

WSR 21-15-089
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 19, 2021, 5:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-079.

Title of Rule and Other Identifying Information: WAC 181-86-145 and 181-86-150, educator discipline appeals process.

Hearing Location(s): On September 16, 2021, at 8 a.m. The September board meeting will be held in Spokane, Washington. The exact location is to be determined. Once determined, we will post the location on our website. We will also have a link available to listen to the meeting virtually, which will become available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., Monday, September 13, 2021.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb@k12.wa.us, by Friday, September 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule clarifies that within both the informal and formal appeals process, the level of discipline may be changed. For example, a suspension could be changed to a reprimand or a revocation, or there could be a modification within the level of discipline. For example, there could be a modification to the length of a suspension, or to the type or amount of professional learning an educator is required to complete.

Reasons Supporting Proposal: This rule clarifies current policy. This policy has long acted in this way at the informal appeals level, and this clarifies that it acts in the same way at the formal appeals level.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8424; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 17, 2021
Maren Johnson
Rules Coordinator

OTS-3167.1

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-86-145 Appeal procedure—Informal SPI review. Any person who appeals the decision or order to deny their application, the issuance of a reprimand, or the order to suspend or revoke their certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of post-marked mailing or other notification, whichever is earlier, from the section of the superintendent of public instruction's office responsible for certification of the decision or order. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes their application should have been granted or why their certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, they shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or education practitioner, the office of superintendent of public instruction, and/or counsel for the applicant or education practitioner with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee. However, the notice of appeal must be received at least thirty calendar days in advance of a scheduled meeting.

(3) Send by certified mail a written decision (i.e., findings of fact and conclusions of law) on the appeal within thirty calendar days from the date of post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may (~~uphold, reverse, or~~) modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate. Modifying the decision may include upholding, reversing, decreasing, or increasing the discipline, including changing the level of discipline imposed.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) In the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

(6) Forms of written notice accepted will be as published by the superintendent of public instruction.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-022, § 181-86-145, filed 3/29/21, effective 4/29/21; WSR 19-24-101, § 181-86-145, filed 12/4/19, effective 1/4/20. Statutory Authority: [RCW 28.410.220]. WSR 18-01-022, § 181-86-145, filed 12/8/17, effective 1/8/18. Statutory Authority: RCW 28A.410.210. WSR 13-20-029, § 181-86-145, filed 9/23/13, effective 10/24/13; WSR 06-14-010, § 181-86-145, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-145, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-145, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-145, filed 1/2/90, effective 2/2/90.]

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-86-150 Appeal procedure—Formal SPI review process.

Formal appeals to the superintendent of public instruction shall be provided as follows:

(1) Any person who has filed an appeal in accordance with WAC 181-86-140 and desires to have the decision of the review officer formally reviewed by the superintendent of public instruction may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of post-marked mailing of the review officer's written decision. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings under RCW 28A.300.120 to hear a particular appeal. Decisions in cases formally appealed under this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority under RCW 28A.300.120.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the de-

cision is to reprimand, suspend, or revoke, the appellant shall be notified that such order takes effect upon signing of the final order.

The superintendent of public instruction or the administrative law judge, whichever is applicable, may (~~uphold, reverse, or~~) modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate. Modifying the decision may include upholding, reversing, decreasing, or increasing the discipline, including changing the level of discipline imposed.

(4) Forms of written notice accepted will be as published by the superintendent of public instruction.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-022, § 181-86-150, filed 3/29/21, effective 4/29/21. Statutory Authority: RCW 28A.410.210. WSR 13-20-029, § 181-86-150, filed 9/23/13, effective 10/24/13; WSR 11-14-112, § 181-86-150, filed 7/6/11, effective 8/6/11; WSR 06-14-010, § 181-86-150, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-150, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 92-15-037, § 180-86-150, filed 7/9/92, effective 8/9/92. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-150, filed 1/2/90, effective 2/2/90.]