392-401-040 Student absences—General requirements. (1)

Students shall not be considered absent if:

(a) The student has been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;

(b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

(c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

(2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

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NEW SECTION

WAC 392-401-045 Multitiered system of support for attendance.

(1) School districts must implement a multitiered system of support for attendance to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy.

(2) Multitiered systems of support under this section must include:

(a) Monitoring daily attendance data for all students who are absent, whether the absence is excused or unexcused;

(b) A process to contact families and verify current contact information for each enrolled student that includes multiple attempts and modalities in the parent's home language;

(c) Differentiated supports that address the barriers to attendance and participation that includes universal supports for all students and tiered interventions for students at-risk of and experiencing chronic absence, including school and district attendance or engagement teams, connecting to community resources, and community engagement boards; and

(d) A process for outreach and reengagement for students who have been withdrawn due to nonattendance and there is no evidence that the student is enrolled elsewhere. This outreach and reengagement process must include:

(i) A school and/or district point person/people to maintain the list, keep it updated, and coordinate the outreach;

(ii) District staff assigned to conduct the outreach and attempts at reengagement;

(iii) Multiple methods of communication and outreach in a language or mode of communication that the parent understands including phone calls, texts, letters, and home visits;

(iv) Referral to community-based organizations, juvenile court or department of children, youth, and families, as appropriate;

(iv) Documentation of the attempts to reach student and family;
and

(v) File a petition in accordance with chapter 28A.225 RCW, even if the student has been withdrawn due to nonattendance.

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