WSR 26-10-067
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 5, 2026, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-09-104.

Title of Rule and Other Identifying Information: Chapter 392-190 WAC, regarding nondiscrimination and equal educational opportunity.

Hearing Location(s): On June 11, 2026, at 6:00 p.m.; on June 16, 2026, at 2:00 p.m.; and on June 18, 2026, at 10:00 a.m. Virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page at ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity. For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: June 22, 2026.

Submit Written Comments to: Sarah Albertson, OSPI, P.O. Box 47200, Olympia, WA 98504, email CivilRightsRules@k12.wa.us, beginning May 6, 2026, 8:00 a.m., by June 18, 2026, no later than 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by June 4, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In accordance with RCW 28A.640.010 and 28A.642.010, discrimination in Washington K-12 public schools on the basis of sex; race; ethnicity; creed; religion; color; national origin; honorably discharged veteran or military status; sexual orientation; gender identity; gender expression; homelessness; immigration or citizenship status; the presence of any sensory, mental, or physical disability; neurodivergence; or the use of a trained dog guide or service animal by a person with a disability is prohibited. RCW 28A.640.020 and 28A.642.020 require OSPI to develop rules and guidelines to eliminate discrimination as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students. These rules are found in chapter 392-190 WAC.

OSPI is proposing revising chapter 392-190 WAC to: (1) Clarify civil rights requirements and procedures for responding to complaints of discrimination in public schools; (2) improve procedures for OSPI monitoring and enforcement; and (3) align rules with new statutory requirements regarding nondiscrimination requirements.

OSPI anticipates a revision of the nondiscrimination rules will, among other things: (1) Clarify procedures for responding to discrimination complaints; (2) eliminate problems of interpretation and problems of practice by increasing the clarity of rule language; (3) encourage public schools to address issues of discrimination with transparency and accountability; and (4) provide students, parents, employees, and community members better access to information about their rights and processes to addressing concerns about equal access and discrimination.

Reasons Supporting Proposal: Clarifying rules, including nondiscrimination requirements and procedures for responding to discrimination complaints, will eliminate problems of interpretation and prob-

lems of practice to ensure clear expectations for how school districts prevent and respond to discrimination.

Statutory Authority for Adoption: RCW 28A.640.020 and 28A.642.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Albertson, 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.

May 5, 2026
Chris P.S. Reykdal
State Superintendent of Public Instruction

RDS-7180.1

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-005 Purpose—Elimination of unlawful discrimination in public schools. The purpose of this chapter is to establish rules to implement chapters 28A.640 and 28A.642 RCW. Chapters 28A.640 and 28A.642 RCW prohibit discrimination on the basis of sex, race, ethnicity, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, homelessness, immigration or citizenship status, the presence of any sensory, mental or physical disability, neurodivergence, or the use of a trained dog guide or service animal by a person with a disability in Washington public schools, including public charter schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and Titles VI and VII of the Civil Rights Act of 1964 similarly prohibit discrimination based on sex, race, creed, religion, color, national origin, and disability in federally assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

In accordance with chapters 28A.640 and 28A.642 RCW and RCW 28A.710.040, it is unlawful for any public school district or public

charter school to discriminate on the basis of sex, race, ethnicity, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, homelessness, immigration or citizenship status, the presence of any sensory, mental, or physical disability, neurodivergence, or the use of a trained dog guide or service animal with regard to any program or activity conducted by or on behalf of a school district or public charter school including, but not limited to, recreational and athletic activities, extracurricular activities, preschool, adult education, community education, and vocational-technical program activities.

In accordance with RCW 28A.640.020 and 28A.642.020, the office of the superintendent of public instruction (OSPI) will develop guidelines to supplement this chapter and to guide its interpretation and administrative enforcement of chapters 28A.640 and 28A.642 RCW under WAC 392-190-060 through 392-190-081. Under RCW 28A.640.050 and 28A.642.050, ((~~the office of superintendent of public instruction~~)) OSPI has the authority to enforce the guidelines and this chapter.

This chapter applies to public charter schools to the same extent as public school districts, collectively referred to as school districts.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-007 Compliance with federal law. For purposes of administrative enforcement of this chapter under WAC 392-190-060 through 392-190-081, and unless otherwise provided in chapters 28A.640 and 28A.642 RCW, this chapter, or as interpreted in the guidelines adopted under WAC 392-190-005, ((~~the office of superintendent of public instruction~~)) OSPI adopts the definitions, requirements, and procedural safeguards set forth by the United States Department of Education pursuant to Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, Title IX of the Education Amendments of 1972, and Title VI of the Civil Rights Act of 1964.

DEFINITIONS

NEW SECTION

WAC 392-190-008 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. The definitions set forth in RCW 28A.642.012 also govern the terms used in this chapter. Where a term is not defined in RCW 28A.642.012, the definitions in chapter 49.60 RCW apply, unless the context clearly requires otherwise.

(1) "OSPI" means the office of the superintendent of public instruction.

(2) "Protected status" means a personal characteristic or membership in a class for which discrimination is prohibited under RCW 28A.640.010 and 28A.642.010 including sex, race, ethnicity, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, homelessness, immigration or citizenship status, the presence of any sensory, mental, or physical disability, neurodivergence, or the use of a trained dog guide or service animal by a person with a disability.

(3) "School district" means a common school as defined by RCW 28A.150.010 and charter schools as defined by RCW 28A.710.010.

(4) "Sexual harassment."

(a) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature between two or more individuals if:

(i) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(ii) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(iii) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

(b) For the purpose of this definition, sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-010 Counseling and guidance services—Course and program enrollment. (1) School districts ((~~and public charter schools~~)) must not discriminate ((~~against any person~~)) on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status in the counseling or guidance of students.

(2) Each school district ((~~and public charter school~~)) must develop and use materials, orientation programs, and counseling techniques that encourage participation in all school programs and courses of study, including career and vocational technical programs and employment opportunities, regardless of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a student's protected status. School districts ((~~and public charter schools~~)) must encourage stu-

dents to explore subjects, activities, and occupations not traditional for their sex.

(3) Each school district ((~~and public charter school~~)) that uses testing and other materials for counseling students must not use different materials for students based on their ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) protected status. A school district ((~~or public charter school~~)) may use different materials for students on the basis of their ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) protected status if:

(a) The different materials address the same occupations and interest areas; and

(b) The use of different materials is essential to eliminate bias or prevent discrimination based on ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status.

(4) Each school district ((~~and public charter school~~)) must develop and use internal procedures to ensure that all tests and appraisal instruments related to guidance counseling, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling or placement do not discriminate on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a student's protected status.

(5) If a school district ((~~or public charter school~~)) concludes that the use of tests and appraisal instruments, career and vocational guidance materials, work/study programs, or educational scheduling or placement has resulted in a substantially disproportionate number of students ((~~who are members of one of the groups identified in WAC 392-190-005~~)) of a protected status in any particular course of study or classification, the school district ((~~or charter school~~)) must take prompt action to ensure that the disproportion is not the result of discrimination in the instrument or material, or its application.

(6) At least annually, each school district ((~~and public charter school~~)) must review student enrollment data within courses and programs disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. In its review of this data, the school district ((~~or public charter school~~)) must determine whether a substantially disproportionate number of students within these categories are enrolled in a particular course or program. Where a school district ((~~or public charter school~~)) finds that a particular course or program contains a substantially disproportionate number of students ((~~who are members of any one of the categories identified in this section~~)) of a protected class, the district ((~~or charter school~~)) must take prompt action to ensure that the disproportion is not the result of discrimination, including in:

(a) The identification and selection of students;
(b) Course and program enrollment criteria;
(c) Tests and appraisal instruments;
(d) Academic, career, and vocational guidance materials;
(e) Work/study programs and opportunities;
(f) Educational scheduling or placement; and
(g) Other factors related to course and program enrollment.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-020 Training—Staff responsibilities—Bias awareness. Each school district ((~~and public charter school~~)) must provide training to all administrators and certificated and classroom personnel((~~,~~ ~~including the school district or public charter school employee designated under WAC 392-190-060, (1)~~)) regarding their responsibilities under this chapter((~~,~~)) and ((~~(2)~~)) to raise awareness of and eliminate bias based on ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal~~)) a protected status.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-025 Recreational and athletic activities. (1) Except as provided under this section, school districts ((~~and public charter schools~~)) must not, on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status, exclude any ((~~person~~)) student from participation in, deny any ((~~person~~)) student the benefits of, or otherwise discriminate against any ((~~person~~)) student in any interscholastic, club, or intramural athletics or recreational activity offered or sponsored by the school district ((~~or charter school~~)). School districts ((~~and public charter schools~~)) must not provide any athletic or recreational activity separately on such basis, except as provided in this section.

(2) A school district ((~~or public charter school~~)) may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a school district ((~~or public charter school~~)) operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered.

(3) A school district ((~~or public charter school~~)) that operates or sponsors interscholastic, club, or intramural athletics must provide equal athletic opportunities for members of both sexes within

each school. The following factors must be considered when determining whether equal opportunities are available:

(a) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(b) Provision of equipment and supplies;

(c) Scheduling of games and practice time, including the use of playfields, courts, gyms, and pools;

(d) Travel and per diem allowances, if any;

(e) Opportunity to receive coaching and academic tutoring;

(f) Assignment and compensation of coaches, tutors, and game officials;

(g) Provision of locker rooms and practice and competitive facilities;

(h) Provision of medical and training facilities and services, including the availability of insurance;

(i) Provision of housing and dining facilities and services, if any; and

(j) Publicity and awards.

(4) Unequal aggregate expenditures within a school district ((~~or public charter school~~)) for members of each sex or unequal expenditures for separate male and female teams alone will not constitute noncompliance with this section, but the failure to provide necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

(5) Where individual students with disabilities cannot participate in existing activities even with reasonable modifications and necessary accommodations, aids, or services, a school district ((~~or public charter school~~)) may offer opportunities for students with disabilities to participate in separate or different recreational or athletic activities.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-030 Recreational and athletic activities—Annual athletic evaluation. Each school district ((~~and public charter school~~)) must evaluate the recreational and athletic program at each school at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club, or intramural athletics that are operated, sponsored, or otherwise provided by the school district ((~~or charter school~~)).

In determining whether equal opportunities are available to members of both sexes, each school district ((~~and public charter school~~)) conducting an evaluation required by this section must consider each of the factors listed under WAC 392-190-025(3).

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-040 Recreational and athletic activities—Student athletic interest survey. (1) ((~~The superintendent of public instruction must develop a survey instrument to assist each school district and public charter school in determining male and female student interest in participation in specific sports. With the office of superintendent of public instruction's approval, school districts and public charter schools may modify or amend the content of the survey instrument if necessary to clarify and assist in evaluating student interest.~~

~~(2)~~)) Each school district ((~~and public charter school~~)) must administer the OSPI student athletic interest survey to determine, for members of both sexes, student interest to participate in specific sports. Each school district must administer the survey ((~~developed under this section~~)) at least once every three years at each school and grade level where interscholastic, intramural, and other athletics are conducted. The school district ((~~or public charter school~~)) must consider the results of the survey, disaggregated by sex, when planning and developing recreational and athletic activities offered within the school district ((~~or charter school~~)) and when determining whether equal opportunities are available to members of both sexes under WAC 392-190-025 and 392-190-030.

(2) With OSPI's approval, school districts may modify or amend the content of the survey instrument if necessary to clarify and assist in evaluating student interest.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-045 Recreational and athletic activities—Facilities. A school district ((~~or public charter school~~)) that provides athletic facilities for members of one sex, including showers, toilets, and training room facilities for athletic purposes, must provide comparable facilities for members of the opposite sex. A school district ((~~or public charter school~~)) may provide separate facilities for male and female students or schedule the facilities equitably for separate use. This section does not require the construction of additional facilities.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-046 Access to course offerings. (1) Each school district ((~~and public charter school~~)) must ensure that no student is denied or limited in their ability to participate in or benefit from its course offerings on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status.

(2) Course offerings include all education programs and activities offered or sponsored by a school district ((~~or public charter school~~)), whether those programs or activities take place in a ((~~school~~)) district's ((~~or charter school's~~)) facilities or elsewhere.

AMENDATORY SECTION (Amending WSR 25-13-037, filed 6/10/25, effective 7/11/25)

WAC 392-190-048 Access to course offerings—Student discipline and corrective action. At least annually, each school district ((~~and public charter school~~)) must review data on corrective and disciplinary actions taken against students within each school disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. This review must include, but is not limited to, short-term suspensions, long-term suspensions, expulsions, and emergency removals. In reviewing this data, each school district ((~~or public charter school~~)) must determine whether it has disciplined or applied corrective action to a substantially disproportionate number of students within any of the categories identified in this section. If a school district ((~~or public charter school~~)) finds that it has disciplined or applied corrective action to a substantially disproportionate number of students who are members of one of the categories identified in this section, the school district ((~~or charter school~~)) must take prompt action to ensure that the disproportion is not the result of discrimination.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-050 Access to course offerings—Separate programs or activities. Except as provided under this section, school districts ((~~and public charter schools~~)) must not provide any course or otherwise carry out any of its programs or activities separately on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status or require or refuse participation therein by any of its students on such basis. This section does not prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex. Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district ((~~or public charter school~~)) must promptly implement appropriate standards that do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students if:

(a) It can be shown under the factual circumstances involved in the particular case that maintaining a separate physical education

class or activity for boys and girls is the best method of providing both sexes with an equal opportunity to participate in the class or activity; and

(b) The separated classes or activities are substantially equal;

(3) The separation of students by sex for classes or portions of classes that deal primarily with human sexuality;

(4) Classes and activities with requirements based on vocal range or quality, which may result in a chorus or choruses of one or predominantly one sex; and

(5) Classes, courses, or placement of students based on the student's individual language skill development or based on the student's needs as identified in the student's individualized education program under the Individuals with Disabilities Education Act.

NEW SECTION

WAC 392-190-052 Student enrollment documentation. (1) A school district must accept a birth certificate, passport, or alternative documents to show a child's age or date of birth for the purposes of enrollment. Alternative documents include, but are not limited to, a religious, hospital, or physician's certificate showing the date of birth, an entry in a family bible, an adoption record, an affidavit from a parent, or a previously verified school record.

(2) Notwithstanding subsection (1) of this section, a school district may not inquire about, request, or collect any information about the immigration or citizenship status of any student or their parent or guardian.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-055 Textbooks ((~~and~~)), instructional materials, and supplemental instructional materials—Instructional materials policy—Elimination of bias. (1) School districts ((~~and public charter schools~~)) must not discriminate on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status through the use of any textbooks ((~~or~~)), instructional materials, or supplemental instructional materials, including reference materials and audio-visual materials.

(2) Each school district ((~~and public charter school~~)) must adopt ((~~an~~)) policies and procedures regarding instructional materials ((~~policy~~)) that ((~~includes~~)) include selection criteria designed to eliminate bias based on ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, and the use of a trained dog guide or service animal~~)) protected statuses in all textbooks ((~~and~~)), instructional materials, and supplemental instructional materials, including reference materials and audio-visual materials. Each school

district ((~~and public charter school~~)) must use the screening criteria adopted under this section to identify and eliminate bias in all textbooks and instructional materials, including reference materials and audio-visual materials.

(3) If instructional materials that contain bias cannot be replaced immediately, each school district ((~~and public charter school~~)) must acquire supplemental instructional materials or aids to be used concurrent with existing materials to counter the bias content.

(4) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials, such as classic and contemporary literary works, periodicals, and technical journals, that are educationally necessary or advisable even though they contain bias.

(5)(a) Consistent with RCW 28A.320.233, a school district board of directors may not refuse to approve, or prohibit the use of, any textbook, instructional material, supplemental instructional material, or other curriculum for student instruction on the basis that it relates to the study of the role and contributions of any individual or group who is part of a protected class established in RCW 28A.640.010 and 28A.642.010.

(b) Subitem (a) of this subsection does not apply if the content of the material relating to the role and contributions of an individual or group violates the provisions of chapter 28A.640 or 28A.642 RCW, including materials containing bias against any individual or group who is part of a protected class established in RCW 28A.640.010 and 28A.642.010.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-0555 Discriminatory harassment. (1) For purposes of administrative enforcement of this chapter under WAC 392-190-060 through 392-190-081, a school district ((~~or public charter school~~)) violates a student's rights regarding discriminatory harassment, including sexual harassment as defined under WAC 392-190-056, when the following conditions are met:

(a) The alleged conduct is based on a student's ((~~sex, race, creed, religion, color, national origin, sexual orientation, gender expression, gender identity, honorably discharged veteran or military status, presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal~~)) protected status;

(b) The alleged conduct is sufficiently severe, persistent, or pervasive that it limits or denies a student's ability to participate in or benefit from the school district's ((~~or public charter school's~~)) course offerings, including any educational program or activity (i.e., creates a hostile environment); and

(c) The school district ((~~or public charter school~~)), upon notice, fails to take prompt and appropriate action to investigate or fails to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

(2) For purposes of administrative enforcement of this chapter under WAC 392-190-060 through 392-190-081, ((~~the office of superintendent of public instruction~~)) OSPI deems a school district ((~~or public charter school~~)) to have notice of discriminatory harassment if a

reasonable employee knew, or in the exercise of reasonable care should have known, about the harassment.

(3) Nothing in this chapter is intended to diminish or otherwise modify an individual's right to bring an action under state or federal law alleging that the individual has been harmed by conduct or communication related to the individual's ((~~sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal~~)) protected status that creates a hostile or abusive educational or workplace environment.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-057 Sexual harassment policy—Required criteria. In order to eliminate sexual harassment in connection with any responsibility, function, or activity within the jurisdiction of a school district ((~~or public charter school~~)), a sexual harassment policy must be adopted and implemented by each district ((~~and charter school~~)). This policy must apply to all school district ((~~and public charter school~~)) employees, volunteers, parents, and students including, but not limited to, conduct between students. This policy must incorporate the following criteria:

(1) Definition((~~s~~)) of sexual harassment consistent with WAC ((~~392-190-056~~)) 392-190-008;

(2) Responsibilities of employees and volunteers;

(3) Investigative and complaint procedures consistent with WAC 392-190-065 through 392-190-075;

(4) Remedies available to targets of sexual harassment;

(5) Possible disciplinary actions against violators, which must conform with collective bargaining agreements and state and federal laws;

(6) Reprisal, retaliation, and false accusations prohibition;

(7) Dissemination and implementation of the policy; and

(8) Internal review of the policy.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-058 Sexual harassment policy—Notification. (1) The school district's ((~~or public charter school's~~)) sexual harassment policy must be easily understood and conspicuously posted throughout each school building and provided to each employee.

(2) Information about the school district's ((~~or public charter school's~~)) sexual harassment policy and complaint procedure must appear in any publication of a school((~~,~~)) or school district((~~, or public charter school~~)) that sets forth the rules, regulations, procedures, and standards of conduct for the school((~~,~~)) or school district((~~, or charter school. School districts and public charter schools that do not provide such a publication must provide written information about the district's or charter school's sexual harassment~~

~~policy and complaint procedure to each student, parent or guardian, employee, and volunteer~~)). Each school district must publish this information in handbooks and on school and district websites consistent with the requirements in RCW 28A.300.286.

(3) Each school district ((~~and public charter school~~)) must develop a process for discussing the district's ((~~or charter school's~~)) sexual harassment policy. The process must ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-059 Harassment, intimidation, and bullying prevention policy and procedure—School districts. (1) Each school district must adopt a harassment, intimidation, and bullying prevention policy and procedure as provided for in RCW ((~~28A.300.285~~)) 28A.600.477.

(2) If the allegations in a written ((~~report~~)) complaint of harassment, intimidation, or bullying ((~~pursued~~)) filed under the school district's procedure adopted under RCW ((~~28A.300.285~~)) 28A.600.477 indicate a potential violation of this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005, the school district's harassment, intimidation, and bullying compliance officer, designated under RCW 28A.300.285, must promptly notify the district ((~~employee~~)) civil rights coordinator designated under WAC 392-190-060. Or, if during the course of an investigation of harassment, intimidation, or bullying, the school district becomes aware of a potential violation of this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005, the ((~~school~~)) district staff member investigating the report must promptly notify the district ((~~employee designated under WAC 392-190-060~~)) civil rights coordinator. Upon receipt of this information, the ((~~designated employee~~)) civil rights coordinator must notify the complainant that their complaint will also proceed under the discrimination complaint procedure in WAC 392-190-065 ((~~through 392-190-075~~)), in addition to the procedures adopted under RCW ((~~28A.300.285~~)) 28A.600.477. School districts must provide this notice in a language that the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964. In these cases, the investigation and response timeline set forth in WAC 392-190-065 begins when the school district knows or should have known that a written report of harassment, intimidation, or bullying involves allegations that the school district has violated this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005.

(3) This section is not intended to limit the scope of RCW ((~~28A.300.285~~)) 28A.600.477 or the use of a school district's procedures adopted under RCW ((~~28A.300.285~~)) 28A.600.477.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-0591 Public school employment and contract practices—Nondiscrimination. (1) School districts ((~~and public charter schools~~)) must not, on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status, exclude any person from participation in, deny any person the benefit of, or subject any person to discrimination in employment, recruitment, promotion, advancement, consideration, or selection, whether full time or part time, in connection with employment by a school district ((~~or public charter school~~)).

(2) Each school district ((~~and public charter school~~)) must make all employment decisions in a nondiscriminatory manner and must not limit, segregate, or classify any person in any way that could adversely affect a person's employment opportunities or status on the basis of ((~~sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status.

(3) School districts ((~~and public charter schools~~)) must not enter into any contractual or other relationship that directly or indirectly has the effect of subjecting any person to discrimination in connection with employment on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal~~)) a protected status including, but not limited to, relationships with employment and referral agencies, labor unions, and organizations providing or administrating fringe benefits to employees.

(4) School districts ((~~and public charter schools~~)) must not grant preferential treatment to applications for employment based on an applicant's enrollment at any education institution or entity that only or predominately admits students on the basis of sex, race, color, or national origin if the giving of such preferences has the effect of discriminating on the basis of sex, race, color, or national origin.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-0592 Public school employment—Affirmative action program. (1) Each school district ((~~and public charter school~~)) must develop an affirmative action employment plan or program that includes appropriate provisions designed to eliminate discrimination on the basis of ((~~sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or~~

~~physical disability, or the use of a trained dog guide or service animal by a person with a disability~~)) a protected status.

(2) With respect to sex discrimination, a school district's ((~~or public charter school's~~)) affirmative action employment plan or program must include:

(a) The requirement to:

(i) Maintain credential requirements for all personnel without regard to sex;

(ii) Make no differentiation in pay scale on the basis of sex;

(iii) Make no differentiation in the assignment of school duties on the basis of sex except where such assignment would involve duty areas or situations such as, but not limited to, a shower room, where persons might be disrobed;

(iv) Provide the same opportunities for advancement for males and females;

(v) Make no difference in conditions of employment on the basis of sex including, but not limited to, hiring practices, leaves of absence, hours of employment, and assignment of or payment for instructional and noninstructional duties; and

(b) Such other provisions as may be required by ((~~the superintendent of public instruction~~)) OSPI to facilitate reasonable affirmative action goals and objectives and to eliminate discrimination in public school employment.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-060 ((~~Compliance—School district or public charter school—Designation of responsible employee—Notification.~~)) Designation of civil rights coordinator. (1) The superintendent of each school district ((~~or the public charter school governing board~~)) must designate at least one employee ((~~who~~)), a civil rights coordinator, who will serve as the district's primary contact under RCW 28A.642.090. The civil rights coordinator may also serve as the primary contact regarding the school district's policy and procedure prohibiting harassment, intimidation, and bullying under RCW 28A.600.477, or the primary contact regarding the school district's policy and procedure related to transgender students under RCW 28A.642.080. The civil rights coordinator is responsible for:

(a) Monitoring and coordinating the school district's ((~~or charter school's~~)) compliance with this chapter ((~~and~~)), including as interpreted in the guidelines adopted under WAC 392-190-005((~~. The employee designated under this section is also responsible for~~));

(b) Ensuring that all complaints communicated to the ((~~school~~)) district ((~~or public charter school~~)) under WAC 392-190-065 are promptly investigated and resolved((~~.~~

~~(2) Each school district and public charter school must, once each year or more often as deemed necessary, publish notice in a manner that is reasonably calculated to inform all students, students' parents and guardians, and employees of the complaint procedure set forth in WAC 392-190-065, 392-190-070 and 392-190-075. School districts and public charter schools must provide this notice in a language that each parent and guardian can understand, which may require language assistance for parents and guardians with limited English~~

~~proficiency, in accordance with Title VI of the Civil Rights Act of 1964.~~

~~(3) Each school district and public charter school must include a nondiscrimination statement in written announcements, notices, recruitment materials, employment application forms, and other publications made available to all students, parents, or employees. The statement must include:~~

~~(a) Notice that the district or public charter school may not discriminate in any programs or activities on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal;~~

~~(b) The name or title, office address, and telephone number of the employee or employees designated under this section, as well as the employees designated to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972; and~~

~~(c) Pursuant to the Boy Scouts of America Equal Access Act, notice that the school district or public charter school provides equal access to the Boy Scouts of America and any other youth group listed in Title 36 of the United States Code as a patriotic society.~~

~~(4) School districts and public charter schools must not adopt any policy, procedure, or practice that would limit a person's right to file a complaint under this chapter or have the effect of discouraging any person from utilizing the complaint procedure in WAC 392-190-065 through 392-190-075. School districts and public charter schools must not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by this chapter or the guidelines adopted under WAC 392-190-005 or because the individual has made a complaint or participated in an investigation under this chapter.~~)); and

(c) Facilitating communication about the school district's compliance with federal and state nondiscrimination laws including, but not limited to, (a) and (b) of this subsection, with other district coordinators, including the primary contact for the harassment, intimidation, and bullying policy and procedure under RCW 28A.600.477 and the primary contact for the policy and procedure related to transgender students under RCW 28A.642.080.

(2) The civil rights coordinator must receive adequate training regarding their responsibilities and the school district's compliance requirements under this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, and to raise awareness of and eliminate bias based on protected statuses.

NEW SECTION

WAC 392-190-063 Notification of nondiscrimination and complaint procedures. (1) Each school district must, once each year or more often as deemed necessary, publish notice in a manner that is reasonably calculated to inform all students, students' parents and guardians, and employees of the complaint procedure set forth in WAC 392-190-065, 392-190-070, and 392-190-075. Each school district must provide this notice in a language that each parent and guardian can understand, which may require language assistance for parents and guardians with

limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964. Each school district must publish this information in handbooks and on school and district websites consistent with the requirements in RCW 28A.300.286.

(2) Each school district must include a nondiscrimination statement in written announcements, recruitment materials, employment application forms, and other publications made available to all students, students' parents and guardians, or employees. The statement must include:

(a) Notice that the school district may not discriminate in any programs or activities on the basis of a protected status, including sex, race, ethnicity, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, homelessness, immigration or citizenship status, the presence of any sensory, mental or physical disability, neurodivergence, or the use of a trained dog guide or service animal;

(b) The name or title, office address, email address, and telephone number of the civil rights coordinator designated under WAC 392-190-060, as well as the employees designated to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972; and

(c) Pursuant to the Boy Scouts of America Equal Access Act, notice that the school district provides equal access to the Boy Scouts of America and any other youth group listed in Title 36 of the United States Code as a patriotic society.

NEW SECTION

WAC 392-190-064 Protections against retaliation. School districts must not adopt any policy, procedure, or practice that would limit a person's right to file a complaint under this chapter or have the effect of discouraging any person from utilizing the complaint procedure in this chapter. School districts must not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right secured by this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, or because the individual has made a complaint or participated in an investigation under this chapter.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-065 ((~~Compliance —~~))Complaint procedure—Level I complaint to school district ((~~or public charter school~~)). Each school district ((~~and public charter school~~)) must establish a discrimination complaint procedure that((~~, at a minimum,~~)) includes the following requirements:

(1) **Receiving a complaint.**

(a) Anyone may file a complaint with a school district ((~~or public charter school~~)) alleging that the district ((~~or charter school~~)) has violated this chapter ((~~or~~))**,** including as interpreted in the guidelines adopted under WAC 392-190-005. The complaint must be writ-

ten and describe the specific acts, conditions, or circumstances alleged to violate this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005.

((~~(2)~~)) (b) A school district ((~~or local charter school~~)) may establish a complaint filing deadline. The filing deadline must be no less than one year after the ((~~occurrence~~)) specific act, condition, or circumstance that is the subject matter of the complaint. A complaint filing deadline may not be imposed if the complainant was prevented from filing a complaint due to:

((~~(a)~~)) (i) Specific misrepresentations by the school district ((~~or public charter school~~)) that it had resolved the problem forming the basis of the complaint; or

((~~(b)~~)) (ii) Withholding of information by the school district ((~~or public charter school~~)) that was required to be provided under this chapter ((~~or the guidelines adopted under WAC 392-190-005~~)).

((~~(3)~~)) (c) Complaints may be submitted by mail, fax, ((~~electronic mail~~)) email, or hand delivery to any district((~~,~~)) or school((~~, or charter school~~)) administrator or to ((~~any employee~~)) the civil rights coordinator designated under WAC 392-190-060. Any district((~~,~~)) or school((~~, or charter school~~)) administrator who receives a complaint that ((~~meets the criteria in this section~~)) alleges a violation of this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, must promptly notify the ((~~employee~~)) civil rights coordinator designated under WAC 392-190-060.

((~~(4)~~)) (d) Upon receipt of the complaint, the ((~~employee or employees~~)) civil rights coordinator designated under WAC 392-190-060 must((~~:~~

~~(a)~~)) provide the complainant a copy of the school district's ((~~or public charter school's~~)) discrimination complaint procedure in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964((~~; and~~)).

(2) **Investigation.**

((~~(b)~~)) (a) Upon receipt of a complaint, the civil rights coordinator designated under WAC 392-190-060 must ensure that the school district ((~~or public charter school~~)) conducts a prompt ((~~and~~)), thorough, and impartial investigation into the allegations in the complaint.

((~~(5)~~)) (b) The school district must complete the investigation and respond to the complainant in writing within 30 calendar days after the district received the complaint. A school district may extend the investigation and response timeline if:

(i) The complainant agrees to an extension; or

(ii) Exceptional circumstances related to the complaint require an extension of the timeline. If an extension is needed, the school district must promptly notify the complainant in writing of the reasons for the extension and the anticipated response date. This notice must be provided in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

(c) Following the completion of the investigation, the ((~~designated employee or employees~~)) civil rights coordinator must provide the school district superintendent((~~, charter school administrator,~~)) or the superintendent's designee with a full written report of the complaint and the results of the investigation.

(3) **Written response to complainant.**

(a) The district superintendent((~~, charter school administrator,~~)) or their designee must respond in writing to the ((~~complaining party within thirty calendar days after the school district or public charter school received the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. If an extension is needed, the school district or public charter school must notify the complainant in writing of the reasons for the extension and the anticipated response date; this notice must be provided in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964. At the time the school district or public charter school responds to the complainant, the school district or charter school must send a copy of the response to the office of superintendent of public instruction.~~

~~(6)~~)) complainant within the timeline established under subsection (2)(b) of this section. The written response of the school district superintendent((~~, charter school administrator,~~)) or their designee ((~~required by this section~~)) must include:

((~~(a)~~)) (i) A summary of the results of the investigation;

((~~(b) Whether~~)) (ii) A determination regarding whether the preponderance of the evidence shows that the school district ((~~or public charter school~~)) has failed to comply with this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005;

((~~(c)~~)) (iii) Notice of the complainant's right to appeal under WAC 392-190-070, including ((~~where and to whom the appeal must be filed~~)) the email and address where the complainant may file the appeal and the name of the party or board that will decide the appeal; and

((~~(d)~~)) (iv) If the school district ((~~or public charter school~~)) has failed to comply with this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005, the corrective measures deemed necessary to correct the noncompliance. Any corrective measures must be instituted as expeditiously as possible but no later than ((~~thirty~~)) 30 calendar days after the school district's ((~~or public charter school's~~)) written response to the complainant, unless otherwise agreed to by the complainant.

((~~(7)~~)) (b) The school district's ((~~or public charter school's~~)) written response to the complainant must be in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

((~~(8)~~)) (c) At the time the school district superintendent responds to the complainant, the school district must send a copy of the response to OSPI.

(4) **Informal resolution.**

(a) The complainant and the school district ((~~or public charter school~~)) may agree to resolve the complaint in lieu of an investigation. If the complaint is resolved to the satisfaction of the parties involved, no further action is necessary under this section.

((~~(9)~~)) (b) Nothing in this section prohibits a school district ((~~or public charter school~~)) from adopting a separate procedure to resolve informal (i.e., verbal) complaints or allegations. An informal complaint procedure must not limit a complainant's right to file a formal complaint under this section. When utilizing an informal complaint procedure, a school ((~~districts and public charter schools~~))

district must notify complainants about their right to file a formal complaint under this section. The school district ((~~or public charter school~~)) must provide this notice in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

((~~(10)~~)) (5) **Failure to respond.**

(a) If a school district fails to comply with the procedures in this section such that the complainant is denied a timely written response, the complainant may file a complaint with OSPI. In lieu of opening an investigation, OSPI may direct the school district to complete the investigation and respond consistent with subsections (2) and (3) of this section.

(b) The complaint to OSPI must be in writing and include:

(i) A copy of the complaint that complainant submitted to the school district under subsection (1) of this section; and

(ii) Information about when, how, and to whom the complaint was submitted; and

(iii) A copy of any communication between the complainant and the school district regarding the complaint response timelines.

(c) The complainant must file the complaint to OSPI within one year of their complaint to the school district. The complaint may be submitted by mail, fax, email, or hand delivery.

(6) **Employment complaints.** Nothing in this section is intended to modify or supersede any grievance procedure provided for in a school district ((~~or public charter school~~)) collective bargaining agreement.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-070 ((~~Compliance—Appeal procedure—School district or public charter school.~~)) Complaint procedure—Level II appeal to school board. (1) **Appeals.**

(a) A school district's ((~~or public charter school's~~)) complaint procedure required under WAC 392-190-065 must provide an option to appeal the decision of the school district superintendent((~~, charter school administrator,~~)) or their designee to ((~~a party or board that was not involved in the initial complaint or investigation~~)) the district school board of directors. The school board may designate a different party or board to decide appeals under this section so long as the designee is granted authority to order the school district to take corrective measures deemed necessary to correct any noncompliance identified in the appeal.

(b) Any individuals deciding the appeal may not have been involved in the initial complaint, investigation, or decision under WAC 392-190-065.

((~~(2)~~)) (c) A school district ((~~or public charter school~~)) may establish ((~~a time limit to file appeals. Appeal time limits~~)) an appeal filing deadline. The appeal filing deadline must be no less than ((~~ten~~)) 10 calendar days from the date the complainant received the school district's ((~~or public charter school's~~)) response under WAC 392-190-065.

((~~(3)~~)) (2) **Appeal decision.**

(a) The school district ((~~or public charter school~~)) must provide ((~~a~~)) the school board or school board designee's written appeal decision to the complainant in a timely manner, not to exceed ((~~thirty~~)) 30 calendar days from the date the school district ((~~or charter school~~)) received the appeal, unless otherwise agreed to by the complainant. The appeal decision must include notice of the complainant's right to file a complaint with ((~~the superintendent of public instruction~~)) OSPI under WAC 392-190-075. ((~~The school district or charter school must send a copy of the appeal decision to the office of superintendent of public instruction.~~

~~(4) The school district's or public charter school's~~))

(b) The written appeal decision must be provided in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

(c) At the time the school district responds to the complainant, the school district must send a copy of the appeal decision to OSPI.

(3) **Failure to respond.**

(a) If a school district fails to comply with the procedures in this section such that the complainant is denied a timely written appeal decision, the complainant may file a complaint with OSPI. In lieu of opening an investigation, OSPI may direct the school district to complete its appeal and respond consistent with subsection (2) of this section.

(b) The complaint to OSPI must be in writing and include:

(i) A copy of the appeal that complainant submitted to the school board or their designee under this section; and

(ii) Information about when, how, and to whom the appeal was submitted; and

(iii) A copy of any communication between the complainant and the school board or their designee regarding the appeal decision timelines.

(c) The complainant must file the complaint to OSPI within one year of their appeal to the school board or their designee. The complaint may be submitted by mail, fax, email, or hand delivery.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-075 ((~~Compliance—Complaint procedure—Office of superintendent of public instruction.~~)) Complaint procedure—Level III complaint to OSPI. (1) **Complaint to OSPI.**

(a) If a complainant disagrees with the ((~~school district's or public charter school's~~)) appeal decision under WAC 392-190-070, ((~~or if the school district or public charter school fails to comply with the procedures in WAC 392-190-065 or 392-190-070,~~)) the complainant may file a complaint with ((~~the office of superintendent of public instruction~~)) OSPI. ((~~A~~))

(b) The complaint must be received by ((~~the office of superintendent of public instruction~~)) OSPI within ((~~twenty~~)) 20 calendar days after the complainant received the school district's ((~~or public charter school's~~)) written appeal decision, unless ((~~the office of superintendent of public instruction~~)) OSPI grants an extension for good

cause. ((~~Complaints~~)) The complaint may be submitted by mail, fax, ((~~electronic mail~~)) email, or hand delivery. ((~~A~~))

(c) The complaint must be in writing and include:

((~~(a)~~)) (i) A description of the specific acts, conditions, or circumstances alleged to violate this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005, and the facts on which the complaint is based;

((~~(b)~~)) (ii) The name and contact information, including an address, of the complainant;

((~~(c)~~)) (iii) The name and address of the school district ((~~or public charter school~~)) subject to the complaint;

((~~(d)~~)) (iv) A copy of the school district's ((~~or public charter school's~~)) complaint and appeal decisions under WAC 392-190-065 and 392-190-070;

((~~(e)~~)) (v) A proposed resolution of the complaint or relief requested; and

((~~(f)~~)) (vi) If the allegations regard a specific student, the complaint must also include((~~:~~

~~(i)~~)) the name and address of the student, or in the case of a homeless child or youth, contact information for the student((~~; and~~

~~(ii) The name of the school and school district, or public charter school, the student attends~~)).

(2) **OSPI investigation.**

(a) Upon receipt of a complaint, ((~~the office of superintendent of public instruction~~)) OSPI may, at its discretion, initiate an investigation, which may include reviewing relevant information or conducting an independent on-site review. ((~~The office of superintendent of public instruction~~)) OSPI may, at its discretion, investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the school district ((~~or public charter school~~)) under WAC 392-190-065 or 392-190-070.

(b) If OSPI initiates an investigation, OSPI will provide notice to the school district of the complaint and the issues OSPI has identified for investigation. As part of the investigation, OSPI will provide the school district the opportunity to respond in writing to the complaint and provide any information the district deems relevant to OSPI's investigation. The school district will provide such response and information, if any, within 30 calendar days of its receipt of OSPI's notice of the investigation, unless OSPI agrees to an extension.

(c) OSPI will provide a copy of the notice under subsection (3)(b) of this section to the complainant in a language that the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

(3) **Investigation resolution.**

(a) A complaint may be resolved at any time when, before the conclusion of an investigation by OSPI, the complainant withdraws their complaint or a school district enters into a voluntary resolution agreement with OSPI to take actions to resolve the complaint.

(b) If the complaint is not resolved voluntarily, following an investigation, ((~~the office of superintendent of public instruction~~)) OSPI will make an independent determination as to whether the preponderance of the evidence shows the school district ((~~or public charter school~~)) has failed to comply with this chapter ((~~or~~)), including as interpreted in the guidelines adopted under WAC 392-190-005. ((~~The office of superintendent of public instruction~~)) OSPI will issue a writ-

ten ((~~decision~~)) proposed order to the complainant and the school district ((~~or public charter school that addresses each allegation in the complaint and any other noncompliance issues that the office of superintendent of public instruction has identified in the investigation. The written decision will include the corrective actions deemed necessary to correct any noncompliance and any documentation the school district or public charter school must provide to ensure that the corrective action is completed. The office of superintendent of public instruction will provide this written decision in a language that the complainant can understand, which may require language assistance for complainants with limited English proficiency, in accordance with Title VI of the Civil Rights Act of 1964~~)) that states OSPI's determination with regard to each issue identified for investigation in the notice provided under subsection (3)(b) of this section.

(c) If OSPI determines the school district has failed to comply with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, OSPI will issue a proposed order that includes:

(i) Findings of fact;

(ii) One or more conclusions of law stating how the school district failed to comply with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005;

(iii) An order of appropriate corrective measures or sanctions, which could include, but is not limited to:

(A) The institution of a corrective action plan, which will include corrective actions OSPI deems necessary to correct the noncompliance, the timeline for completing such corrective actions, and the documentation the school district must provide OSPI to show the corrective actions are completed;

(B) The institution of sanctions or other corrective measures outlined in WAC 392-190-080; and

(iv) Notice of appeal procedures under WAC 392-190-079.

(d) If the school district does not exercise its right to appeal the proposed order pursuant to the procedures described in WAC 392-190-079 within 30 calendar days of the date of the proposed order, the proposed order shall be the final order of the agency.

(4) **Corrective action monitoring.**

(a) All corrective actions must be completed within the timelines established in the ((~~written decision~~)) final order unless ((~~the office of superintendent of public instruction~~)) OSPI grants an extension.

(b) If timely compliance by a school district ((~~or public charter school~~)) is not achieved, ((~~the office of superintendent of public instruction~~)) OSPI may take actions to ensure compliance. Such actions may include, but are not limited to, referring the school district ((~~or public charter school~~)) to appropriate state or federal agencies empowered to order compliance with the law or the initiation of additional sanctions or corrective measures under WAC 392-190-080.

((~~(5) A complaint may be resolved at any time when, before the conclusion of an investigation, the complainant, the school district, or the public charter school voluntarily agrees to resolve the complaint. The office of superintendent of public instruction may provide technical assistance and dispute resolution methods necessary to resolve a complaint.~~))

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-0751 Mediation. (1) A school district ((~~or public charter school~~)) may offer mediation, at the district's ((~~or charter school's~~)) expense, to resolve complaints at any time during the complaint procedure set forth in WAC 392-190-065 through 392-190-075. The purpose of mediation is to offer both the complainant and the school district ((~~or public charter school~~)) an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the complaint through the use of an impartial mediator.

(2) Mediation must be voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a complainant's right to utilize the complaint procedure set forth in WAC 392-190-065 through 392-190-075 or to deny any other rights afforded under this chapter or under chapters 28A.640 or 28A.642 RCW.

(4) Mediation must be conducted by qualified and impartial mediators. An individual who serves as a mediator:

(a) May not be an employee of any school district((~~, public charter school,~~)) or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Must not have a personal or professional conflict of interest.

(5) A person who otherwise qualifies as a mediator is not an employee of a school district((~~, public charter school,~~)) or other public agency solely because he or she is paid by the school district((~~, charter school,~~)) or agency to serve as a mediator.

(6) If the parties resolve a dispute through the mediation process, the parties may execute a legally binding agreement that:

(a) Sets forth that resolution;

(b) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent complaint, due process hearing, or civil proceeding; and

(c) Is signed by both the complainant and a representative of the school district ((~~or public charter school~~)) who has the authority to bind the district ((~~or charter school~~)).

(7) The complainant and the school district ((~~or public charter school~~)) may agree to extend the timelines set forth in WAC 392-190-065 through 392-190-075 to pursue mediation.

(8) ((~~The office of superintendent of public instruction~~)) OSPI does not sign, approve, or endorse any mediation agreements reached by the parties. However, ((~~the office of superintendent of public instruction~~)) OSPI may assist both parties in understanding pertinent legal standards and possible remedies.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-076 Monitoring—Duty of the superintendent of public instruction. (1) ((~~The office of superintendent of public instruc-~~

~~tion~~)) OSPI must monitor school districts' ((~~and public charter schools'~~)) compliance with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, and chapters 28A.640 and 28A.642 RCW((~~, and the guidelines adopted under WAC 392-190-005~~)).

(2) In addition to monitoring school district compliance through the investigation of complaints under WAC 392-190-075, procedures for monitoring school districts ((~~and public charter schools~~)) may include, but are not limited to:

(a) Investigation ((~~of complaints under WAC 392-190-075~~)) into a school district's compliance with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, and chapters 28A.640 and 28A.642 RCW;

(b) Collection, review, and analysis of data and other information; and

(c) Performance of on-site visits and interviews((~~; and~~

~~(d) Review of any compliance issues, including reviews by those agencies referenced in WAC 392-190-077~~)).

(3) If OSPI initiates monitoring under this section, OSPI will provide notice to the school district of the issues OSPI has identified for monitoring. As part of the monitoring, OSPI will provide the school district the opportunity to respond in writing to the identified issues and provide any information the district deems relevant to OSPI's monitoring. The school district will provide such response and information, if any, within 30 calendar days of its receipt of OSPI's notice of the monitoring, unless OSPI agrees to an extension.

(4) OSPI may, at any time, refer a complaint or compliance issue regarding a school district to appropriate state or federal agencies empowered to order compliance with the law.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-077 Monitoring ((~~procedures—Results~~))—Determinations. (1) ((~~Following its monitoring of a school district or public charter school under WAC 392-190-076, the office of superintendent of public instruction must notify the district or charter school of any findings of noncompliance with this chapter, chapters 28A.640 and 28A.642 RCW, or the guidelines adopted under WAC 392-190-005. This notification of noncompliance must initiate a process of correction, verification, and validation to ensure that the noncompliance is corrected within a compliance period identified by the office of superintendent of public instruction. The compliance period must be no longer than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan will be required. The school district or public charter school will have thirty calendar days after its receipt of the notice of noncompliance to:~~

~~(a) Accept the findings contained in the notification of noncompliance;~~

~~(b) Provide the office of superintendent of public instruction with supplemental information that may serve as a basis for amending the notification of noncompliance; or~~

~~(c) Provide any revisions to the proposed corrective action plan.~~

~~(2) If the school district or public charter school provides the office of superintendent of public instruction with supplemental in-~~

~~formation, the office of superintendent of public instruction must respond to the school district or charter school with a final monitoring report within thirty calendar days after receipt of the supplemental information.~~

~~(3) If the school district or public charter school does not timely address the identified noncompliance with corrective actions, the superintendent of public instruction may, at his or her discretion, undertake actions to ensure the school district's or charter school's compliance. Such actions may include, but are not limited to, referring the school district or public charter school to appropriate state or federal agencies empowered to order compliance with the law, or the initiation of sanctions or corrective measures under WAC 392-190-080.~~)) OSPI's monitoring may be resolved at any time when, before the conclusion of the monitoring by OSPI, the school district enters into a voluntary resolution agreement with OSPI to take actions to resolve noncompliance with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, or chapters 28A.640 and 28A.642 RCW.

(2) Following the monitoring, OSPI will make an independent determination as to whether the preponderance of the evidence shows the school district has failed to comply with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005. OSPI will issue a written proposed order to the school district that states OSPI's determination with regard to each issue identified for investigation in the notice provided under WAC 392-190-076.

(3) If OSPI determines the school district has failed to comply with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, or chapters 28A.640 and 28A.642 RCW, OSPI will issue a proposed order that includes:

(a) Findings of fact;

(b) One or more conclusions of law stating how the school district failed to comply with this chapter, including as interpreted in the guidelines adopted under WAC 392-190-005, or chapters 28A.640 and 28A.642 RCW;

(c) An order of appropriate corrective measures or sanctions which could include, but is not limited to:

(i) The institution of a corrective action plan, which will include corrective actions OSPI deemed necessary to correct the noncompliance, the timeline for completing such corrective actions, and the documentation the school district must provide OSPI to show the corrective actions are completed; or

(ii) The institution of permissible sanctions or other corrective measures outlined in WAC 392-190-080; and

(d) Notice of appeal procedures under WAC 392-190-079.

(4) If the school district does not exercise the right to appeal the proposed order pursuant to the procedures described in WAC 392-190-079 within 30 calendar days of the date of the proposed order, the proposed order shall be the final order of the agency.

(5) All corrective actions must be completed within the timelines established in the final order unless OSPI grants an extension. If timely compliance by a school district is not achieved, OSPI may take actions to ensure compliance. Such actions may include, but are not limited to, referring the school district to appropriate state or federal agencies empowered to order compliance with the law or the initiation of additional sanctions or corrective measures WAC 392-190-080.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-079 Monitoring—Appeal procedure. (1) A complainant((~~,~~)) or school district((~~, or public charter school~~)) that desires to appeal the ((~~written decision of the office of superintendent of public instruction~~)) proposed order of OSPI issued under WAC 392-190-075 or 392-190-077 may file an appeal with ((~~the superintendent of public instruction~~)) OSPI in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of ((~~the superintendent of public instruction~~)) OSPI in chapter 392-101 WAC. To initiate review under this section, a complainant((~~,~~)) or school district((~~, or public charter school~~)) must file a written notice with ((~~the superintendent of public instruction~~)) OSPI within ((~~thirty~~)) 30 calendar days following the date of receipt of ((~~the office of superintendent of public instruction's written decision~~)) OSPI's proposed order under WAC 392-190-075 or 392-190-077.

(2) For purposes of hearing an appeal under this section, ((~~the superintendent of public instruction~~)) OSPI must conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. ((~~The superintendent of public instruction~~)) OSPI, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-080 Violations—Permissible sanctions. In the event a school district ((~~or public charter school~~)) is found to be in violation of the requirements of this chapter, ((~~the superintendent of public instruction~~)) OSPI may, by appropriate order pursuant to chapter 34.05 RCW, impose an appropriate sanction or institute appropriate corrective measures including, but not limited to:

(1) The termination of all or part of state apportionment or categorical moneys to the offending school district ((~~or public charter school~~));

(2) The termination of specified programs wherein the violation or violations are found to be flagrant in nature;

(3) The institution of a mandatory affirmative action program within the offending school district ((~~or public charter school~~)); and

(4) The placement of the offending school district ((~~or public charter school~~)) on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by ((~~the superintendent of public instruction~~)) OSPI.

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

WAC 392-190-081 Concurrent claims and remedies. (1) Except as provided in subsections (2) and (3) of this section, nothing in this chapter is intended to deny an aggrieved person from simultaneously pursuing other available administrative, civil, or criminal remedies for an alleged violation of the law.

(2) A complaint made under WAC 392-190-065 through 392-190-075 may be held in abeyance for a period of time pending the outcome of any proceeding in state or federal court or before a local, state or federal agency in which the same claim or claims are at issue, whether under RCW 28A.640.040, 28A.642.040, or any other law.

(3) Where the complainant elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, in some circumstances, be binding on all or portions of the claims pending before other tribunals.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-190-056	Sexual harassment——Definitions.
WAC 392-190-082	Informing citizens about complaint procedures.