

WSR 26-05-012
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 6, 2026, 8:44 a.m., effective February 6, 2026, 8:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington state legislature enacted SSB 5933 in 2022, which requires the office of superintendent of public instruction (OSPI) to implement the school seismic safety program (program) to allow districts to receive seismic funds and be eligible to receive funding from the school construction assistance program. In alignment with SSB 5933 (2022), the emergency rules establish grant funding procedures concerning the program. OSPI's current school construction rules do not provide a process that would allow OSPI to timely or effectively award these grant funds during the biennium.

OSPI will also conduct permanent rule making concerning the program.

Citation of Rules Affected by this Order: New WAC 392-341-013, 392-343-013, 392-344-013, 392-347-011, and chapter 392-902 WAC; and amending WAC 392-341-020, 392-341-025, 392-343-030, 392-343-080, and 392-344-155.

Statutory Authority for Adoption: RCW 28A.525.020 and 28A.525.320.

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: The emergency rules are necessary to allow the timely use of funds for the program under SSB 5933 (2022). New grant funding procedures are necessary to preserve the general welfare by allowing OSPI to proceed with the grants and distribution of funding to school districts in accordance with legislative intent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: February 6, 2026.

Chris P.S. Reykdal
State Superintendent of Public Instruction

RDS-6423.1

NEW SECTION

WAC 392-341-013 Waiver of rules to facilitate school seismic safety program projects. The superintendent of public instruction or their designee may waive provisions of chapters 392-341 through 392-347 WAC for school district projects approved for school seismic safety program funding under RCW 28A.525.320. The superintendent of public instruction or their designee will notify school districts of requirements to be fulfilled under the provisions of chapters 392-341 through 392-347 WAC.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-341-020 District application—Study and survey. Prior to the superintendent of public instruction consideration of state funding assistance in providing school facilities, the board of directors of a school district shall file with the superintendent of public instruction an application for each school facility project, whether new construction or modernization of an existing facility, and shall ~~((request the superintendent of public instruction to))~~ conduct a study and survey of existing and proposed school facilities within the district.

AMENDATORY SECTION (Amending WSR 21-13-129, filed 6/22/21, effective 7/23/21)

WAC 392-341-025 State study and survey—Content. The study and survey ~~((to be))~~ conducted by a local school district and submitted to the superintendent of public instruction ~~((with the cooperation of the local school district))~~ shall include the following:

(1) An inventory and area analysis of existing school facilities within the district, a ~~((description))~~ building condition assessment of the types and kinds of systems and subsystems used in those facilities and the state of their ~~((physical))~~ condition. The inventory, area analysis, and building condition assessment must use standardized formats identified by the office of superintendent of public instruction. The building condition assessment must include a physical inspection and review performed by an independent evaluator certified by the office of superintendent of public instruction;

(2) A long-range (i.e., minimum of six years) educational and facilities plan setting forth the projected facility needs and priorities of the district based on the educational plan, including a discussion of the need for adjustments of school attendance areas within the district, and supplemented by the following information:

(a) Demographic data including population projections and projected economic growth and development. OSPI shall provide projected enrollment based on most recent October enrollments. District shall provide most recent October enrollments of developmentally disabled students;

(b) The ability of such district to provide capital funds by local effort;

(c) The existence of a school housing emergency as defined by RCW 28A.525.166 (5) (a);

(d) The need to improve racial balance and/or to avoid creation or aggravation of racial imbalance: OSPI shall provide diversity report based on most recent October enrollments and enrollment data reported by district;

(e) The type and extent of new and/or additions to existing school facilities required and the urgency of need for such facilities;

(f) A cost/benefit analysis on the need to modernize and/or replace existing school facilities in order to meet current educational needs and the current state building code; and

(g) A determination of the district's time line for completion of the school facilities project(s); ~~((and))~~

(3) Such other matters as the superintendent of public instruction deems pertinent to decision making in the allocation of funds for school facilities, or that the applicant district deems relevant. Cooperation by the applicant school district in conducting the study and survey is a requisite for the superintendent of public instruction to complete the study and survey and to establish the eligibility of the district for state funding assistance in school facility construction;

(4) A letter signed by the independent evaluator who performed the building condition physical inspection and review attesting that all building condition assessment information required by the study and survey provided is accurate. The independent evaluator must be certified by the office of superintendent of public instruction;

(5) A letter signed by the architect or consultant certifying that the square footage reported accurately reflects the square footage of the school facilities included in the study and survey at the time of submission; and

(6) A letter signed by the school district superintendent and school district board of directors' president stating information included in the study and survey is accurate at the time of submission.

RDS-6424.1

NEW SECTION

WAC 392-343-013 Waiver of rules to facilitate school seismic safety program projects. The provisions of this chapter may be deemed waived in accordance with WAC 392-341-013.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-030 Applicable state funding assistance percentage for project. Pursuant to the provisions of RCW 28A.525.168, the state funding assistance percentage used for the allocation of state moneys shall be the highest ~~((amount prevailing at the time of))~~ applicable rate based on the following criteria, determined by the calendar year in which each event occurs:

(1) Adoption of the school board resolution authorizing bond indebtedness and/or levies for the project;

(2) Passage of bonds and/or levies by the voters of the school district to provide the local share required for state funding assistance;

~~((2))~~ (3) Approval of the project by the superintendent of public instruction project approval. If approved before the funding assistance percentage for the new year is available, the previous calendar year funding assistance percentage will be applied; or

~~((3))~~ (4) Superintendent of public instruction approval to bid.

In the event that a district is otherwise eligible to receive approval to bid one or more projects but a lack of state funding assistance precludes the issuance of such approval(s), the district shall retain the higher state funding assistance percentage as provided for in this section for such approval(s). This provision shall apply to all projects having received project approval by the state board of education after September 1, 1997, or by the superintendent of public instruction after June 6, 2006.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-080 Value engineering studies, constructability reviews, and building commissioning—Requirements and definition. At the appropriate time in the design process for a school facility approved by the superintendent of public instruction, the district shall prepare a value engineering study, complete a constructability review, and perform building commissioning for all projects greater than ~~((fifty thousand))~~ 50,000 square feet. Value engineering studies and constructability reviews shall be optional for projects larger than ~~((fifteen thousand))~~ 15,000 square feet but less than ~~((fifty thousand))~~ 50,000 square feet. Any project which includes ~~((fifteen thousand))~~ 15,000 square feet or less shall be exempt from this requirement. For projects subject to chapter 39.35D RCW, building commissioning must be performed for all projects over ~~((five thousand))~~ 5,000 square feet. For the purpose of this section, a value engineering study is defined as a cost control technique which is based on the use of a systematic, creative analysis of the functions of the facility with the objective of identifying unnecessary high costs or functions and/or identifying cost savings that may result in high maintenance and operation costs. The study shall consist of ~~((a forty-hour workshop))~~ multiple workshops involving a minimum of a five-person team pursuant to WAC 392-344-065. A constructability review is defined as a cost control technique which is based on the review of project documents by mechanical, electrical, structural, construction, and design professionals prior to a request for bids. The purpose of a constructability review is to identify potential claim or problem areas and deficiencies that may occur as a result of errors, ambiguities, omissions, discrepancies, and conflicts in design documents. The study shall consist of a ~~((forty))~~ 40-hour workshop involving a minimum of a five-person team pursuant to WAC 392-344-066. Building commissioning is defined as the process of verifying that the installation and performance of selected building systems meet or exceed the specified design criteria and therefore satisfy the design intent. Building com-

missioning shall include a physical inspection, functional performance testing, listing of noted deficiencies, and a final commissioning report. Building commissioning shall be performed by a professional agent or authority not contractually or otherwise financially associated with the project design team or contractor. A district shall be eligible for state funding assistance for a value engineering study, a constructability review, and building commissioning for each qualifying project.

(1) The maximum amount of state funding assistance for value engineering studies and constructability reviews of the study package shall be the state funding assistance percentage multiplied by the greater of the following:

(a) Two-fifths of one percent of the construction cost allocation multiplied by the square foot area for the fiscal year funded; or

(b) Twenty thousand dollars.

(2) The maximum amount of state funding assistance for building commissioning shall be:

(a) Seven thousand five hundred dollars for projects larger than ((five thousand)) 5,000 square feet but less than ((ten thousand)) 10,000 square feet;

(b) Ten thousand dollars for projects ((ten thousand)) 10,000 square feet but less than ((fifteen thousand)) 15,000 square feet;

(c) The larger of the following for projects ((fifteen thousand)) 15,000 square feet and above:

(i) Two-fifths of one percent of the construction cost allocation multiplied by the square foot area for the fiscal year funded; or

(ii) Twenty thousand dollars.

RDS-6425.1

NEW SECTION

WAC 392-344-013 Waiver of rules to facilitate school seismic safety program projects. The provisions of this chapter may be deemed waived in accordance with WAC 392-341-013.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-155 Final acceptance of project by architect/engineer. Upon final completion of the project by contractor(s), the architect/engineer shall inspect the project to determine compliance with the construction documents. The architect/engineer, upon determining that the project has been completed satisfactorily, shall make such recommendation through the issuance of a certificate of completion to the school district board of directors. Separate certificates of completion shall be written for each contract awarded. Certificates of completion shall provide a statement of work completed including the gross square footage of new and/or modernized construction per WAC 392-343-019.

Upon acceptance of project completion by the school district of directors, the school district is required to provide the office of superintendent of public instruction the board of director's resolution of acceptance and enter pertinent project data into the information and condition of schools data system. The office of superintendent of public instruction will determine the pertinent data to be provided.

RDS-6426.1NEW SECTION

WAC 392-347-011 Waiver of rules to facilitate school seismic safety program projects. The provisions of this chapter may be deemed waived in accordance with WAC 392-341-013.

RDS-6427.1

**Chapter 392-902 WAC
SCHOOL SEISMIC SAFETY GRANT PROGRAM**

NEW SECTION

WAC 392-902-005 Purpose and authority. This chapter is adopted pursuant to RCW 28A.525.320 to establish policies and procedures governing the school seismic safety grant program.

NEW SECTION

WAC 392-902-010 School seismic safety—Eligibility. Buildings must meet the eligibility requirements in accordance with RCW 28A.525.320(2). Projects seeking funding under RCW 28A.525.320 are limited to the following project types:

(1) **Seismic structural retrofits.** Seismic structural retrofits are defined as projects which make minor or major structural modifications. The project scope can include an entire facility or one or more complete buildings within a facility for which the estimated cost of major structural change is less than 40 percent of the estimated cost of replacement. The estimated cost of replacement shall be derived from multiplication of the total gross square foot area of the facility or facilities proposed for modernization by the construction cost allocation for the fiscal year funded as defined in WAC 392-343-060.

(2) **Seismic modernization projects.** Seismic modernization projects are defined as school district projects which meet the requirements under chapter 392-347 WAC, except for those under WAC 392-347-015(4). State tribal education compact school projects are required to make major modifications to a school facility or building which cost more than 40 percent of the estimated cost of replacement of the school facility or building. The estimated replacement cost shall be computed under the provisions of subsection (1) of this section.

(3) **Vertical evacuation towers.** Vertical evacuation towers are defined as projects which create a vertical structure which provides an evacuation facility that is intended to serve as a safe haven from a tsunami until imminent danger has passed. The school seismic safety advisory committee may advise the office of superintendent of public instruction on proposed structures to ensure they meet the definition of a vertical evacuation tower.

NEW SECTION

WAC 392-902-020 Building inventory and condition data. School districts and state tribal education compact schools seeking seismic grant funding under RCW 28A.525.320 are required to submit building inventory and condition data for the facility, building, or structure into the information and condition of schools data system, which are included in the proposed project applying for planning grant funding to perform a seismic retrofit or relocation outside of a tsunami design zone. The superintendent of public instruction or their designee will determine the inventory and condition data to be submitted, including any necessary assessments.

NEW SECTION

WAC 392-902-030 School seismic safety planning grants. School districts and state tribal education compact schools are required to have the following items completed and reported to the office of superintendent of public instruction prior to an award of a school seismic safety planning grant:

(1) School districts and state tribal education compact schools requesting funding for a planning grant for funding from the school seismic safety grant program are required to provide the following:

Updated inventory of school site acreage, and square feet data required by the office of superintendent of public instruction of the existing school facility to be retrofitted, modernized, or relocated outside of a tsunami zone. This information is required to be entered into the office of superintendent of public instruction's information and condition of schools data system.

(2) Other information required by the school seismic safety advisory committee to qualify for a planning grant.

The office of superintendent of public instruction will award planning grant funding to school districts and state tribal education compact schools to hire professional services to assist them in providing the required planning information needed by the school seismic safety advisory committee to prioritize grant funding. Grant award no-

tifications will identify funding allowances allocated for specific tasks and requirements and will be allocated in phases. Grant amounts will be determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee.

Seismic phase one grants. Seismic phase one grants will be provided to a school district or state tribal education compact school to perform needed geotechnical engineering investigations prior to design or construction of projects authorized by RCW 28A.525.320. Grant funding will be provided for project management, a site survey, and other necessary professional services determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee. The school seismic safety advisory committee must recommend approval of the geotechnical investigation report findings before a phase two grant can be awarded.

Seismic phase two grants. Seismic phase two grants awarded to a school district or state tribal education compact school will provide funding to develop concepts for needed seismic retrofits, seismic modernizations, or vertical evacuation structures prior to the design or construction of projects authorized by RCW 28A.525.320. Concept requirements will be determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee. Grant funding will be provided for project management and other necessary professional services determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee.

Concepts as part of a phase two planning grant will be evaluated and approved by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee. If a concept is not approved, a revised concept will need to be submitted and approved. Additional grant funding may be awarded for the costs associated with the revision and the amount of funding will be determined by the office of superintendent of public instruction.

Each planning grant must be completed within one year of issuance. Grant funding may be extended with the approval of the office of superintendent of public instruction. Grant recipients may seek reimbursement of costs monthly, but final reimbursement will not be made until all proposed seismic project planning documents and related materials, including estimated costs, are submitted to the office of superintendent of public instruction.

The office of superintendent of public instruction shall prioritize planning grant funding awards based on criteria provided in RCW 28A.525.320 and other criteria established by the school seismic safety advisory committee.

The school seismic safety advisory committee must recommend approval of the concepts presented to the committee before design grant funding can be provided.

NEW SECTION

WAC 392-902-040 School seismic safety design and construction grants. School seismic safety structural retrofit construction projects, as defined under WAC 392-902-010, are eligible for two phases of construction grant funding:

(1) **Seismic phase three grants.** Seismic phase three grants are available for projects which have completed the planning grant phases as defined in WAC 392-902-030. Grant funding will be provided for the complete design and related construction documents, including costs of the proposed project based on the approved conceptual design. Grant requirements and funding will be determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee.

The design must be presented to the school seismic committee for approval to receive construction.

(2) **Seismic phase four grants.** Seismic phase four grants are available for projects which have completed the design phase in subsection (1) of this section. Grant requirements and funding will be determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee.

NEW SECTION

WAC 392-902-050 School seismic safety construction grant—Funding determination for seismic structural retrofit projects. Phase four construction grant funding assistance for seismic structural retrofit projects, as defined under WAC 392-902-010(1), shall be the following:

(1) At least two-thirds of the projected total project costs as determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee.

(2) Additional grant funding assistance can be awarded if the school district or state tribal education compact school meets one or more of the following conditions:

(a) Meet the definition of high poverty under the learning assistance program under chapter 28A.165 RCW.

(b) Can demonstrate that they have limited financial capacity to provide funding to complete the project.

(c) Provide in-kind resources which contribute to the overall project. The value of the in-kind resources will need to be evaluated and approved by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee. In-kind resources cannot include school district or state tribal education compact school employee labor costs, furnishings, or equipment.

The amount of additional assistance will be determined by the office of superintendent of public instruction in consultation with the school facilities citizens advisory panel established under RCW 28A.525.025.

NEW SECTION

WAC 392-902-060 School seismic safety construction grant—Funding determination for seismic modernization projects. Phase four construction grant funding assistance for seismic modernization projects, as defined under WAC 392-902-010(2), shall be calculated as follows:

(1) At least two-thirds of the projected total project cost as determined by the office of superintendent of public instruction in

consultation with the school seismic safety advisory committee. Funding assistance will be adjusted lower if two-thirds of the projected project cost is higher than the difference between the projected total project cost less state funding assistance received under chapter 392-347 WAC.

(2) Additional grant funding can be awarded if the school district or state tribal education compact school meets one or more of the following conditions:

(a) Meet the definition of high poverty under the learning assistance program under chapter 28A.165 RCW.

(b) Can demonstrate that they have limited financial capacity to provide funding to complete the project.

(c) Provide in-kind resources which contribute to the overall project. The value of the in-kind resources will need to be evaluated and approved by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee. In-kind resources cannot include school district or state tribal education compact school employee labor costs, furnishings, or equipment.

The amount of additional assistance will be determined by the office of superintendent of public instruction in consultation with the school facilities citizens advisory panel established under RCW 28A.525.025. The school facilities citizens advisory panel will make additional funding assistance recommendations based on information provided by school districts requesting additional funding assistance.

NEW SECTION

WAC 392-902-070 School seismic safety construction grant—Funding determination for vertical evacuation tower projects. Phase four construction grant funding assistance for vertical evacuation tower projects, as defined under WAC 392-902-010(3), shall be the following:

(1) Vertical evacuation towers sited on school district or state tribal education compact school owned property, and located on a site where students receive instruction, are eligible for grant funding in the amount of the projected cost of the proposed project. The office of superintendent of public instruction, in consultation with the school seismic safety advisory committee, will determine the amount of grant funding and project scope.

(2) Vertical evacuation towers built in partnership with state and local government agencies to serve the community and students, faculty, and administration of a school district or state tribal education compact school shall be limited to the proportion of the project's square footage needed to house students, faculty, and administration personnel. The square foot proportion will be based on the square foot per occupant of the number of students, faculty, and administration personnel of the school which the tower will serve as a refuge at the time of project application. Grant funding will be determined by the office of superintendent of public instruction in consultation with the school seismic safety advisory committee.

NEW SECTION

WAC 392-902-080 School seismic safety construction grant—Space eligibility for seismic modernization projects. The determination of gross square footage eligible for seismic modernization projects, as defined under WAC 392-902-010(2), shall be based on the greater of the following:

(1) Gross square footage of existing building(s) to be modernized on a school site; or

(2) Calculated gross square footage using the office of superintendent of public instruction's capital prototypical funding model, which includes headcount enrollment data based on a five-year cohort projection using historical enrollment and other additional enrollment and demographic information provided by the applicant for funding.

The office of superintendent of public instruction may adjust the space eligibility determined by subsections (1) and (2) of this section upon consultation with the school district or state tribal education compact school.

NEW SECTION

WAC 392-902-090 School seismic safety construction grant—Space eligibility for vertical evacuation towers. The calculation of gross square footage eligible for vertical evacuation tower projects as defined under WAC 392-902-010(3) shall be the following:

(1) Based on a square foot allocation per student, staff, and administrative personnel who attend the school which the tower will serve. The square foot allocation will be determined by the school seismic safety committee at the time of funding application.

(2) The office of superintendent of public instruction may adjust the space eligibility determined under subsection (1) of this section using additional information provided by the grant applicant upon consultation with the school facilities citizens advisory panel established under RCW 28A.525.025.

NEW SECTION

WAC 392-902-100 Seismic retrofit projects and future state assistance. School facilities that receive state funding assistance under WAC 392-902-010(1) may not be eligible to receive state funding assistance under chapter 392-347 WAC for at least 10 years after the completion of a project which was funded. The superintendent of public instruction may waive the 10-year period upon consultation with the school facilities citizens advisory panel established under RCW 28A.525.025.