

**WSR 22-17-159
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed August 24, 2022, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-162.

Title of Rule and Other Identifying Information: New sections to chapter 392-122 WAC (WAC 392-122-430, 392-122-440, 392-122-445, 392-122-450, 392-122-455) to describe compliance rules and calculations related to physical, social, and emotional support in schools.

Hearing Location(s): On September 29, 2022, at 1:15 p.m., webinar via Zoom (call-in option also available). Participation link available on office of superintendent of public instruction (OSPI) website k12.wa.us/policy-funding/ospirulemaking-activity [k12.wa.us/policy-funding/ospi-rulemaking-activity]. Due to the ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). For information on participating, please visit OSPI's website at k12.wa.us/policy-funding/ospi-rulemaking-activity. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email Thomas.kelly@k12.wa.us, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by September 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add new sections to chapter 392-122 WAC to describe the compliance rules and calculations concerning provisions in SSHB [2SHB] 1664 (2022) and the 2022 supplemental budget (ESSB 5693) related to physical, social, and emotional support in schools. These changes are required to ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget.

Reasons Supporting Proposal: The 2022 supplemental budget (ESSB 5693) implements SSHB [2SHB] 1664 which provides increased funding allocations for physical, social, and emotional support through the prototypical school funding model beginning with the 2022-23 school year. Maximum allocations to local education agencies are subject to compliance rules as drafted by OSPI. These changes are required to ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget. Without these rules, local education agencies could receive state basic education allocations in excess of what RCW and state budget language allows.

Statutory Authority for Adoption: RCW 28A.150.260.

Statute Being Implemented: RCW 28A.150.260.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Proposed language is the same as that adopted under the emergency rule (see WSR 22-15-056).

Name of Agency Personnel Responsible for Drafting: Michelle Matas, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6019; Im-

plementation: T. J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301; and Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

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).

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2022

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-3884.1

PHYSICAL, SOCIAL, AND EMOTIONAL SUPPORT

NEW SECTION

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

[]

NEW SECTION

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

[]

NEW SECTION

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01 or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;
- Duty root 43 - All activities - Occupational therapist;
- Duty root 44 - All activities - Social worker;
- Duty root 45 - All activities - Speech, language pathology/ audio;
- Duty root 46 - All activities - Psychologists;
- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
- Duty roots 91 - 99 - Activity 26 - Health/related services.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

[]

NEW SECTION

WAC 392-122-445 Physical, social, and emotional support (PSES) compliance—Contracted and supplemental staff. (1) Eligible staff working under contract and staff not required to be reported in the S-275 must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered.

(2) The full-time equivalency of supplemental staff reported must be reported as less than a 1.0 full-time equivalent (FTE).

(3) The full-time equivalency (FTE) of staff providing services under contract should be reported as determined in the contracting agreement or defined at the local school district level.

(4) Supplemental staff reporting should include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignments of staff.

[]

NEW SECTION

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

[]

NEW SECTION

WAC 392-122-455 Physical, social, and emotional support (PSES)—Penalty for noncompliance. (1) Penalty units identified by the calculations will be split between certificated instructional staff and classified staff based on the percentage that each contributes to the combined total of certificated instructional staff and classified staff in the physical, social, and emotional support staff for that school year at the state level.

(2) Any adjustments to those calculations will be made in January, March, and June apportionment payments.

[]