

WSR 22-03-098

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed January 19, 2022, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-094.

Title of Rule and Other Identifying Information: The state board of education (SBE) has proposed amendments to chapter 180-90 WAC regarding private schools.

Hearing Location(s): On February 23, 2022, at 2:00 p.m., online using Zoom at <https://us02web.zoom.us/j/81188445649> or phone by dialing US +1-253-215-8782 with webinar Meeting ID 811 8844 5649. There will not be an in-person attendance option for the public hearing due to the COVID-19 pandemic. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://us02web.zoom.us/j/81188445649> or phone by dialing US +1-253-215-8782 with webinar Meeting ID 811 8844 5649.

Date of Intended Adoption: March 10, 2022.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email [rulescoordinatorSBE@k12.wa.us](mailto:rulescoordinatorSBE@k12.wa.us), fax 360-586-2357, by February 23, 2022.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-742-4037, fax 360-586-2357, TTY 360-664-3631, email [rulescoordinatorSBE@k12.wa.us](mailto:rulescoordinatorSBE@k12.wa.us), by February 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this emergency rule making on chapter 180-90 WAC is to clarify policy and establish administrative procedures regarding loss of private school approval.

The rule making clarifies that private schools must comply with state law, including all applicable health and safety requirements, and that noncompliance may result in suspension or rescission of approval.

The private school emergency rules provide for:

- Additional definitions.
- Clarification of the reasons for possible loss of private school approval.
- A brief adjudicative hearing process before a hearing officer on whether the private school should lose its approval.
- An initial decision with a written statement of the reasons for the decision issued by the hearing officer.
- An administrative review process for the initial decision.
- An emergency summary suspension of private school approval if there is a reasonable basis to believe there is immediate danger to the health, safety, or welfare of the private school students, staff, or others.
- Right of a private school to request a hearing on the summary suspension to determine whether the suspension should continue or be less restrictive in scope.
- Modification of annual certification of compliance process to align with current practice and for consistency with loss of approval standards.

Reasons Supporting Proposal: RCW 28A.195.040 provides that SBE shall adopt rules pertaining to private school approval. The revisions to the rules are necessary to clarify that all health and safety requirements private schools are subject to may be taken into considera-

tion in approval decisions by the board. The revisions also outline a clear process in situations where the agency may need to take action to suspend or rescind board approval

Statutory Authority for Adoption: RCW 28A.195.040, 28A.195.010, 28A.150.220.

Statute Being Implemented: RCW 28A.195.040, 28A.195.010, 28A.150.220.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

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.

The proposed rule does impose more-than-minor costs on businesses.

### **Small Business Economic Impact Statement for Proposed Rules for Chapter 180-90 WAC**

*January 2022*

**1. Summary of the Proposed Rules:** The proposed rules amend sections of chapter 180-90 WAC, and add three additional sections. The purpose of these changes is to:

- Add new or modify existing definitions, including modifying definition of private school.
- Clarify the reasons for possible loss of private school approval for noncompliance with the law.
- Establish an administrative procedure for suspension or rescission of private school approval if a hearing officer determines the school is out of compliance with state or federal laws.
- Provide for a review process of the decision for suspension or rescission of private school approval.
- Establish an administrative procedure for summary suspension, an immediate suspension of private school approval to prevent or avoid the immediate danger to the health and safety of a private school's students or community.
- Modify annual certification of compliance process.

**2. Summary of the Estimated Economic Impact of the Proposed Rules:** It is estimated there would be little to no additional cost of the proposed rules on most private schools. Currently, a private school's approval by SBE requires compliance with current law and SBE has the ability to rescind a private school's approval for noncompliance. The proposed rules provide clarification. The added administrative procedures provide additional due process. SBE anticipates that the use of these procedures will be infrequent because most compliance issues are resolved informally. It is indeterminate whether the impact of the proposed rules would be disproportionate for small versus large private schools.

A survey of private school representatives indicated that nine of 12 respondents estimated no cost or indeterminate cost; three respondents were concerned that the rules would involve additional record-keeping, administrative, or professional services cost[s]. A summary of the survey results is included as section 7 of this statement.

**3. A Brief Description of the Reporting, Recordkeeping, and Other Compliance Issues of the Proposed Rules:**

It is not anticipated that there would be additional reporting, recordkeeping, or other compliance issues beyond what is required by current rules and law for most private schools. Under current law, private schools are required to annually apply for approval and certify that they are in compliance with current law. Schools are required to retain documentation of health and safety and fire inspections of school facilities, and keep current school policies available for examination if requested. Schools also must report on enrollment and staffing, including the required qualifications of their teaching staff. If the administrative procedures established by the proposed rules are needed, the currently required reporting, recordkeeping, and documentation of compliance should be sufficient for the private school to comply with the administrative procedures.

*3.1. Professional services that a small business is likely to need to comply with the requirements of the proposed rules:* It is not anticipated that the proposed rules would require private schools to engage additional professional services. Private schools that are in compliance with current law would not need additional professional services. If a private school was out of compliance with current law and the matter could not be resolved, then the administrative process may be initiated and the private school could choose to retain legal professional services. However, such services are not necessary to comply with the requirements of the proposed rules, and schools could engage in the administrative procedures without such services.

*3.2. Analysis of the cost of compliance, including consideration of equipment, supplies, labor, professional services, and increased administrative costs:* It is not anticipated that the proposed rules would require private schools to incur additional equipment, supplies, labor, or administrative costs to comply with the proposed rules.

*3.3. Whether compliance with the rules will cause businesses to lose revenue:* It is not anticipated that compliance with the proposed rules would cause private schools to lose revenue.

*3.4. Whether there is a disproportionate cost on small businesses—the cost of compliance for the smallest 10 percent compared to the largest 10 percent of businesses required to comply with the proposed rules:* It is anticipated that compliance with the proposed rules would have no additional cost to most private schools. For a school engaging in the administrative procedures established by the rules, the economic impact of the proposed rules on small versus large schools is indeterminate.

There are approximately 500 approved private schools in Washington state. Based on reporting in the 2020-21 school year, the smallest 50 schools have a teaching staff of one and an average enrollment of 13 students; the largest 50 schools have an average teaching staff of 40 teachers and an average enrollment of 593 students.

It is unclear whether involvement in administrative procedures established in the rules would have a disproportionate cost impact on a small versus a large school. A survey of private school representatives indicated that eight of 12 respondents estimated no disproportionate cost or indeterminate cost; four respondents were concerned that small and large schools would be impacted differently. These respondents indicated that larger schools would have more resources to absorb costs associated with implementing rules. A summary of the survey results is included as section 7 of this statement.

**4. Steps Taken by the Agency to Reduce the Cost of the Rule on Small Businesses:** It is anticipated that implementing and complying with the proposed rules would have no additional cost to most private schools. SBE has taken several significant steps in the past few years to reduce the cost to private schools of compliance with current law and the proposed rules. SBE has:

- Directed agency funds to a permanent staff position dedicated to supporting private schools, significantly increasing the ease with which private schools may obtain information and decreasing the time required to obtain answers to questions.
- Reduced the documentation schools are required to submit with their initial private school approval application and renewal application.
- Streamlined the annual application process.
- Updated the agency private school web pages so that information about compliance with private school law is more readily available.
- Established regular meetings with the Washington Federation of Independent Schools (WFIS) and the private school leaders.

**5. A Description of How the Agency Will Involve Small Businesses in the Development of the Rules:** One member of SBE is a private school representative. In developing rules, SBE staff consulted with SBE private school representative member[s] as well as the executive director of WFIS. In addition, WFIS, SBE staff, and leaders and representatives of private school organizations meet periodically. Private school representatives had the opportunity to review and give input on the draft proposed rules before adoption by SBE.

SBE meetings are public and there is a public comment period at each meeting. The draft proposed rules were discussed at two public meetings in November and December 2021. The proposed rules were adopted by the board in December 2021. A hearing on the rules will be scheduled and comments and feedback will be solicited from the private school community through WFIS and the private school advisory committee (a legislatively mandated committee staffed by the office of the superintendent of public instruction).

**6. An Estimate of the Number of Jobs Created or Lost as a Result of Compliance with the Proposed Rules:** It is not anticipated that jobs will be created or lost as a result of compliance with the proposed rules.

**7. Summary of Survey Results of Private School Representatives Concerning the Proposed Private School Rules:** A survey was sent to members of the private school advisory council, the board of WFIS, and private school constituency leaders.

A total of 12 responses were received from:

- Seven private school administrators (one respondent was both an administrator and a constituency leader).
- Three private school constituency leaders.
- Three private school association executive[s] or staff.

*Question #1: Do you think the proposed rules, including the proposed administrative processes, would require private schools to have additional recordkeeping, reporting, labor, supplies, professional services or administrative costs?*

- Four "Indeterminate."
- Five "No."

- Three "Yes"; comments from those who answered "Yes":
  - "Any time the SBE threatens to take away approval, and requires a hearing, a school will hire a lawyer. There will be a paper trail needed for record keeping and the school board will have to have a special meeting to address the issue. It takes staff to run the meeting and requires use of the building outside of school hours."
  - "Records to prove the processes followed by the private school to prove their viability and worth to the community will take much time/labor costs/emotional investment and more."
  - "Tracking compliance materials, and any work associated with a revocation of license should it occur."

*Question #2: Do you think the proposed rules, including the proposed administrative processes, would have a disproportionate impact between the large private schools and small private schools?*

- Three "Indeterminate."
- Five "No."
- Four "Yes"; comments from those who answered "Yes":
  - "Schools may be impacted differently. Smaller schools do not usually have regular access to a lawyer and do not have an administrative team to help deal with the board meeting, etc. Larger schools will have more people involved, which may mean more meetings. There is a huge financial burden on the schools to have approval taken away."
  - "Larger schools have more resources and more staff to keep records for additional required information."
  - "Matter of resources."
  - "Economy of Scale will impact a smaller school to a greater degree."

*Question #3: Do you have concerns about the economic impact of these rules on your school, or on private schools generally? Please explain.*

- Two responses indicated no concerns; five responses were left blank.
- "I do. The current SBE staff is reasonable and when there is an issue, works to resolve it. My concern is that a different staff may look for issues, hope to take approval away from schools and be influenced by the person making the complaint."
- "Private schools enrich the educational options offered to parents. They meet needs differently than [than] public schools and thus offer great value to the state. It is important that schools keep their "independence" while staying within reasonable expectations/laws. The cost of "proving" a choice a school may make for its constituency could be too much of a burden, and cause schools to close."
- "Not yet, but I'm not sure enough is known about the process and potential examples of the process in action."
- "Yes. Administrative issues come with costs, often unforeseen, that have to come from somewhere."
- "If a school's approval were suspended, I believe there could be an economic impact for a private school."

A copy of the statement may be obtained by contacting Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, phone

360-742-4037, fax 360-586-2357, TTY 360-664-3631, email  
rulescoordinatorSBE@k12.wa.us.

January 18, 2022  
Randy Spaulding  
Executive Director

#### OTS-3324.4

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-90-112 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "~~((Approved))~~ Private school" means a nonpublic school or nonpublic school district ~~((conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been))~~ approved by the state board of education pursuant to RCW 28A.305.130, and chapter 28A.195 RCW and in accordance with the minimum standards for approval as prescribed in this chapter.

(2) (a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health, and other applicable health requirements for private schools.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences

which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) (a) "Non-Washington state certificated teacher" means a person who does not have a Washington state certification consistent with WAC 181-79A-030(2), but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

(6) "Business day" means a weekday, excluding weekends, state holidays, and state closures unless otherwise specified.

(7) "Filing" means the process by which a document is officially delivered to a state board of education staff member. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified state board of education staff member;

(b) By sending the document by email and first class mail to the specified state board of education email address and state board of education's office address on its website; or

(c) By submitting an initial or annual application and certification of compliance as required in WAC 180-90-130 or 180-90-160.

Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the state board of education.

(8) "Executive director" means the executive director of the state board of education.

(9) "SBE private school officer" means the person designated by the executive director to administer the state board of education's private school program.

(10) "Hearing officer" means the person designated by the executive director to conduct a brief administrative proceeding on the loss of private school approval.

(11) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by both email, and by either certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(12) "Loss of approval" means either a suspension or rescission of a private school's approval by the state board of education. Suspension is for a set period of time or until specified conditions are met and rescission is permanent until a new application for approval is granted.

(13) "School" means and includes each building, facility, and location, including online program components, where any portions of a kindergarten and grades one through 12 program of education and related activities are conducted for two or more children by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

(14) "Summary suspension" means the immediate, temporary suspension of a private school's approval in an administrative procedure.

(15) "Threat to health or safety" means the physical facilities, personnel, or practices of the school do not meet reasonable health requirements or reasonable fire safety requirements; or failure to meet the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW.

(16) "School or district administrator" means administrative or executive authority of private schools or private school districts. The terms "head of school," "principal," or "superintendent" may also be used in rule or application materials to refer to the administrative or executive authority of the private school or private school district.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-112, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-112, filed 12/1/15, effective 1/1/16. Statutory Authority: Chapter 28A.305 RCW,



RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, and 28A.195.040. WSR 10-23-104, § 180-90-112, filed 11/16/10, effective 12/17/10. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-112, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-112, filed 12/2/85.]

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-90-130 Approval—Annual certification—Adverse findings.**

(1) All private organizations carrying out a program for any or all of the grades kindergarten through 12, with the exception of kindergarten only, are subject to annual approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

~~(2)~~ At least ~~((ninety))~~ 90 days prior to the commencement of the annual school term or period, the ~~((chief administrator of each private))~~ school or district administrator shall file with the state board of education a certificate of compliance ~~((in the form and substance))~~ as set forth in WAC 180-90-160.

~~((2))~~ (3) The state board of education shall review each certificate. The review shall be completed within ~~((thirty))~~ 30 days after receipt of a completed application. The state board of education may request additional information as it deems necessary.

~~((3))~~ (4) If the state board of education finds deviation, the private school shall be notified through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

~~((4))~~ (5) If the state board of education finds major or unacceptable deviations, the private school shall submit a narrative report indicating agreement or not with the findings of the state board of education and any proposed remedial action to address the reported deviations. Minor deviations will be resolved with the state board of education prior to approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

(6) In reviewing a private school's application for annual approval, the state board of education may consider pending or completed proceedings for loss of approval of a private school, including any conditions or sanctions agreed to or placed upon a private school and any information obtained by the state board of education regarding potential loss of approval of a private school.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-130, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-130, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-130, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-130, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-130, filed 1/21/82; Order 2-77, § 180-90-130, filed 3/24/77; Order 1-75, § 180-90-130, filed 2/4/75.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

**WAC 180-90-141 Loss of private school approval.** The state board of education may suspend or rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(a) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and

(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities, personnel, and practices of the school meet ~~((the))~~ all reasonable health requirements and all reasonable fire safety ((standards)) requirements.

(4) Failure to meet any of the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-141, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-141, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-141, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-141, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.204 [28A.02.240]. WSR 87-09-039 (Order 7-87), § 180-90-141, filed 4/14/87.]

NEW SECTION

**WAC 180-90-142 Brief adjudicative proceedings—Initial hearing.**

(1) A brief adjudicative proceeding is the process for rescission or suspension, other than summary suspension, of a private school's approval. Brief adjudicative proceedings shall be conducted by a hearing officer. The hearing officer may not participate in any case in which the hearing officer is involved as a complainant or witness, or in which the hearing officer has a direct or personal interest, prejudice, or bias.

(2) The parties to a brief adjudicative proceeding are the private school representative and the SBE private school officer. Before taking action, the hearing officer will conduct an informal hearing

and provide each party an opportunity to explain its view of the matter.

(3) The hearing officer will serve an initial decision upon both the private school representative and the SBE private school officer within 10 business days of the completion of the informal hearing. The initial decision must include:

(a) A brief written statement of the reasons for the decision, including a description of the acts or failures to act giving rise to any sanctions and reference to the provisions of the Washington Administrative Code or the law violated;

(b) Any sanctions against the private school, including suspension or rescission of approval, and any time period or conditions which must be met for a suspension; and

(c) Information about how to seek administrative review of the initial decision.

If no request for review is filed within 21 days of service of the initial decision, the initial decision is deemed the final decision. The hearing officer must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

[]

#### NEW SECTION

**WAC 180-90-143 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the executive director or designee, provided a party makes an oral or a written request for review with the executive director within 21 days of service of the initial decision.

(2) The executive director or designee may not participate in any case in which the executive director or designee is involved as a party or witness, or in which the executive director or designee has a direct or personal interest, prejudice, or bias.

(3) During the review, the executive director or designee must give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions or conditions should be continued, modified, or removed.

(4) The decision on review must be in writing, and include a brief statement of the reason for the decision and the changes or modifications, if any, to the initial decision, and a notice that judicial review may be available pursuant to WAC 180-90-150. The decision on review must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

(5) The decision on review must be served on the parties within 20 days of the initial decision or the request for review whichever is later. The decision on review is the final decision.

[]

NEW SECTION

**WAC 180-90-144 Emergency adjudicative proceeding—Summary suspension.** (1) An emergency adjudicative proceeding is the process to enter an emergency order for summary suspension of a private school's approval and other such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare while an investigation and/or administrative procedure is pending.

(2) The SBE private school officer may issue an emergency order summarily suspending a private school's approval if there is reasonable basis to believe that a private school:

(a) Has violated any provision of WAC 180-90-141; and

(b) Presents an immediate danger to the health, safety, or welfare of the private school's students, staff, volunteers, visitors, or other members of the school community that justifies use of emergency adjudication.

(3) The emergency order must include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the SBE private school officer's decision to take the specific action. The summary suspension can be a full or partial suspension of approval.

(4) Notice. The SBE private school officer must provide notice to a private school that its approval as a private school has been summarily suspended under an emergency order. The private school must be served with oral or written notice of the summary suspension. If oral notice is given, a written notification must be served on the private school within two business days of the oral notice.

The written notification will include:

(a) The reasons for imposing the summary suspension, including a description of the acts or failures to act giving rise to the summary suspension and reference to the provisions of the Washington Administrative Code, state or federal law, or other applicable requirements, standards, or authority allegedly violated;

(b) The conditions, if any, under which the private school may continue to operate during the summary suspension; and

(c) Information on how to request a hearing on the summary suspension.

(5) The private school has the right to request a hearing on the summary suspension. The hearing request must be in writing and filed with the SBE private school officer.

(6) The SBE private school officer will conduct a hearing on the summary suspension as soon as practicable after receipt of the private school's request for a hearing on the summary suspension.

(a) During the summary suspension hearing, the issue before the SBE private school officer is whether there is probable cause to believe that summary suspension should be continued pending further administrative proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The SBE private school officer must provide the private school with an opportunity to explain why summary suspension should not be continued while administrative proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the private school fails to appear at the designated hearing time, the SBE private school officer may order that the summary

suspension remain in place pending the conclusion of the administrative proceedings.

(d) As soon as practicable following the hearing, the SBE private school officer will issue a written decision which must include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) The SBE private school officer shall provide a copy of the decision to the private school. The SBE private school officer must include in the decision that the private school must provide a copy of the decision to the families of all its students and all of its staff members.

[]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

**WAC 180-90-160 Minimum standards and certificate form.** (1) The annual certificate of compliance required by WAC 180-90-130 shall be ~~((in substantial compliance with the form and substance of the following))~~ submitted to the state board of education and signed by the school or district administrator certifying compliance by the school or district. The certificate of compliance form and the submittal process will be determined by the state board of education. Information about annual private school approval and the submittal process will be posted on the state board of education website. The certificate of compliance affirms the school meets the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW and the following standards with the exception only of such deviations or proposed deviations, if any, as are set forth in an attachment to the certificate of compliance:

~~(( CERTIFICATE OF COMPLIANCE  
WITH STATE STANDARDS  
ESD/County/Public  
School District  
Private School/  
District Address~~

I, ....., do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades ..... through ..... with a projected enrollment of .....; and that said school is scheduled to meet throughout the ..... school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I, ~~.....~~, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:))

(a) Except as provided in chapter 180-111 WAC (~~for the 2019-20 school year~~), the minimum school year for instructional purposes consists of no less than (~~one hundred eighty~~) 180 school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

(i) (~~450~~) Four hundred fifty hours for students in kindergarten.

(ii) (~~1000~~) One thousand hours for students in grades one through (~~twelve~~) 12.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than (~~thirty~~) 30 students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities, personnel, and practices of the school are adequate to meet the program offered, and all school facilities, personnel, and practices are in ~~((substantial))~~ compliance with all reasonable health requirements and all reasonable fire safety ~~((standards))~~ requirements, as defined in WAC 180-90-112, and substantiated as required by current inspection reports of appropriate health and fire safety officials which are on file in the ~~((chief))~~ school or district administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations or proposed deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. ~~((I have reported all such deviations herewith.~~

Dated this ..... day of ....., 20....

.....

(signed)

.....

(title)

.....

(phone-number)))

(2) Approval by the state board of education is contingent upon on-going compliance with the requirements, standards, and legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW and the standards ~~((certified))~~ herein. The school shall notify the state board of education of any deviation from these requirements, standards ~~((which))~~, or legal obligations that occurs after the approval action taken by the state board of education. Such notification shall be filed within ~~((thirty))~~ 30 days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the ~~((revocation))~~ rescission or suspension of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) ~~((Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board~~

~~of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.)~~ The board may provide a shortened approval form or expedited approval process for private schools accredited by a state board of education-approved accrediting body.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-160, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-160, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-160, filed 12/1/15, effective 1/1/16. Statutory Authority: 2014 c 217 and RCW 28A.230.090. WSR 14-19-032, § 180-90-160, filed 9/8/14, effective 10/9/14. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-160, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.305.130(6), 28A.195.040 and 1996 c 83. WSR 96-15-099, § 180-90-160, filed 7/22/96, effective 8/22/96. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-90-160, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.02.240. WSR 89-01-038 (Order 23-88), § 180-90-160, filed 12/14/88; WSR 87-09-039 (Order 7-87), § 180-90-160, filed 4/14/87. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-160, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-160, filed 1/21/82. Statutory Authority: RCW 28A.02.201 et seq. and 28A.04.120(4). WSR 78-06-064 (Order 9-78), § 180-90-160, filed 5/25/78; Order 2-77, § 180-90-160, filed 3/24/77; Order 1-76, § 180-90-160, filed 2/3/76; Order 1-75, § 180-90-160, filed 2/4/75.]