

WSR 21-18-052
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 25, 2021, 4:00 p.m., effective August 25, 2021, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to establish the terms and conditions governing local education agencies' entitlement to receive state basic education apportionment allocations during the 2021-22 school year when local education agencies willfully fail to meet the requirements of Proclamation 20-09, et seq., or Proclamation 21-14, et seq.

Citation of Rules Affected by this Order: New WAC 392-117-070, 392-117-075, 392-117-080, and 392-117-085.

Statutory Authority for Adoption: RCW 28A.150.290.

Other Authority: RCW 28A.300.040.

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: Board actions that violate the law will jeopardize the opening of school, risk cases and outbreaks in school that will warrant quarantines, school building closures, and disruptions in high-quality in-person learning. Given the unprecedented situation caused by the COVID-19 virus and its effect on students and schools in Washington state, emergency rule making is necessary to address local education agencies that willfully do not comply with health and safety requirements contained within Proclamation 20-09, et seq., or vaccination requirements contained within Proclamation 21-14, et seq.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 25, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3289.4

NEW SECTION

WAC 392-117-070 Definition—Local education agency. As used in WAC 392-117-075 through 392-117-085, local education agency means a common school district, educational service district, or charter school established under chapter 28A.710 RCW.

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NEW SECTION

WAC 392-117-075 Definition—Willful. As used in this chapter, willful means nonaccidental action or inaction by a local education agency that the local education agency knew or reasonably should have known would violate Proclamation 20-09, et seq., or Proclamation 21-14, et seq.

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NEW SECTION

WAC 392-117-080 Failure to comply with health and safety requirements. School districts, charter schools, and other local education agencies receiving state funds must comply with Proclamation 20-09, et seq. Local education agencies that fail to meet the requirements under Proclamation 20-09, et seq., are subject to the following course of action.

(1) **First notice:** Upon the superintendent of public instruction's determination that a local education agency has willfully failed to meet Proclamation 20-09, et seq., requirements, the state superintendent will provide notice of the determination to the local education agency. The local education agency will have 15 days from the receipt of the notice to provide verification of compliance. Unless the state superintendent provides instructions to the contrary, verification of compliance means a resolution passed by the local education agency which rescinds any actions previously taken prohibiting compliance or enforcement of Proclamation 20-09, et seq. If the local education agency's willful failure to comply with Proclamation 20-09, et seq., requirements is not corrected within 15 days of the state superintendent's first notice, the state superintendent will provide a second notice to the local education agency.

(2) **Second notice and withholding of apportionment:** The second notice will describe the state superintendent's determination and will identify a five day deadline for corrective action. If the local education agency does not provide verification of compliance prior to the deadline in the state superintendent's second notice, the state superintendent may withhold the local education agency's subsequent monthly apportionment payments until Proclamation 20-09, et seq., requirements are met. The first apportionment payment to be withheld will be for the month outlined in the second notice. The first apportionment payment and subsequent payments will be withheld until the local education authority meets Proclamation 20-09, et seq., requirements.

(3) **Reinstatement of apportionment:** A local education agency will be eligible to receive any withheld monthly apportionment, less any reduction under subsection (4) of this section, when the state superintendent has determined that the local education agency is complying with Proclamation 20-09, et seq. Such payments will be made at the next available monthly apportionment cycle.

(4) **Reduction of apportionment after persistent willful failure to meet requirements:** If the local education agency does not comply with the requirements under Proclamation 20-09, et seq., for two monthly apportionment cycles, any subsequent state basic education payments withheld for noncompliance will be reduced proportionately by a ratio equal to the number of school days held while the district was in violation of Proclamation 20-09, et seq., divided by 180 school days.

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NEW SECTION

WAC 392-117-085 Failure to comply with vaccination requirements.

School districts, charter schools, and other local education agencies receiving state funds must comply with Proclamation 21-14, et seq. Local education agencies that fail to meet the requirements under Proclamation 21-14, et seq., are subject to the following course of action.

(1) **First notice:** Upon the superintendent of public instruction's determination that a local education agency has willfully failed to meet Proclamation 21-14, et seq., requirements, the state superintendent will provide notice of the determination to the local education agency. The local education agency will have 15 days from the receipt of the notice to provide verification of compliance. Unless the state superintendent provides instructions to the contrary, verification of compliance means a resolution passed by the local education agency which rescinds any actions previously taken prohibiting compliance or enforcement of Proclamation 21-14, et seq. If the local education agency's willful failure to comply with Proclamation 21-14, et seq., requirements is not corrected within 15 days of the state superintendent's first notice, the state superintendent will provide a second notice to the local education agency.

(2) **Second notice and withholding of apportionment:** The second notice will describe the state superintendent's determination and will identify a five day deadline for corrective action. If the local education agency does not provide verification of compliance prior to the deadline in the state superintendent's second notice, the state superintendent may withhold the local education agency's subsequent monthly apportionment payments until Proclamation 21-14, et seq., requirements are met. The first apportionment payment to be withheld will be for the month outlined in the second notice. The first apportionment payment and subsequent payments will be withheld until the local education authority meets Proclamation 21-14, et seq., requirements.

(3) **Reinstatement of apportionment:** A local education agency will be eligible to receive any withheld monthly apportionment, less any reduction under subsection (4) of this section, when the state superintendent has determined that the local education agency is complying

with Proclamation 21-14, et seq. Such payments will be made at the next available monthly apportionment cycle.

(4) **Reduction of apportionment after persistent willful failure to meet requirements:** If the local education agency does not comply with the requirements under Proclamation 21-14, et seq., for two monthly apportionment cycles, any subsequent state basic education payments withheld for noncompliance will be reduced proportionately by a ratio equal to the number of school days held while the district was in violation of Proclamation 21-14, et seq., divided by 180 school days.

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