

**WSR 17-01-019****PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed December 12, 2016, 9:47 a.m.]

Continuance of WSR 16-23-165.

Preproposal statement of inquiry was filed as WSR 14-05-042.

Title of Rule and Other Identifying Information: Chapter 308-108 WAC, Driver training schools and chapter 308-110 WAC, Administration of knowledge and skills testing by driver training schools.

Hearing Location(s): Kent City Hall, Chambers East and West, First Floor, 220 4th Avenue South, Kent, WA 98032, on January 26, 2017, at 10:30 a.m.

Date of Intended Adoption: January 27, 2017.

Submit Written Comments to: Sirena Walters, P.O. Box 9027, Olympia, WA 98507, email TSE@dol.wa.gov, fax (360) 570-4976, by January 25, 2017.

Assistance for Persons with Disabilities: Contact driver training schools (DTS) by January 25, 2017, TTY (360) 664-0116 or (360) 664-6692.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes will update current rules for DTS to clarify compliance procedures and the requirements for teaching and administering examinations for traffic safety education.

Reasons Supporting Proposal: Improve compliance and understanding of requirements for our applicants and licensees.

Statutory Authority for Adoption: Chapter 46.82 RCW and RCW 46.02.110.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Loni Miller, 405 Black Lake Boulevard South, Olympia, WA 98502, (360) 664-6692; Implementation: Sirena Walters, 405 Black Lake Boulevard South, Olympia, WA 98502, (360) 664-6692; and Enforcement: Derek Goudriaan, 405 Black Lake Boulevard South, Olympia, WA 98502, (360) 664-6692.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt per RCW 19.85.030 (1)(a) since it will impose only minor costs of less than \$100 to businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

December 12, 2016  
Damon Monroe  
Rules Coordinator

**WSR 17-01-030****PROPOSED RULES****DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed December 12, 2016, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-065.

Title of Rule and Other Identifying Information: New rule concerning 2008 early retirement factors (ERF) and post-retirement employment.

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Tuesday, January 24, 2017, at 2:00 p.m.

Date of Intended Adoption: January 24, 2017.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email jilenes@drs.wa.gov, fax (360) 753-3166, by January 23, 2017, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by January 20, 2017, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: EHB 2391, passed in 2007, provided optional subsidized 2008 ERFs for Plan 2 and Plan 3 members in the state's retirement systems, with restrictions on post-retirement employment. This new rule will clarify how the department interprets those provisions.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Implementation: Jacob White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

December 12, 2016  
Jilene Siegel  
Rules Coordinator

**NEW SECTION**

**WAC 415-02-325 2008 Early retirement factors.** (1) **What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system (SERS); and teachers' retirement system (TRS). The 2008

ERFs provide a higher retirement benefit than the three percent ERFs, but impose stricter return to work rules.

**(2) If I retire before age sixty-five using the 2008 ERFs, how will my benefit be calculated?** Your normal (age sixty-five) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

**(3) Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered membership prior to May 1, 2013, must be at least age fifty-five and have at least thirty service credit years to be eligible for retirement using the 2008 ERFs.

**(4) What are the return to work rules if I retire under the 2008 ERFs?** The legislation that created the 2008 ERFs also established restrictions on retirees who return to an employer after selecting the 2008 ERF option. The 2008 ERF return to work restrictions are a broad prohibition to avoid incentives for early retirement while the member continues to collect payments from a public employer before reaching full retirement age. A retiree's benefit will stop if they retire under the 2008 ERFs and return to a DRS-covered employer, in any capacity for which they receive compensation, before age sixty-five.

**(5) What organizations are DRS-covered employers?** For the purpose of this section, a DRS-covered employer is any organization that employs one or more members of any retirement system administered by DRS. This includes, but is not limited to, public agencies, boards and commissions, counties, cities and towns, public schools and educational service districts, higher education institutions, libraries and utilities throughout the state. It also includes first class cities that maintain separate retirement systems but also employ members of the law enforcement officers' and fire fighters' retirement system.

**(6) What types of compensation impact my benefit if I retire under the 2008 ERFs and return to work before age sixty-five?** The legislature defines "employment with an employer" for purposes of the 2008 ERF return to work restrictions as including "any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer." The phrase "any other similar compensated rela-

tionship with any employer" includes both employment with a DRS-covered employer and any other type of compensated relationship with a DRS-covered employer.

**Example:**

**Bob, an attorney for the city of Olympia, retires using the 2008 ERFs. Can Bob receive his pension if he subsequently provides legal services to Spokane County?** It depends on whether Bob's compensated relationship with Spokane County meets the definition of "employment with an employer." Below are examples of the different types of potential compensated relationships Bob could have, and whether those relationships would be considered "employment with an employer."

**Personal service contract.** If Bob has a personal service contract with Spokane County to provide legal services, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he provides this compensated service to Spokane County.

**Sole proprietorship or partnership. 2008 ERF retiree is sole proprietor or partner.** If Bob is a sole proprietor or a partner of a law firm; the firm contracts with Spokane County to provide services; and Bob or any other employee of the law firm provides legal services to Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he or his firm provides service to Spokane County under the contract.

**Corporation. 2008 ERF retiree is a shareholder of a publicly traded corporation.** If Bob is a shareholder of a publicly traded corporation and the corporation contracts with Spokane County to provide services, then Bob would not be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

**Corporation. ERF retiree is an employee of the corporation.** If Bob is working for the corporation solely on matters unrelated to the corporation's contract with Spokane County, Bob is not in a "similar compensated relationship" with Spokane County. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

If Bob is working for the corporation on matters that are related to the corporation's contract with Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer."

**(7) What is considered compensation?** Compensation is financial consideration for work performed, regardless of whether that consideration is paid as a salary, hourly amount, or flat dollar amount. A reimbursement is not considered compensation.

**Examples:**

**Basketball referee** - A TRS Plan 2 member retires using the 2008 ERFs at age 62. He receives a \$2,500 monthly pension payment. When he is 64, he referees one high school basketball game. He receives a flat dollar amount of \$50 for refereeing the game. Under the 2008 ERF return to work

restrictions, he has returned to the employment of an employer and received compensation. Therefore, his \$2,500 pension benefit is forfeited for the month he earned the \$50 payment.

**Board/commission** - A PERS Plan 3 member retires using the 2008 ERFs at age 60. She receives a \$1,200 monthly pension payment. When she is 62, she is elected as a member of the local school board. As a school board member she does not receive a salary; however, she does receive reimbursements for travel and food. Under the 2008 ERF return to work restrictions, she is able to continue to receive her pension while receiving those reimbursements.

(8) **What are a DRS employer's responsibilities for determining whether an employee is a 2008 ERF retiree?** RCW 41.50.139 requires DRS employers to obtain, in writing, the retirement status of all new employees. If the employer fails to report a 2008 ERF retiree's retirement status to the department, the employer is liable for any overpayments that may occur.

(9) **What are a DRS employer's responsibilities for determining whether a contractor's employees are 2008 ERF retirees?** DRS employers who hire a contractor to perform services for their organization will need to inquire with the contractor and confirm with DRS to determine if any of the workers providing services to the DRS employer through the contractor retired using the 2008 ERFs, or if the company is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended.

#### WSR 17-01-040

#### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed December 13, 2016, 12:52 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-56-320 from WSR 16-19-059 filed on September 19, 2016.

Scott Bird  
Rules Coordinator

#### WSR 17-01-060

#### PROPOSED RULES DEPARTMENT OF FINANCIAL INSTITUTIONS

(Securities Division)

[Filed December 14, 2016, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-021.

Title of Rule and Other Identifying Information: Technical updates to the manual exemptions. The division is proposing amendments to chapters 460-10A, 460-42A, and 460-44A WAC to make technical updates to the manual exemp-

tion, and to update references to securities manuals and rating agencies. The impacted sections are WAC 460-10A-160, 460-42A-030, 460-42A-082, and 460-44A-100.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on January 24, 2017, at 10:00 a.m.

Date of Intended Adoption: January 25, 2017.

Submit Written Comments to: Dan Matthews, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, email dan.matthews@dfi.wa.gov, fax (360) 704-6496, by January 24, 2017.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division is proposing amendments to WAC that would accomplish the following: (1) Amend the manual exemption in WAC 460-44A-100 to more closely align the exemption with Section 202(2) of the Uniform Securities Act of 2002; (2) amend the definition of "Nationally Recognized Securities Manual" in WAC 460-10A-160 to accommodate certain online investor services that are equivalent to preexisting securities manuals, and (3) amend WAC 460-10A-160, 460-42A-030, and 460-42A-082 to account for changes in the securities manual and securities ratings industries.

The division is proposing amending WAC 460-10A-160, 460-42A-030, 460-42A-082, and 460-44A-100.

Reasons Supporting Proposal: The division hopes to increase uniformity among the states and federally, to keep its rules current with industry practices, and to ensure its rules contain the most accurate information.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320 (1) and (17).

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Dan Matthews, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Gloria Papiez, Acting Director, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William M. Beatty, Director of Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

December 14, 2016

Gloria Papiez  
Acting Director

AMENDATORY SECTION (Amending WSR 14-13-005, filed 6/5/14, effective 7/6/14)

**WAC 460-10A-160 Nationally recognized securities manual.** For the purpose of WAC 460-44A-100, "Nationally recognized securities manual or its electronic equivalent" shall mean: *Fitch Investors Service, Mergent's Investor Service, and ((Standard and Poor's Corporation Records)) OTC Markets Group Inc. (with respect to securities included in the OTCQX and OTCQB markets).*

AMENDATORY SECTION (Amending WSR 89-17-080, filed 8/17/89, effective 9/17/89)

**WAC 460-42A-030 Exemption of securities pursuant to RCW 21.20.310(1).** Any security which would otherwise be exempt from registration under RCW 21.20.310(1) except that it is payable from a nongovernmental industrial or commercial enterprise shall be exempt from registration if it meets the requirements of either subsection (1) or (2) of this section:

(1) The security receives a rating of "AA" or better from Standard and Poor's Corporation or an equivalent rating from *((Moody's Investors Service)) Mergent, Inc.*; or

(2)(a) The security is issued to fund a single-family mortgage loan program established and operated by a state housing finance agency; and

(b) The security receives a rating of at least "A+" from Standard and Poor's Corporation or an equivalent rating from *((Moody's Investors Service)) Mergent, Inc.*

AMENDATORY SECTION (Amending WSR 97-16-051, filed 7/31/97, effective 8/31/97)

**WAC 460-42A-082 World class foreign issuer exemption.** (1) Any security meeting all of the following conditions is exempted under RCW 21.20.310(8):

(a) The securities are:

(i) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

(ii) Units consisting of equity securities permitted by (a)(i) of this subsection and warrants to purchase the same equity security being offered in the unit;

(iii) Nonconvertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's *((Moody's)) Corporation, Mergent, Inc., Dominion Bond Rating Services ((of)), Canadian Bond Rating Services or such other rating organization which the administrator by rule or order may designate. For purposes of this subsection (1)(a)(iii) of this section, nonconvertible debt securities means securities that cannot be converted for at least one year from the date of issuance and then only into equity shares of the issuer or its parent; or*

(iv) American Depository receipt representing securities described in (a)(i), (ii) or (iii) of this subsection.

(b) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

(c) The issuer, at the time an offer or sale is made under this subsection, has been a going concern engaged in continuous business operations for the immediate past five years and during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this subsection (1)(c) of this section, the operating history of any predecessor that represented more than fifty percent of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the five year requirement.

(d) The issuer, at the time an offer or sale is made under this subsection (1)(d) of this section, has public float of one billion dollars (United States) or more.

(e) The market value of the issuer's equity shares, at the time an offer or sale is made under this subsection, is three billion dollars (United States) or more.

(f) The issuer, at the time an offer or sale is made under this subsection (1)(f) of this section, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in Rule 902 (a)(1) or successor rule promulgated under the Securities Act of 1933 or designated by the U.S. Securities and Exchange Commission under Rule 902 (a)(2) promulgated under the Securities Act of 1933.

(2) For purposes of this section:

(a) "Public float" means the market value of all outstanding equity shares owned by nonaffiliates.

(b) "Equity shares" means common shares, nonvoting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

(c) An "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than ten percent of the outstanding equity shares of such person.

AMENDATORY SECTION (Amending WSR 98-17-012, filed 8/10/98, effective 9/10/98)

**WAC 460-44A-100 Nonissuer transactions pursuant to RCW 21.20.320(2)—Manual exemption.** Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days shall be exempt pursuant to RCW 21.20.320(2) provided that, at the time of the transaction:

(1) The issuer of the security is actually engaged in business and not in the organizational stage, bankruptcy, or receivership;

(2) The issuer is not a blank check, blind pool or shell company *((whose)) that has no specific business plan or purpose or has indicated that its primary ((plan of)) business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person ((or persons));*

(3) The security is sold at a price reasonably related to *((the)) its current market price ((of the security));*

(4) The security does not constitute *((all)) the whole or part of an unsold allotment to, or a subscription or participa-*

tion by, the broker-dealer as an underwriter of the security or a redistribution;

(5) A nationally recognized securities manual or its electronic equivalent designated by the director pursuant to WAC 460-10A-160 or a document filed with and publicly available through the U.S. Securities ~~((&))~~ and Exchange ((Commission's Electronic Data Gathering and Retrieval System (EDGAR))) Commission that is publicly available contains:

(a) A description of the business and operations of the issuer;

(b) The names of the issuer's executive officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(c) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger ~~((where))~~ when the parties to the reorganization or merger each had ((such)) an audited balance sheet, a pro forma balance sheet for the combined organization; and

(d) An audited income statement for each of the issuer's two immediately ((preceding two)) previous fiscal years((;)) or for the period of existence of the issuer, ~~((if in existence for less than two years))~~ whichever is shorter or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(6) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(a) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(b) The issuer of the security, including its predecessors, has been engaged in continuous business ~~((including predecessors))~~ for at least three years; or

(c) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger where parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 24, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 25, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 24, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 10, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing will amend WAC 388-450-0070 to comply with federal regulations for income and deductions for basic food, the Washington combined application program, the food assistance program for legal immigrants, and transitional food assistance.

Reasons Supporting Proposal: Refer to Purpose above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 7 C.F.R. 273.2, 7 C.F.R. 273.3.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4611.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. It only impacts DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 13, 2016

Katherine I. Vasquez

Rules Coordinator

**WSR 17-01-072**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed December 15, 2016, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-078.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0070 How do we count the earned income of a child?

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

**WAC 388-450-0070 ((How)) When do we count ((the earned income of a child)) a child's income?** (1) For food assistance, we do not count ~~((the earnings of a child))~~ a child's earned income if the child is:

- (a) In school;
- (b) Age seventeen or younger;
- (c) Not married; and

(d) ~~((Not emancipated))~~ Living with a natural parent, adoptive parent, or stepparent or is under the parental control of a household member other than a parent.

(2) For cash assistance, we do not count ~~((the earnings of a child))~~ a child's earnings if the child is:

(a) In school; and

(b) Meets the age and attendance requirements in WAC 388-404-0005.

(3) School includes:

(a) Participating in a home-school program that is approved by the superintendent of public instruction; or

(b) On break between school terms when the child:

(i) Was enrolled during the previous school term; and

(ii) Plans to return to school when it reopens.

### WSR 17-01-112

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed December 19, 2016, 4:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-103.

Title of Rule and Other Identifying Information: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC), establishing new sections for WIC participant compliance.

Hearing Location(s): Department of Health (DOH), 310 Israel Road S.E., Point Plaza East, Room 152, Tumwater, WA 98504-7830, on January 25, 2017, at 1:00 p.m.

Date of Intended Adoption: January 31, 2017.

Submit Written Comments to: Margaret Hansen, P.O. Box 47848, Olympia, WA 98504-7848, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2345, by January 20, 2017.

Assistance for Persons with Disabilities: Contact Margaret Hansen by January 18, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal supports the awareness of WIC clinic, WIC participant, DOH staff, and others involved in the hearing process of WIC participant requirements and violations. The proposal will:

- Clarify requirements an applicant must meet to be certified as a WIC participant;
- Clarify the circumstances and process for verifying and sharing WIC applicant information;
- Establish participant violations and the sanctions that will be applied when a violation occurs;
- Clarify circumstances in which a monetary claim will be imposed and the claim process;
- Establish the circumstances in which a participant will be disqualified; and
- Describe the participant appeal process.

Reasons Supporting Proposal: 7 C.F.R. Â§ 246.12 (u)(1) requires the department to establish procedures designed to control participant violations, and to establish sanctions. Under RCW 43.70.120, DOH can adopt such rules and regu-

lation[s] as may be necessary to entitle Washington to receive federal funds. It is anticipated this increased awareness will result in fewer client violations. The proposed rule will support DOH's ability to recover losses to the program when a violation occurs. The proposed rule also provides clarity and consistency for all parties involved in the hearing process.

Statutory Authority for Adoption: RCW 43.70.120.

Statute Being Implemented: RCW 43.70.120.

Rule is necessary because of federal law, 7 C.F.R. Â§ 246.12 (u)(1).

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Hansen, 310 Israel Road S.E., Tumwater, WA 98504-7830, (360) 236-3763; Implementation: Troy Parks, 310 Israel Road S.E., Tumwater, WA 98504-7830, (360) 236-3610; and Enforcement: Janet Charles, 310 Israel Road S.E., Tumwater, WA 98504-7830, (360) 236-3697.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Margaret Hansen, 310 Israel Road S.E., Tumwater, WA 98504-7830, phone (360) 236-3763, fax (360) 236-2345, email [Margaret.Hansen@doh.wa.gov](mailto:Margaret.Hansen@doh.wa.gov).

December 19, 2016

John Wiesman, DrPH, MPH  
Secretary

### PARTICIPANT COMPLIANCE

#### NEW SECTION

**WAC 246-790-500 Definitions related to participant compliance.** The definitions in this section apply to this section through WAC 246-790-570 unless the context clearly indicates otherwise.

(1) "Appeal" means a formal proceeding where a participant who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.

(2) "Applicant" means any pregnant woman, postpartum woman, infant or child, or caregiver of an infant or child who is applying to receive WIC program benefits, and a breastfeeding infant of an applicant breastfeeding woman. Applicants include individuals who are currently participating in the program but are applying because their certification period is about to expire.

(3) "Authorized supplemental foods" means those supplemental foods authorized by the department for issuance to a particular participant.

(4) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

(5) "C.F.R." means Code of Federal Regulations.

(6) "Claim" means a type of sanction demanding repayment for misuse of WIC/FMNP benefits by a WIC participant.

(7) "Deliberate" means acting intentionally, knowingly and voluntarily and not because of mistake or accident.

(8) "Department" means the Washington state department of health.

(9) "Disqualification" means the act of ending the WIC program participation of a participant whether as a punitive sanction or for administrative reasons.

(10) "Dual participation" means program participation in one or more than one WIC clinic.

(11) "Eligibility criteria" means the reasons people qualify for WIC program benefits as described in 7 C.F.R. Sec. 246.7(c).

(12) "Farmers' market nutrition program (FMNP)" means a program to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants, and to expand the awareness, use of, and sales at farmers' markets.

(13) "Food instrument" means the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, cash value vouchers, or electronic benefit transfer (EBT) payment.

(14) "Local agency" means:

(a) A public or private nonprofit health or human services agency that provides health services either directly or through contract with the department to provide services, in accordance with 7 C.F.R. Sec. 245.5;

(b) An Indian health services unit in contract with the department to provide services;

(c) An Indian Tribe, band or group recognized by the department; and/or

(d) An intertribal council or group that is an authorized representative of Indian Tribes, bands or groups.

(15) "Notice of violation" means a written document given to a participant, or caregiver of an infant or child participant, when the department determines a participant or caregivers of an infant or child participant, have not complied with WIC program requirements, federal WIC regulations, this chapter, or the participant rights and responsibilities form. This notice is a type of sanction which explains the violation and provides a warning about repercussions of subsequent violations.

(16) "Nutritional risk" means detrimental or abnormal nutritional conditions detectable by biochemical or anthropomorphic measurements; other documented nutritionally related medical conditions; dietary deficiencies that impair or endanger health; conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions including, but not limited to, homelessness and migrancy, as specified in 7 C.F.R. Sec. 246.2.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant violation" means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program.

(19) "Proxy" means an individual who is designated by a participant or a child or infant participant's parent, guardian, or caretaker to receive food instruments and to redeem food

instruments for the participant and whose name is on file at the local agency.

(20) "Restitution" means reimbursement to the department of the cash value of the WIC program benefits received by a participant as the result of a sanction imposed for a violation.

(21) "Sanction" means a penalty imposed by the department of health WIC program because of a violation. The three types of sanctions are notice of violation, disqualification, and claim.

(22) "SNAP" means the federal Supplemental Nutrition Assistance Program. SNAP was previously known as the Food Stamp Program.

(23) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC approved foods to WIC participants.

(24) "Violation" means any deliberate action of a WIC participant or caregiver of an infant or child participant, including actions listed in WAC 246-790-520 that violate federal or state statutes, regulations, policies or procedures governing the WIC program.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. Sec. 246.

(26) "WIC benefits" means benefits a participant receives that include, but are not limited to, food, formula, and breast pumps.

(27) "WIC Participant Rights and Responsibilities form" means a document a WIC participant or proxy has signed showing she or he has been advised of and agrees to WIC program rights and obligations.

## NEW SECTION

**WAC 246-790-501 Participant purpose.** (1) The federal special supplemental nutrition program for women, infants, and children (WIC) provides supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income through payment of cash grants to states that operate WIC food delivery systems. The department operates a WIC retail food delivery system in which WIC participants obtain authorized supplemental foods by submitting a food instrument to a retail business that has entered into a contract with the department to provide such service. The department's WIC operations comply with the most current version of 7 C.F.R. Sec. 246. Copies are available from the Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, or by calling the WIC nutrition program at 800-841-1410.

(2) The purpose of this chapter is to establish:

(a) Requirements an applicant must meet to be certified as a WIC participant;

(b) Circumstances and process for verifying and sharing WIC applicant information;

(c) Participant violations and the sanctions that will be applied when violations occur;

(d) The circumstances in which a monetary claim will be imposed, the process for establishing a claim, and the conse-

quences for failing to pay, or make arrangements to pay, a claim;

- (e) The circumstances in which participants are disqualified; and
- (f) The participant appeal process.

NEW SECTION

**WAC 246-790-510 Participant certification requirements.** (1) To be eligible for the WIC program, at the time of application an applicant must:

(a) Be a pregnant woman, a breastfeeding woman up to one year after delivery, postpartum woman through six months after delivery, an infant up to one year of age, or a child from age one through the end of the month he or she turns five years of age;

(b) Reside within the state of Washington;

(c) Meet the department's income eligibility criteria as described in 7 C.F.R. Sec. 246.7; and

(d) Be at nutritional risk as defined by the department.

(2) At the time of enrolling in the WIC program, the applicant must:

(a) Provide truthful and accurate information to WIC agency staff;

(b) Present proof of residency, identity, and income; and

(c) Review and sign the department's "Rights and Responsibility" form acknowledging that the applicant has read and agrees to the rules governing WIC participants.

(3) WIC participants may participate in only one WIC clinic at a time.

(4) The department may remove a participant from the WIC program if the WIC participant no longer meets the WIC eligibility requirements.

(5) A WIC participant is eligible to receive farmers' market nutrition program (FMNP) food instruments if the participant meets all of the following eligibility criteria on the date the food instrument is issued:

(a) The WIC participant is currently receiving WIC pursuant to 7 C.F.R. Sec. 246 and this chapter.

(b) The WIC participant belongs to eligible WIC categories described in 7 C.F.R. Sec. 246.7 with the exception that the child must be four years of age or older.

(6) WIC participants must notify the department of any changes in status including, but not limited to, change in household income; change in eligibility status in an adjunct eligibility program, including basic food program, temporary assistance to needy families (TANF), food distribution program to Indian reservations (FDPIR), or medical assistance program; change of number in household; or change in breastfeeding status.

(7) The department will notify WIC participants of their program rights and responsibilities, program rules, and that there are sanctions should they deliberately violate a program rule.

NEW SECTION

**WAC 246-790-520 Participant information verification and sharing.** (1) The department and local WIC agency staff may verify any of the information provided by any person applying for or receiving WIC benefits.

(2) When a WIC participant moves to a new service area or state, the WIC agency staff or state staff will share the participant's eligibility information with staff at the new WIC agency or the state.

(3) The department may provide information to law enforcement agencies when it is determined that a participant violated program rules.

NEW SECTION

**WAC 246-790-530 WIC participant violations and sanctions.** (1) When any WIC participant or caregiver deliberately violates the federal or state statutes, regulations, policies or procedures governing the WIC program, the department will initiate appropriate enforcement action which may include establishment of claims under WAC 246-790-550 or disqualification under WAC 246-790-560. Violations and applicable sanctions are listed below:

Violations	1st Instance	2nd Instance	Subsequent Instances
Redeeming or attempting to redeem a food instrument for unauthorized foods or formula.	Notice of violation	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim
Returning or attempting to return foods purchased with a food instrument to a WIC vendor in exchange for money or a different food.	Notice of violation	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim
Redeeming a food instrument reported as lost or stolen, and then replaced.	Notice of violation	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim



Violations	1st Instance	2nd Instance	Subsequent Instances
Destruction of vendor or farmer property during a WIC transaction.	Notice of violation if replacement or repair cost is less than \$100 6-month disqualification if replacement or repair cost is more than \$100	1-year disqualification	1-year disqualification
Destruction of state or local agency property during a WIC visit.	Notice of violation if replacement or repair cost is less than \$100 6-month disqualification if replacement or repair cost is more than \$100	1-year disqualification	1-year disqualification
Altering a food instrument.	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim	1-year disqualification and claim
Making false or misleading statements or deliberately misrepresenting, concealing or withholding facts to obtain or increase benefits.	Notice of violation and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim	1-year disqualification and claim
Participating in and spending WIC food instruments from more than one WIC clinic during the same time period (dual participation).	Notice of violation and claim if claim is less than \$100; termination from one of the WIC clinics 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim	1-year disqualification and claim
Threatening to harm or physically harming clinic, farmer or vendor staff during a WIC visit.	6-month disqualification	1-year disqualification	1-year disqualification
Failure to comply with department or local agency request for information required to verify eligibility.	1-year disqualification	1-year disqualification	1-year disqualification
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell or exchange food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other non-food items (trafficking). This includes verbally, in print or online through web sites and social media.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim

Violations	1st Instance	2nd Instance	Subsequent Instances
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell or exchange a WIC multi-user breast pump for cash, credit, merchandise, favors, or other items (trafficking). This includes verbally, in print or online through web sites and social media.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim
Theft of a food instrument by a WIC participant.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim

(2) During each certification visit, participants will be informed of their rights and responsibilities, program rules and that there are sanctions should they deliberately violate a program rule.

(3) Whenever the department assesses a claim of misappropriated WIC program benefits of one hundred dollars or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year.

(4) The department may decide not to impose a disqualification if, within thirty days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or by a participant under the age of eighteen, the department may approve the designation of a proxy in order to continue program benefits to these participants.

(5) Participants may reapply for benefits at any time after the disqualification period is over.

(6) The department must consider designating a substitute caregiver instead of disqualification for infants, children, and women under eighteen years of age.

(7) Second and subsequent instances of violations are assessed based on a twelve-month period from the first notice that a violation has occurred. Violations instances are household-based.

NEW SECTION

**WAC 246-790-550 Participant claims.** (1) If the department determines that a WIC participant has committed a violation listed in WAC 246-790-530 which involves the misuse of WIC benefits, the department shall establish a claim against the participant for the full value of such benefits.

(2) The department shall provide a written notice to the WIC participant of the claim, describing the violation, and demanding a specific repayment amount.

(3) If the WIC participant does not appeal the claim as provided in WAC 246-790-570, make full restitution, or agree to a repayment schedule within thirty days of receiving the letter, the department may take additional collection actions as authorized by law, unless the department deter-

mines that further collection actions would not be cost-effective.

NEW SECTION

**WAC 246-790-560 Participant disqualification.** (1) In addition to the disqualifications set forth in the table under WAC 246-790-530, whenever the department assesses a claim under WAC 246-790-550 of one hundred dollars or more, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year. In addition, a claim may be assessed for misuse of WIC/FMNP benefits.

(2) The department will count any violation occurring within the consecutive twelve-month period following the first notice of violation as a second or subsequent violation.

(3) The department will count any second or subsequent violation as a second or subsequent violation even if:

(a) Another member of the WIC participant's household commits the violation; or

(b) The violation affects the WIC benefits of another WIC participant in the same household.

(4) The department shall provide a written notice to the WIC participant describing the violations and specifying the sanction.

(5) For a violation involving a claim, the department may decline to impose a disqualification if the WIC participant makes full restitution, or agrees to a repayment schedule within thirty days of the date the notice of disqualification was sent.

(6) Where a parent or caregiver of an infant or child participant or a WIC participant under the age of eighteen has committed the violation, the department may designate a proxy to continue providing WIC benefits to the participant.

(7) Participants may reapply for benefits at any time after the end of the disqualification period.

NEW SECTION

**WAC 246-790-570 Participant appeal process.** (1) An applicant or WIC participant may file an appeal of the department's decision to deny an applicant, establish a claim, or disqualify a person from receiving WIC benefits.

(2) At the time the department determines an applicant ineligible, issues a disqualification, or establishes a claim, the

department shall provide written notice of appeal rights informing the person of how to file the appeal and that the person may represent themselves personally or be represented by a spokesperson. The spokesperson does not need to be a member of the Washington state bar.

(3) The applicant or WIC participant must file the appeal within sixty calendar days of service of the notice of adverse action. Proceedings under WAC 246-790-500 through this section must be in accordance with 7 C.F.R. Sec. 246.9 and chapter 246-10 WAC including, at a minimum:

(a) A hearing conducted by an impartial official;

(b) A scheduling order that sets the time and dates of steps in the hearing process;

(c) A prehearing conference in which the hearing official explains the procedures and establishes the conduct at hearing;

(d) A hearing in which the appellant and the department's WIC program can present evidence and cross-examine witnesses.

(4) Participants who appeal the termination of benefits within fifteen days of service of the adverse action notice must continue to receive program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible during a certification period may appeal the denial of WIC certification or disqualification within sixty days, but must not receive benefits while awaiting the hearing or its results.

(5) If a provision of chapter 246-10 WAC conflicts with 7 C.F.R. Sec. 246.9, federal regulation prevails.

**WSR 17-01-120**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed December 20, 2016, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-22-066.

Title of Rule and Other Identifying Information: Chapter 296-14 WAC, Industrial insurance—Pension tables, pension discount rate and mortality tables, amending WAC 296-14-8810.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Auditorium, Tumwater, WA 98501, on January 24, 2017, at 1:30 p.m.

Date of Intended Adoption: February 14, 2017.

Submit Written Comments to: Suzy Campbell, P.O. Box 44208, Olympia, WA 98504-4208, email [suzanne.campbell@lni.wa.gov](mailto:suzanne.campbell@lni.wa.gov), fax (360) 902-4960, by 5 p.m. on January 25, 2017.

Assistance for Persons with Disabilities: Contact Veronica Berets by January 17, 2017, at [Veronica.Berets@lni.wa.gov](mailto:Veronica.Berets@lni.wa.gov) or (360) 902-4252.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. Currently, WAC 296-14-8810 sets the pension discount rate at 6.3 percent. The department has worked with the workers' compensation advisory committee (WCAC) to develop a plan for reducing the pension discount rate annually, through 2022, until it reaches 4.5 percent. The purpose of this rule making is to reduce the current pension discount rate to 6.2 percent in 2017.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, (360) 902-5003; Implementation: Sandi Haerling, Tumwater, Washington, (360) 902-5006; and Enforcement: Vickie Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Labor and industries is exempt from preparing a small business economic impact statement under RCW 19.85.025(3) referencing RCW 34.05.310 (4)(f) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. Labor and industries is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

December 20, 2016

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 16-05-087, filed 2/16/16, effective 4/1/16)

**WAC 296-14-8810 Pension tables, pension discount rate and mortality tables.** (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;

(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; and

(iii) A pension discount rate of ~~((6.3))~~ 6.2 percent.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability,

and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

**WSR 17-01-127**  
**PROPOSED RULES**  
**WESTERN WASHINGTON UNIVERSITY**

[Filed December 20, 2016, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-026.

Title of Rule and Other Identifying Information: Chapter 516-21 WAC, Student rights and responsibilities code.

Hearing Location(s): Western Washington University (WWU), Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225-9015, on January 25, 2017, at 12:00 p.m.

Date of Intended Adoption: February 10, 2017.

Submit Written Comments to: Jennifer Sloan, Rules Coordinator, 516 High Street, Old Main 331, Bellingham, WA 98225-9015, email Jennifer.Sloan@wwu.edu, fax (360) 650-6197, by January 24, 2017.

Assistance for Persons with Disabilities: Contact Jennifer Sloan by January 13, 2017, TTY (800) 833-6384 or (360) 650-3117.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes add a new section on amnesty to clarify the current practice of encouraging students to seek medical assistance and/or report sexual violence without fear of punishment through the code. A new section regarding violation of university policy, rule, or regulation. Updates to sections regarding alcohol; drugs and paraphernalia; and weapons and destructive devices to better align with recent changes to state law. New sections that better define prohibited conduct related to Title IX. New violation section for notification of criminal arrest to match admissions application question and comply with changing state law. Updates to the process for violations of the code.

Reasons Supporting Proposal: The proposal clarifies existing rules, adds new sections, and updates the student conduct code on university procedures, in line with state and federal laws and guidance.

Statutory Authority for Adoption: RCW 28B.35.120; chapter 34.05 RCW; and 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

Rule is necessary because of federal law, 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

Name of Proponent: WWU, public.

Name of Agency Personnel Responsible for Drafting: Michael Sledge, Assistant Dean of Students, WWU Viking Union 506A, (360) 650-2484; Implementation and Enforcement: Tedd Pratt, Dean of Students, WWU Viking Union 544, (360) 650-3450.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to

the student rights and responsibilities code would not impose a disproportionate impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed changes are not considered a significant legislative rule by WWU.

December 20, 2016

Jennifer L. Sloan

Rules Coordinator

**Chapter 516-21 WAC**

**STUDENT (~~(RIGHTS AND RESPONSIBILITIES)~~)**  
**CONDUCT CODE**

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-010 Introduction.** Western Washington University students enjoy the same basic rights, privileges, and freedoms granted to all members of society. At the same time, acceptance of admission to the university carries with it an obligation to fulfill certain responsibilities and expectations as a member of the Western Washington University community.

As ~~(a condition of enrollment at)~~ members of the Western community, students must assume responsibility for their own actions and maintain an environment conducive to ~~((the))~~ academic success ~~((, safety, and well-being of others))~~. In addition, they are expected to be truthful, respect the rights of others, and abide by all university policies and procedures, as well as all applicable local, state, and federal laws and regulations. All students are responsible for understanding and complying with the responsibilities and expectations set forth in this code both on and off campus.

The student conduct process ~~((at Western is designed to be a learning process that promotes an understanding of students' responsibilities as members of the university community. The objectives of the student conduct system, as set forth in this code, are twofold: To ensure that students act in a manner consistent with high standards of scholarship and behavior, and to maintain))~~ is intended to be educational in ensuring that students act in a manner consistent with high standards of scholarship and behavior, while maintaining the safety and well-being of all members of the university community.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-020 Definitions.** As used in this chapter, the following words and phrases mean:

(1) ~~((**Appeals board.** The student conduct appeals board.~~

(2) ~~(**Business**)~~ **Day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

~~((3))~~ (2) **Catalog.** The *Western Washington University General Catalog*.

~~((4))~~ (3) **Code.** The student ~~((rights and responsibilities))~~ conduct code.

(4) **Board.** The student conduct appeals board.

(5) **Conduct hold** (~~(or judicial hold)~~). A block placed on a student's official university record at the request of ~~((the))~~ a conduct officer or dean of students. A conduct ~~((or judicial))~~ hold prohibits a student from registering for classes, requesting an official transcript, or receiving a degree from the university until the hold has been removed.

(6) **Conduct officer.** ~~((The student))~~ A conduct officer or ~~((his/her))~~ their authorized designee as determined by the dean of students.

(7) **Dean of students.** The dean of students or ~~((his/her))~~ their authorized designee.

(8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.

(9) **Member of the university community.** Any person who is a student, university official, registered volunteer or who is otherwise employed or contracted by the university. Any question regarding a person's status in a particular situation for purposes of this code shall be determined by the dean of students.

(10) **Official university function.** Any activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.

(11) **Preponderance of evidence.** Defined as "more likely than not," the standard of responsibility that is used when determining whether a violation of the student ~~((rights and responsibilities))~~ conduct code has occurred.

(12) **Student.** Any person who:

(a) Has been formally admitted to the university;

(b) Is enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;

(c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;

(d) Is participating in a university-sponsored study abroad program;

(e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or

(f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university.

(13) **University.** Western Washington University and all associated programs, including those offered online and/or at off-campus program sites.

(14) **University official.** Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time, and may include student staff members.

(15) **University property.** All land, buildings, facilities, electronic presences and other property that is owned, used, leased, or controlled by Western Washington University wherever located. University property also includes computer systems, and adjacent streets and sidewalks.

(16) **WAC.** An abbreviation for the Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-030 Jurisdiction.** (1) The student ~~((rights and responsibilities))~~ conduct code applies to all conduct that occurs on university property or in connection with any official university function.

(2) Western Washington University does not act as a policing agent for students when they are off campus. However, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest. Student conduct that occurs off campus may be subject to the student ~~((rights and responsibilities))~~ conduct code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, ~~((the student))~~ a conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged ~~((victim(s)))~~ complainant(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of students for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enrollment. Students who are found to be in violation of the code may be subject to sanctions under the code.

(4) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, a conduct hold will be placed on the student's official record, preventing them from registering for classes, requesting an official transcript, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s).

(5) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

#### NEW SECTION

**WAC 516-21-055 Amnesty.** (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students are encouraged to seek swift medical assistance for themselves and others without fear of penalty. Students requesting and receiving medical assistance in these situations will not typically be subject to the student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from

other violations of the code. Western will consider the positive impact of reporting a situation when determining any course of action.

(2) Complainants and witnesses who in good faith report sexual violence will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual violence unless their own conduct placed another person's health or safety at risk. Without imposing sanctions, Western may initiate educational remedies regarding alcohol or drug use.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-060 Conduct that harms or threatens health or safety.** Conduct that harms, attempts to harm, or threatens the health or safety of any ((person, including one-self, is a violation of the code. Conduct that threatens health or safety)) member of the Western community by any means (e.g., in person, through a third party, online), or others on university property or in connection with any official university function, is a violation of the code. This includes, but is not limited to:

(1) ~~((Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for his/her own safety or well-being.))~~ Physical assault.

(2) Any threat, stated or implied, to the health, safety or well-being of ~~((self or))~~ others.

(3) Any contact or communication of a threatening nature that intimidates, harasses, ~~((or causes a))~~ and would cause a reasonable person to fear for their safety or well-being.

(4) ~~((Incidents involving the use or display of a weapon or destructive device likely to cause bodily injury and/or damage to property.))~~ Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for their own safety or well-being.

(5) Sexual violence including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-070 Disruptive behavior.** Behavior that substantially disrupts, disturbs, or interferes with the ability of students to learn or university officials to perform their assigned duties is a violation of the code. Disruptive behavior includes, but is not limited to:

~~((1) Demonstrations or protests that substantially disrupt, disturb, or interfere with:~~

~~((a) Classroom activities or other educational pursuits;~~  
~~((b) Official university activities or functions including, but not limited to, ceremonies, meetings, office functions, performances, or athletic events;~~

~~((c) Pedestrian or vehicular traffic; or~~

~~((d) The preservation and protection of university property and/or the personal property of members of the university community.~~

~~((2)) Any ((other)) behavior that substantially disrupts, disturbs, or interferes with:~~

~~((a)) (1) Classroom activities or other educational pursuits;~~

~~((b)) (2) Official university activities or functions including, but not limited to, ceremonies, meetings, office functions, performances, or athletic events;~~

~~((c)) (3) Pedestrian or vehicular traffic; or~~

~~((d)) (4) The preservation and protection of university property and/or the personal property of members of the university community.~~

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment).** ~~((Harassment, defined as any conduct that is sufficiently severe, pervasive, or persistent to have the purpose or effect of interfering with a member of the university community's ability to work, study, or participate in their regular activities, is a violation of the code. Examples of harassment include, but are not limited to:~~

~~((1) Engaging in unwanted contact or communication, including calls, voice messages, electronic mail, text messages, social media posts or messages, written letters, unwanted gifts, or face-to-face contact with a member of the university community;~~

~~((2) Repeatedly following a member of the university community; waiting outside their residence, school, or place of employment; or placing them under any form of surveillance; and~~

~~((3) Engaging in any form of behavior that is meant to threaten or intimidate a member of the university community based on their membership in a protected class, including race, color, creed, religion, national origin, sex, age, disability, marital status, genetic information, status as a veteran, and/or sexual orientation.))~~ Harassment is conduct by any means that is severe or pervasive. It is of such a nature that it would cause a reasonable person in the complainant's position substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the university. Harassment causes the complainant substantial emotional distress and undermines the complainant's ability to work, study, or participate in the complainant's regular life activities or participate in the activities of the university.

#### NEW SECTION

**WAC 516-21-115 Discrimination and discriminatory harassment.** Discrimination or discriminatory harassment is prohibited on the basis of race; sex; sexual orientation; gender identity/expression; religion; age; color; creed; national or ethnic origin; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); marital status; genetic information; and/or veteran status; and as defined in Western Washington University policy POL-U1600.02 and POL-U1600.04, which prohibit discrimination, sexual harassment, and sexual misconduct. Anyone

complaining or involved in a complaint of discrimination is protected against retaliation.

(1) Sexual harassment is a violation of the code. Sexual harassment is unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, electronic, or physical conduct of a sexual nature, when:

(a) It has a tangible impact on a student's education including, but not limited to, classroom experiences, academic grades, living environment, participation in a university activity; or

(b) It is sufficiently severe and/or pervasive to interfere with a member of the university community's ability to work, study, or participate in their regular activities, or benefit from the university's programs or activities and creates a hostile environment.

(2) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes, and is a violation of the code. Gender-based harassment violates this code when it is sufficiently severe and/or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(3) Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-130 ((Illegal possession and/or use of) Alcohol.** ((Illegally possessing, using, distributing, selling, or being under the influence of alcohol while on university property or at an official university function is a violation of the code. This includes, but is not limited to:

(1) Possession or consumption of alcohol by anyone under the age of twenty-one;

(2) Providing alcohol to anyone under the age of twenty-one;

(3) Driving on university property while under the influence of alcohol; and

(4) Public intoxication by persons of any age. See also policy concerning alcohol and other drugs in the catalog.) Except as permitted by law (e.g., possession or use by a person of legal age) and/or university policy, the possession, use, distribution, or sale of alcohol while on university property or at an official university function is a violation of the code. See also *Policy Concerning Alcohol and Other Drugs* in the appendices section of the university catalog.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-140 ((Illegal possession and/or use of) Drugs and paraphernalia.** ((Illegally possessing, using, manufacturing, cultivating, packaging, distributing, selling, or providing a controlled or illegal substance, or being under the influence of a controlled or illegal substance while on university property or at an official university function, is a violation of the code. This includes, but is not limited to:

(1) Possession of drug paraphernalia;

(2) Driving on university property while under the influence of a controlled or illegal substance; and

(3) Intentionally misusing or distributing prescription drugs. See also policy concerning alcohol and other drugs in the catalog.) Except as permitted by law and university policy, the possession, use, cultivation, manufacturing, packaging, distribution, or provision of a controlled or illegal substance or the possession of drug paraphernalia while on university property or at an official university function is a violation of the code. This code violation also includes the intentional misuse or distribution of prescription drugs. See also *Policy Concerning Alcohol and Other Drugs* in the appendices section of the university catalog.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-150 Interfering with the conduct process.** Interfering with the conduct process is a violation of the code. This includes, but is not limited to:

(1) Giving a false report or claim;

(2) Attempting to influence the impartiality of witnesses or appeals board member(s);

(3) Participating in or encouraging ((retribution)) retaliation against a complainant((s)) or ((witnesses)) witness;

(4) Threatening, harassing, or intimidating complainants or witnesses;

(5) Disrupting or interfering with the orderly conduct of a hearing or meeting; and

(6) Failing to comply with any sanction(s) imposed as the result of a code violation.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-160 Misuse of computers, electronic data or communication systems.** Misuse of computers, electronic data, or communication systems is a violation of the code. This includes, but is not limited to:

(1) Unauthorized entry into a file, web page, e-mail account, or online profile to use, download, read, transfer, or change the contents, or for any other purpose;

(2) Unauthorized use of another person's university-issued identification and password;

(3) The use of campus computing facilities, networks (including wireless networks), equipment, or services to interfere with the normal operation of the university computing system or the work of any member of the university community;

(4) The use of campus computing facilities, networks (including wireless networks), equipment, or services to "cyber stalk" another person or to send obscene, abusive ((or)), harassing, or sexually harassing messages;

(5) The use of campus computing facilities, networks (including wireless networks), equipment, or services to illegally copy, distribute, download, or upload information (including movies, music, or other digital content) from the internet or any electronic source;

(6) The use of campus computing facilities, networks (including wireless networks), equipment, or services to illegally copy, reproduce, or distribute licensed software;

(7) Attempting to modify system facilities or networks, including the introduction of electronic vandalism (e.g., "viruses," "worms," or other disruptive/destructive programs) into university computing resources or those connected to it by the network; and

(8) The use of campus computing facilities, networks (including wireless networks), equipment or services for personal profit or for any use other than authorized university business.

Students are also responsible for reading and complying with all provisions set forth in the Western Washington University policy for responsible computing, the user agreement for WWU network and computing resources, and the using copyrighted materials policy.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-180 Sexual misconduct.** ~~((1) Sexual misconduct, defined as any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, or coercion, is a violation of the code. Sexual misconduct includes, but is not limited to:~~

~~(a) Sexual harassment (e.g., engaging in unwelcome verbal, written, or physical behavior of a sexual nature that is directed at another person or group, based on that person or group's sex, gender, or perceived sex or gender);~~

~~(b) Sexual intimidation (e.g., engaging in any behavior, either verbal or nonverbal, that has the effect of subjecting another person to humiliation, embarrassment, or discomfort because of their sex, gender, or perceived sex or gender);~~

~~(c) Sexual coercion (e.g., engaging in the use of pressure, alcohol or drugs, or force to compel or persuade another person to engage in sexual activity);~~

~~(d) Sexual exploitation (e.g., engaging in voyeurism or peeping, distributing intimate or sexual information about another person without that person's consent, knowingly transmitting an STD or HIV to another person, or engaging in any behavior that takes sexual advantage of another person without that person's consent);~~

~~(e) Sexual assault (e.g., engaging in actual or attempted sexual touching, genital oral contact, penetration, and/or intercourse without consent).~~

~~(2) Consent for all sexual activity must be given free of force, threat, intimidation, or coercion. At the time of the sexual activity, actual words or conduct demonstrating freely given agreement must occur; silence or passivity do not imply consent. Activity of a sexual nature is considered non-consensual when:~~

~~(a) An individual is asleep, unconscious, or otherwise physically unable to communicate his or her willingness or unwillingness to engage in sexual activity;~~

~~(b) An individual lacks the ability, at the time of sexual activity, to be able to understand the nature or consequences of the activity, whether due to illness; impairment; the influence of alcohol, drugs, or medication; or another cause; or~~

~~(c) An individual is not of legal age to give consent.~~

~~(3) Sexual misconduct represents a range of behavior; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can also be committed by individuals of any gender and can occur between people of the same or different sex. See also sexual misconduct policy and procedure in the catalog.) Sexual misconduct is a violation of the code and includes nonconsensual sexual contact, sexual exploitation and sexual violence (sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination). See also WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, WAC 516-21-184 Dating violence, and WAC 516-21-186 Domestic violence.~~

~~(1) Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Consent is ongoing and can be withdrawn at any time. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:~~

~~(a) Force or coercion is threatened or used to procure compliance with the sexual activity;~~

~~(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.~~

~~(ii) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail, extortion, or a position of power to overcome resistance or gain consent to sexual activity.~~

~~(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or~~

~~(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if they cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or they lack the capacity to reasonably understand the situation and to make rational, reasonable decisions.~~

~~(2) Sexual assault is attempted or actual nonconsensual penetration, no matter how slight, of the vagina or anus by any body part or object; or of another's vagina, anus, or mouth by a penis. Sexual assault is also nonconsensual sexual contact or any intentional sexual touching, however slight,~~



with any object or body part, by one person against another person's intimate parts (genitals or genital area, breast or buttock (clothed or unclothed). This includes any intentional bodily contact of one's own intimate area with another person.

(3) Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above.

(4) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

(5) Sexual misconduct represents a range of behaviors; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can be committed by individuals or groups of individuals directed to one or more people and can occur between people of the same or different sex. See also *University Policy U1600.04 Preventing and Responding to Sex Discrimination, Including Sexual Misconduct.*

#### NEW SECTION

**WAC 516-21-184 Dating violence.** Conduct by a student who is or has been in a romantic or intimate relationship with another that intentionally or recklessly causes bodily injury or places another in reasonable fear of serious bodily injury is a violation of the code. The nature of the relationship is determined by the length, type, and frequency of interaction between them. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

#### NEW SECTION

**WAC 516-21-186 Domestic violence.** Conduct by a student who is a current or former spouse or intimate partner (including between two people that share a child in common) that intentionally or recklessly causes bodily injury, or causes another to be in reasonable fear of serious bodily injury is a violation of the code. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

#### NEW SECTION

**WAC 516-21-188 Stalking.** Engaging in a course of unwelcomed conduct (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property) directed at a specific person that would cause a reasonable person to fear for their safety, or the safety of others, or suffer substantial emotional distress, is a violation of the code. Stalking includes, but is not limited to, conduct occurring in person, electronically, and/or through a third party.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-190 Student violation of the law.** Students are expected to abide by all local, state, and federal

laws while on campus or at official university functions. Failure to comply with these laws is a violation of the code.

While Western does not act as a policing agent for students when they are off campus, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest(~~(-See also)~~) as set forth in WAC 516-21-030 Jurisdiction.

Proceedings under the code may be carried out prior to, simultaneously, or following civil or criminal proceedings in the courts. Since the standard of proof under the code (preponderance of evidence) differs from that of criminal law, decisions made through the student conduct process are not subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced by a court of law.

#### NEW SECTION

**WAC 516-21-195 Notification of criminal arrest.** Failure by the student to notify the dean of students of any off-campus felony arrest, or when the arrest is for an offense that is violent, weapons-related, involves kidnapping, or requires that the student register as a sex offender by any legal authority within the U.S., is a violation of the code. The university may send a letter to the student requiring that they make an appointment for an interview. During this interview, the dean of students or their designee shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of any criminal charge(s);
- (3) The student's obligation to advise the university of the final disposition of any criminal charge(s); and
- (4) Whether the behavior falls under jurisdiction of the student code.

The university will cooperate with law enforcement and other agencies administering a corrective or rehabilitative program for the student. See also *POL-U5620.02 Notifying Campus Community About Sex and Kidnapping Offenders.*

#### NEW SECTION

**WAC 516-21-215 Violation of university policy, rule, or regulation.** Violation of any published university policy, rule, or regulation is a violation of the code.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-220 Weapons and destructive devices.** Possession, use, (~~(unauthorized)~~) storage, or manufacture of firearms, ammunition, explosives, or other weapons or destructive devices capable of causing bodily injury or damage to property, on university property or at official university functions, is a violation of the code. Weapons and destructive devices include, but are not limited to, the unauthorized use or possession of:

- (1) Firearms or projectile devices of any kind, including BB, pellet, paintball, and airsoft guns, bow and arrow, and sling shots;

(2) Martial arts weapons of any kind, including nunchucks, swords, or throwing stars;

(3) Fireworks of any kind (~~(, including firecrackers, cherry bombs, or homemade explosives);~~);

(4) (~~(Projectile devices of any kind, including catapults or slingshots);~~) Dangerous chemicals;

(5) Any knife with a blade longer than three inches (excluding kitchen utensils); and

(6) (~~(Any object that can be used as a weapon to cause bodily injury or damage to property.)~~) Weapons classified as dangerous in RCW 9.41.250.

This does not include the lawful possession of any personal protection spray device authorized under RCW 9.91-160.

See also WAC 516-52-020 Firearms and dangerous weapons.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-230 Sanctions.** Sanctions serve many purposes including, but not limited to, educating students about the seriousness of their actions; reinforcing the high standards of scholarship and behavior expected of Western students; promoting student development; and maintaining the safety and well-being of members of the university community. When a student admits responsibility or is found in violation of the code, ~~((the))~~ a conduct officer or dean of students may impose one or more of the sanctions listed in this section. This list of sanctions is not meant to be exclusive. Other sanctions, designed or intended to enhance the educational value of conduct proceedings, may be applied in a given case.

(1) **Warning.** A formal written notice to the student that a violation of the code has occurred, and that further violations may result in additional sanctions under the code.

(2) **Conditional status.** A probationary status imposed for a specific period of time, during which the student must demonstrate conduct that conforms to university standards. Conditions restricting the student's privileges or eligibility for activities may be imposed. Violations of any conditions specified in the notice of conditional status or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(3) **Loss of privileges.** A student may be denied specific privileges (i.e., participation in specific activities, restriction from specific areas of campus, etc.) on a temporary or permanent basis. Violations of any conditions specified in the notice of loss of privileges or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(4) **Restriction from contacting others ("no contact" order).** A student may be restricted from direct or indirect physical, verbal, or electronic contact with another person and/or group. Indirect or direct contact made with another person or group while a "no contact" order is in place may result in additional sanctions under the code.

(5) **Educational activities.** A student may be required to engage in educational activities related to violation(s) of the

code. Such activities may include, but are not limited to, required attendance at educational programs, community service, conducting research projects, writing assignments, and/or meeting with campus officials.

(6) **Assessment, counseling, or treatment programs.** A student may be required to participate in an assessment, counseling, and/or treatment program (at the student's expense), to address substance abuse, anger issues, or other issues or types of behaviors that pose a threat to ~~((their safety or well-being or))~~ the safety or well-being of others.

(7) **Restitution.** A student may be required to provide compensation for loss, damage, or injury resulting from a violation of the code. Restitution may take the form of monetary or material replacement or appropriate service to repair or otherwise compensate for the loss, damage, and/or injury caused.

(8) **Parental notification.** Parents may be notified of conduct findings when a student under the age of twenty-one is found responsible for violations involving alcohol and/or drugs. When possible, students whose parents are to be notified will be informed before such notification occurs and given an opportunity to initiate contact with their parents.

(9) **Campus residence hall or apartment relocation.** A student's on-campus living arrangements may be transferred to another residence hall or apartment.

(10) **Termination of university residences agreement.** A student may be removed from their campus residence hall or apartment and their housing agreement terminated.

(11) **Suspension from the university.** A student may be removed from the university for a designated period of time, after which the student will be eligible to return. While suspended, the student is trespassing from all university facilities and prohibited from participating in official university functions. Specific conditions for readmission to the university may be imposed (e.g., counseling, completion of substance abuse treatment, etc.).

(12) **Deferred suspension.** A student may receive a notice of deferred suspension from the university, with a provision that they are allowed to remain enrolled contingent on meeting specific conditions. Failure to meet any condition(s) specified in the notice of deferred suspension will result in immediate suspension from the university.

(13) **Expulsion from the university.** A student may be permanently separated from the university. A student who has been expelled is not eligible for readmission.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-240 Student conduct system.** (1) The vice-president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice-president to the dean of students.

(2) ~~((The))~~ A conduct officer(s) shall be appointed and supervised by the dean of students or ~~((his/her))~~ their authorized designee. ~~((The))~~ A conduct officer has the authority to ~~((adjudicate))~~ consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging discrimination or sexual violence, which includes

sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to a conduct officer in lieu of the conduct officer's investigation.

~~(3) ((A six member appeals board shall be appointed at the beginning of each fall term to consider reviews of the conduct officer's findings and decision. The appeals board shall include:))~~ Appeal board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Appeal board members shall include a pool of the following:

~~(a) ((Two))~~ Four faculty members, appointed by the faculty senate;

~~(b) ((Three))~~ Six student members, appointed by the associated students board of directors and/or residence hall association. Student board members must:

(i) Have a cumulative grade point average above 2.0;

(ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and

(iii) Be confirmed by the dean of students; and

~~(c) ((One))~~ Four staff members, generally but not exclusively from the division of enrollment and student services, ~~((nominated))~~ confirmed by the dean of students ~~((and confirmed by the vice president for enrollment and student services.~~

~~(4) Alternates will be identified for each area represented on the appeals board. Student appointments are for one academic year. Faculty and staff appointments are for two year staggered terms.~~

~~(5) All appointments to the committee shall be initiated during the first full month of the fall term. Should a request for a review of the conduct officer's findings and decision come forward during the summer term or during other break periods, the review will be heard by the dean of students or by an interim appeals board appointed by the dean of students.~~

~~(6) Both the appeals board and the dean of students have full authority to render a decision under the code. All review decisions are final).~~

(4) An appeals board shall be composed of five members and any three persons constitute a quorum of a board. Generally an appeals board will be comprised of faculty, staff, and students, but in some instances may only be comprised of members from two of the three groups. The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint, or involved in the complaint. Board members must be properly trained in accordance with state and/or federal guidance. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.

(5) A staff member appointed by the dean of students may advise the board on technical details of the code and its procedures.

(6) Conduct officers, the appeals board, and the dean of students or authorized designees have full authority to administer a decision under the code.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-250 Student rights in the conduct process.** ~~((A))~~ Alleged violations of the code will be resolved through the student conduct process, respecting fairness and due process for all involved parties.

(1) A student(s) accused of violating the code ~~((have)),~~ known as the respondent, has certain rights in the conduct process. These include the right to:

~~(a) ((Receive written notification of the section(s) of the code they are alleged to have violated, including a clear description of the basis for the charge(s), delivered via e-mail to the student's official @students.wvu.edu account;~~

~~(b) Meet with the conduct officer to discuss the section(s) of the code they are alleged to have violated and present a response to such allegations;~~

~~(c) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board delivered via e-mail to the student's official university e-mail account;~~

~~(d) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;~~

~~((d))~~ (c) Be accompanied through the conduct process by ~~((a person))~~ an advisor of their choice ~~((this person may give advice to the student, but may not directly address the conduct officer, any member of the appeals board, or the dean of students);~~

~~(e) Refuse to answer any question asked of them and have no inference of guilt drawn from such refusal) and at their own expense. A respondent should select as an advisor a person who is not involved in the same complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;~~

~~(d) Remain silent or decline to respond to any question(s) during any conduct meeting or hearing;~~

~~(e) Review information relied upon by the conduct officer or appeals board in making a determination;~~

~~(f) Receive written notification of the ((conduct officer's)) findings ((and)), decision, and basis for each, delivered via e-mail to the student's official ((@students.wvu.edu)) university e-mail account, within seven business days of the date of the ((meeting (or, if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven business days of the date of the final meeting for the specific incident))) final meeting with a conduct officer, or ten business days of the date of a hearing with an appeals board;~~

~~(g) Request ((a review of the conduct officer's findings and decision by the appeals board or dean of students)) an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for ((review; and)) appeal;~~

~~(h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and~~

~~(i) Waive any of the rights contained in this section.~~

(2) An individual(s) who ~~((have))~~ has filed a complaint ~~((or are the victim of an alleged violation of the code have))~~ alleging violence or sexual violence, including sexual assault,

dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, known as the complainant, has certain rights in the conduct process. These include the right to:

(a) ((Submit a written account of the alleged violation(s);  
(b) Be advised of the date, time, and location of the hearing;

(e)) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board delivered via e-mail to the student's official university e-mail account;

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

((~~(c)~~)) (c) Be accompanied through the conduct process by ((a person)) an advisor of their choice ((~~this person may give advice to the student, but may not directly address the conduct officer, any member of the appeals board, or the dean of students~~));

(e) Be free of any form of retaliation and report any retaliation that occurs for further action;

(f) Have ~~past unrelated behavior excluded from the investigation or hearing;~~ and

(g) Submit an oral or written impact statement to the conduct officer, appeals board, or dean of students, for consideration during the sanctioning phase of the conduct process, if the charged student is found responsible)) and at their own expense. A complainant should select as an advisor a person who is not involved in the complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

(d) Remain silent or decline to respond to any question(s) during the conduct meeting;

(e) Review information relied upon by the conduct officer or appeals board in making a determination;

(f) Receive written notification of the findings, decision and basis for each, delivered via e-mail to the complainant's official university e-mail account, within seven business days of the date of the respondent's final meeting with a conduct officer or ten business days of the date of a hearing with an appeals board;

(g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;

(h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and

(i) Waive any of the rights contained in this section.

(3) For incidents involving ~~((violence or))~~ sexual violence, including ((sexual harassment, misconduct, and/or assault, victims)) sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complainants shall have the following additional rights:

(a) To be notified of the availability of counseling, academic support, and general assistance((;)) and support resources, both on campus and in the surrounding community;

(b) ((To request and be granted a "no contact" order against the accused student(s);

(e) To receive written notification of the conduct officer's findings and decision delivered via e-mail to the stu-

dent's official @students.wvu.edu account, within seven business days of the date of the meeting (or, if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven business days of the date of the final meeting for the specific incident); and

(d) To request a review of the conduct officer's findings and decision by the appeals board or dean of students, as described in WAC 516-21-280 Basis for review.)) Have past behavior unrelated to the alleged behavior excluded; the conduct officer, appeals board chair, or dean of students will make a final determination regarding such behavior if in question;

(c) To be free from questioning about their sexual history involving anyone other than the respondent;

(d) Submit an oral or written impact statement to the conduct officer, and/or appeals board, and/or dean of students (if applicable), for consideration;

(e) To request an administrative no contact order against the respondent(s) during the conduct process;

(f) To have alternative accommodations to avoid being in the physical presence of the respondent during the conduct process; and

(g) Be free of any form of retaliation. Complainants should report any retaliation that occurs for further action. See POL-U1600.02 Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-260 Procedures for immediate interim suspension.** In consultation with university officials, the dean of students may suspend a student from the university on an immediate interim basis, pending ~~((disciplinary or))~~ criminal proceedings, or a medical evaluation, and/or action through the student conduct process.

(1) An interim suspension may only be imposed ~~((in the following circumstances:~~

(a) The student poses a threat to his/her own safety or well-being;

(b) The student poses a threat to the safety or well-being of other members of the university community;

(c) The student poses a threat to university property, is disrupting, or interfering with the normal operations of the university; and

(d) The student is alleged to have committed a serious violation of local, state, or federal law.)) when the dean of students has cause to believe that the student:

(a) Has violated the student conduct code; and

(b) Poses an immediate danger to the safety or security of the university community; and/or

(c) Poses an ongoing threat of serious disruption or interference with the normal operations of the university.

(2) During the interim suspension, a student may be denied access to university activities and privileges, including access to classes, university property, and/or campus residence halls and apartments.

(3) A student suspended from the university on an ~~((immediate))~~ interim basis shall be notified in writing of the terms of the interim suspension. The notice, which shall be delivered ~~((both))~~ via e-mail to the student's official ~~((@students.wvu.edu))~~ university account and ~~((via certified mail to the student's local address on file))~~ in person if possible, shall include the ~~((stated))~~ alleged violation(s), the circumstances, reasons, and terms of the interim suspension, and the time, date and location of a meeting to discuss the interim suspension ~~((with the dean of students))~~.

(4) The interim suspension meeting shall occur no ~~((less))~~ fewer than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. The purpose of the interim suspension meeting is for the student to have an opportunity to demonstrate ~~((to the dean of students))~~ why the terms specified in the interim suspension notice should not continue, or why the suspension should be less restrictive.

(5) Cases of interim suspension are given priority ~~((and will be expedited))~~ through the student conduct process. The interim suspension will remain in effect until a final decision has been made on the pending code violation(s) or until the dean of students determines that the reasons for imposing the interim suspension no longer exist or are not supported by available evidence.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-270 Proceedings for violations of the code.** ~~((1) Any member of the university community may file a complaint against a student or a student organization, alleging a violation of the code. All complaints should be provided in writing to the conduct officer or dean of students and include a statement of the alleged misconduct.~~

~~((2) The conduct officer will conduct a preliminary investigation. If, in the conduct officer's judgment, there is insufficient basis to consider a charge, the individual(s) initiating the complaint will be informed. If there is sufficient basis to consider a charge, the conduct officer shall:~~

~~((a) Provide the accused student with a written notice of the charge(s), delivered via e-mail to the student's official @students.wvu.edu account. This notice shall include a clear description of the nature and date of the complaint and the specific code section(s) the student is alleged to have violated;~~

~~((b) Provide the accused student with a copy of the code as well as information on the availability of procedural advice regarding the code; and~~

~~((c) Provide the accused student with written notice to contact the dean of students' office immediately upon receipt of the charge letter to schedule a conduct meeting. This meeting should occur no less than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three day notice if an earlier date is mutually agreed upon.~~

~~((3) During the meeting with the accused student, the conduct officer will determine, based on a preponderance of evidence, whether it is more likely than not that a violation of the~~

~~code has occurred. If a student fails to meet with the conduct officer after receiving proper notification, a decision on the allegation(s) may be rendered in the student's absence.~~

~~((4) Within seven business days of the meeting, the conduct officer shall notify the student in writing of the findings and decision, including any imposed sanctions. This notification will be delivered via e-mail to the student's official @students.wvu.edu account and will include a statement of the student's option for a review of the conduct officer's findings and decision by the appeals board or the dean of students.~~

~~((5) If multiple meetings are required to determine responsibility, the findings and decision letter will be sent via e-mail to the student's official @students.wvu.edu account no later than seven business days after the final meeting for the specific incident.~~

~~((6) If multiple individuals are involved in the incident and the information presented by each student is deemed necessary to determine responsibility, individual findings and decision letters will be sent via e-mail to the student's official @students.wvu.edu account no later than seven business days after the final meeting for the specific incident.~~

~~((7) If both parties agree to mediate a complaint and the conduct officer agrees, mediation may be substituted for a conduct meeting. If mediation is unsuccessful, the original complaint will be considered and decided upon by the conduct officer. Mediation may not be substituted for a conduct meeting in cases involving violence or sexual violence, including sexual harassment, misconduct, or assault.))~~ (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

(a) Review the complaint, investigate and make a finding whether the code was violated and impose sanction(s);

(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; or

(c) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises.

(3) In complaints alleging discrimination and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complaints should be made to Western Washington University's equal opportunity office. An investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(4) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location. Any request to extend the time and/or date of the conduct

officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

(5) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

(6) All notifications under the code are delivered by electronic mail to the students' university e-mail account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

(7) Upon written request to the dean of students office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

(8) A conduct officer's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

(9) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, appeal board chair, or dean of students shall have the discretion to determine admissibility of evidence.

(10) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or appeals board, the complaint may be considered in their absence, and the conduct officer or appeals board may issue a decision based upon that information.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-280 Basis for ((~~review~~)) appeal.** ~~((1))~~ A student found in violation of the code may request a review of the conduct officer's findings and decision by either the appeals board or the dean of students. A review may be requested for the following reasons only:

~~(a) The original meeting was not conducted in conformity with prescribed procedures;~~

~~(b) The conduct officer misinterpreted the code;~~

~~(c) The sanctions imposed are disproportionate to the violation(s) committed; and~~

~~(d) The decision reached did not properly consider the information presented.~~

~~(2) For incidents involving violence or sexual violence, including sexual harassment, misconduct or assault, victims may request a review of the conduct officer's findings and~~

~~decision by either the appeals board or the dean of students. A review may be requested for the following reasons only:~~

~~(a) The original meeting was not conducted in conformity with prescribed procedures;~~

~~(b) The conduct officer misinterpreted the code;~~

~~(c) The sanctions imposed are disproportionate to the violation(s) committed; and~~

~~(d) The decision reached did not properly consider the information presented.~~

~~(3) The request for review must be submitted in writing to the dean of students within seven business days of receipt of the conduct officer's written notice of findings and decision (which shall be delivered via e-mail to the student's official @students.wvu.edu account). The request must state, as clearly and concisely as possible, the basis for the review and specify whether the student wishes to have their review considered by the appeals board or the dean of students.~~

~~(4) Upon receipt of the written request for review, the dean of students will determine whether the request meets one or more of the criteria specified for reviews of the conduct officer's findings and decision. If it does, the review hearing will be scheduled. If it does not, the party requesting the review will be notified in writing and the request will be denied.~~

~~(5) For incidents involving violence or sexual violence, including sexual harassment, misconduct or assault, both the student found in violation of the code and the victim will be notified in writing regarding the outcome of the written request for review.~~

~~(6) No sanction will begin while a review is pending, except as provided in WAC 516-21-260, Procedures for immediate interim suspension. Temporary relocation of a student to alternative housing and/or restrictions between affected parties may be enforced during an appeal.)~~ (1) A student found in violation of the code may appeal the conduct officer's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, a complainant may also request an appeal. An appeal may be requested for any reason including:

(a) The proceedings were not conducted in conformity with prescribed procedures and significantly impacted the outcome of the student conduct process;

(b) The sanctions imposed are substantially disproportionate to the violation(s) committed;

(c) The decision reached did not properly consider the information presented; and/or

(d) New information becomes available that was unavailable at the time of the original meeting, and could substantially impact the original decision. A summary of this new information and its potential impact must be included. The dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate.

(2) The appeal must be submitted by the respondent or complainant (if applicable) in writing to the dean of students within ten days of the decision. The appeal must state, as clearly and concisely as possible, the reason for the appeal.

(3) Appeals of a finding that resulted, or may have resulted, in suspension or expulsion are considered by an

appeals board. All other appeals are considered by the dean of students.

(4) No sanction will begin while an appeal or request for review is pending, except interim sanctions such as administrative no-contact orders, trespass, etc.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-290 ((Review)) Appeal procedures.**

~~((1) Upon acceptance of a request for review, the dean of students shall notify the student (or, for incidents involving violence or sexual violence, both the student and the victim) in writing of the:~~

~~(a) Section(s) of the code the student was found to have violated;~~

~~(b) Findings and decision of the conduct officer;~~

~~(c) Time, date, and location of the review hearing; and~~

~~(d) Location of the code, should they wish to view or download a copy.~~

~~(2) The review hearing shall be held no less than three business days and no more than seven business days from the date of notification. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. If the student fails to appear at the hearing, the appeals board or the dean of students may proceed with the review, based upon consideration of all available information, or may dismiss the request for review.~~

~~(3) During the review hearing:~~

~~(a) The chair of the appeals board or dean of students may ask any person with relevant information to speak or provide a written statement regarding the alleged violation.~~

~~(b) The student found in violation of the code may ask any person with relevant information to speak or provide a written statement regarding the alleged violation.~~

~~(c) The chair of the appeals board or the dean of students may limit or exclude information that is considered to be irrelevant, immaterial, or repetitious.~~

~~(d) Five members shall constitute a quorum of the appeals board. Actions by the appeals board require agreement by a majority of members present at the time of the hearing.~~

~~(e) Any member of the appeals board that is unable to render an impartial decision in a particular case shall excuse themselves from the appeals board's deliberations in advance and may be replaced by an alternate.~~

~~(f) The appeals board or the dean of students may either confirm, reverse, or modify the conduct officer's findings and decision.~~

~~(4) New substantive information that was not presented at the time of the original conduct meeting will not be considered during the review. When new substantive information is present prior to or during the review hearing and such evidence could impact the original decision, the allegation(s) will be reheard by the conduct officer.~~

~~(5) The chair of the appeals board or the dean of students will render a decision regarding the review within seven business days of the hearing and notify the student (or, for incidents involving violence or sexual violence, both the student and the victim) in writing of their findings and decision. All~~

~~review decisions are final.)~~ (1) Appeals can be made by the respondent (or complainant in incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination) and must be made to the dean of students.

(2) The dean of students or their designee reviews the appeal.

(3) Where new information, unavailable at the time of the original meeting, that could substantially impact the original decision, is received, the dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate. The dean of students or their designee may, at their discretion, refer the complaint to a different conduct officer for reconsideration.

(4) In appeals in which the possible or recommended sanction is not expulsion or suspension as determined by the conduct officer, a designee of the dean of students will consider the appeal and hold an informal meeting, giving each party an opportunity to be informed of the conduct officer's view of the matter and to explain their view of the matter.

(5) In appeals in which the possible or recommended sanction is expulsion or suspension as determined by the conduct officer, an appeals board considers the appeal.

(a) The appeals board will provide respondent and complainant (if applicable) with five days' notice of an appeals hearing date, time and location. An appeal by respondent or complainant will be shared with the other party (parties).

(b) The appeals board meets in private and reviews the complaint, the results of the subsequent investigation and its findings, and the conduct officer's decision. The board provides an opportunity for respondent and complainant (if applicable) to share information and the board may call witnesses. The appeals board then deliberates in private.

(c) After any appeal, the respondent and complainant (if applicable) may request that a decision be reviewed by the dean of students. This request for review must be made in writing within ten days of the written outcome of an appeal. The dean of students will review the written documentation only; any involved person (respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of the dean of students.

(d) During limited times during the year, such as break periods and summer quarter, when board members are unavailable, an interim board may be appointed by the dean of students.

(6) Respondent and complainant (if applicable) will be informed of the outcome of reviews and/or appeals simultaneously and in writing within ten days.

(7) If there is no request for appeal received by the dean of students within ten days, the decision of the conduct officer is considered final. If there is no request for review within five days (or ten days of an appeals board decision), the decision is considered final.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-300 Deviations from established procedures.** Deviations from the timelines set forth in this code

may be granted by the dean of students, upon request, for good cause. Respondent (and complainant, if applicable) will be informed simultaneously and in writing of extensions and the reason for the extension.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-310 Confidentiality of conduct proceedings and records.** (1) The confidentiality of all conduct proceedings and records will be maintained in compliance with the student records policy, as well as all applicable state and federal laws. Conduct records prepared by ~~((the))~~ a conduct officer, the appeals board, and/or the dean of students:

(a) Will be held in the dean of students office for six years, except in cases of suspension, interim suspension, or expulsion, which are permanent records; and

(b) Will not be shared with any member of the public, except upon the informed written consent of the student(s) involved or as stated in the student records policy, or as required by law or court order.

(2) The conduct officer's findings may be shared with the ~~((victim))~~ complainant, as required by law, in cases involving violence or sexual violence, including sexual ~~((harassment, misconduct or))~~ assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination. The ~~((disciplinary))~~ findings may also be shared with university officials involved in the completion or supervision of the sanction and/or the student. See also chapter 516-26 WAC, Student records.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-340 Revision of the code.** ~~((+))~~ The code shall be reviewed every five years or more often, if needed, by the committee on the student ~~((rights and responsibilities))~~ conduct code. The committee on student rights and responsibilities shall include~~(:~~

~~(a) Five students, including at least one graduate student. Three students shall be appointed by the associated students board of directors and two shall be appointed by the residence hall association;~~

~~(b) One faculty member, appointed by the faculty senate;~~

~~(c) One staff member from the division of enrollment and student services, appointed by the dean of students;~~

~~(d) One staff member from the department of public safety, appointed by the director of public safety;~~

~~(e) One staff member from university residences, appointed by the director of university residences; and~~

~~(f) The conduct officer.~~

~~(2) Recommendations of the committee on student rights and responsibilities shall be made to the vice-president for enrollment and student services for submission to and consideration by the president's cabinet. Prior to adoption of the code, all proposed modifications shall be reviewed by the office of the assistant attorney general at Western Washington University for consistency with university policies and the law. Final authority for changes to the code rests with the Western Washington University board of trustees))~~ students, faculty, and staff. Once recommendations are complete, they

will be forwarded to the vice-president for enrollment and student services. See also POL-U1000.11 *Developing and Maintaining University Provisions of the Washington Administrative Code.*

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 516-21-320 Relationship of the code to university residences.

#### **WSR 17-01-128**

#### **WITHDRAWAL OF PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed December 20, 2016, 12:05 p.m.]

On December 7, 2016, the state superintendent of public instruction filed a CR-102 proposed rule-making notice, WSR 16-24-090, regarding proposed changes to chapter 392-160 WAC. The hearing was scheduled for January 11, 2017.

I am writing to request that this CR-102 proposed rule-making notice, filed as WSR 16-24-090, be immediately rescinded. The January 11, 2017, hearing is cancelled. A new CR-102 proposed rule-making notice related to chapter 392-160 WAC is anticipated to be filed within the next few weeks.

Randy Dorn  
State Superintendent  
of Public Instruction

#### **WSR 17-01-129**

#### **PROPOSED RULES STUDENT ACHIEVEMENT COUNCIL**

[Filed December 20, 2016, 12:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-105.

Title of Rule and Other Identifying Information: Chapter 250-18 WAC, Residency status for higher education.

Hearing Location(s): Washington Student Achievement Council, 917 Lakeridge Way S.W., Third Floor Conference Room, Olympia, WA 98504, on January 25, 2017, at 3 p.m. - 4 p.m.

Date of Intended Adoption: February 1, 2017.

Submit Written Comments to: Gail Wootan, Washington Student Achievement Council, P.O. Box 43430, Olympia, WA 98504-3430, email gailw@wsac.wa.gov, fax (360) 753-7808, by January 24, 2017.

Assistance for Persons with Disabilities: Contact Kristin Ritter, by January 24, 2017, (360) 753-7810.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 250-18-010, to make housekeeping changes;



WAC 250-18-015, to make housekeeping changes and to add new definitions;

WAC 250-18-020, to make housekeeping changes, to add language from new RCW since last rule filing in 2006, to delete redundant language, and to clarify certain subsections;

WAC 250-18-025, to make housekeeping changes, to delete redundant language, and to delete subsection (6), which is not practiced by institutions nor required by RCW;

WAC 250-18-030, to make housekeeping changes, to add clarification language, and to delete confusing language;

WAC 250-18-035, to make housekeeping changes, to clarify definition of independent student with specific time periods and references to tax years;

WAC 250-18-055, to make housekeeping changes;

WAC 250-18-060, to make housekeeping changes and add clarifying language so that it better aligns with RCW.

Statutory Authority for Adoption: RCW 28B.15.012, 28B.15.013, 28B.15.015.

Rule is necessary because of federal law, Section 702 of the Veterans Access, Choice, and Accountability Act of 2014.

Name of Proponent: Washington student achievement council, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gail Wootan, 917 Lakeridge Way S.W., Olympia, WA 98504, (360) 753-7890.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. Does not apply.

December 14, 2016  
Randy Spaulding  
Director of Academic  
Affairs and Policy

**AMENDATORY SECTION** (Amending WSR 93-20-004, filed 9/22/93, effective 10/23/93)

**WAC 250-18-010 Purpose and applicability.** This chapter is promulgated pursuant to RCW 28B.15.015 by the ~~((board))~~ council to establish the necessary regulations for the administration of residency status in higher education. Institutions shall apply the provisions of the regulations specified in chapter 250-18 WAC for the uniform determination of a student's resident and nonresident status and for recovery of fees for improper classification of residency.

**AMENDATORY SECTION** (Amending WSR 03-13-056, filed 6/13/03, effective 7/14/03)

**WAC 250-18-015 Definitions.** (1) The term "institution" shall mean a public university, college, or community or technical college within the state of Washington.

(2) The term "domicile" shall denote a person's true, fixed, and permanent home and place of habitation ~~((for other than educational purposes))~~. It is the place where ~~((he or she))~~ the person intends to remain, and to which ~~((he or she))~~ the person expects to return when ~~((he or she))~~ the person leaves without intending to establish a new domicile elsewhere.

(3) The term "reside" shall mean the maintenance and occupancy of a primary residence in the state of Washington.

(4) The term "financially independent" shall be determined according to WAC 250-18-035.

(5) The term "financially dependent" shall mean a person who is not financially independent.

(6) The term "resident" for tuition and fee purposes shall be determined according to WAC 250-18-020.

(7) The term "nonresident" for tuition and fee purposes shall be determined according to WAC 250-18-020.

(8) The term "recovery of fees" shall apply to the amounts due to the institution or the student as a result of improper classification.

(9) The term "civil service" shall mean Washington state or federal government nonmilitary employment.

(10) The term "spouse" shall include individuals in state registered domestic partnerships as outlined in RCW 28B.15.980.

(11) The term "parent" shall include a person who becomes a stepparent through marriage or through a state registered domestic partnership.

(12) The term "legal guardian" shall include the court when an individual is a ward of the court.

(13) The terms "active military duty," "active duty service," and "uniformed services" shall be defined as outlined in RCW 28B.15.012 (7), (8), and (9).

**AMENDATORY SECTION** (Amending WSR 06-20-118, filed 10/4/06, effective 11/4/06)

**WAC 250-18-020 Student classification.** (1) For a student to be classified as a "resident" for tuition and fee purposes, ~~((he or she))~~ the student must prove by evidence of a sufficient quantity and quality to satisfy the institution that ~~((he or she))~~ the student:

~~((a))~~ ~~((i))~~ ~~Has established~~ Is financially independent and has maintained a bona fide domicile in the state of Washington primarily for purposes other than educational for ~~((the period of one year))~~ at least one year immediately prior to commencement of the first day of the semester or quarter for which ~~((he or she))~~ the student has registered at any institution; ~~((and~~

~~((ii))~~ ~~Is financially independent;~~) or

(b) Is ~~((a))~~ financially dependent ~~((student, one or both of whose parents or legal guardians have))~~ with at least one parent or legal guardian who has maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the first day of the semester or quarter for which the student has registered at any institution ~~((provided that any student who has))~~; or

~~((c))~~ Meets RCW 28B.15.012 (2)(c); or

~~((d))~~ Has spent at least seventy-five percent of both ~~((his or her))~~ junior and senior years in high school in this state, ~~((whose))~~ who has at least one parent((s) or legal guardian((s have)) who had been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who has enrolled in ~~((a public institution of higher education))~~ an institution within six months of leaving high school ~~((, shall be considered a resident only for as long as))~~. The student shall retain resident

student status so long as the student remains continuously enrolled for three quarters or two semesters in any calendar year; or

~~((e) Is a person who has completed))~~ (e) Has met all of the following:

(i) Has either:

(A) Completed the full senior year of high school and obtained a high school diploma~~((--both))~~ at a Washington public high school or a Washington private high school approved under chapter 28A.195 RCW ~~((or who has received the equivalent of a diploma). The person must have lived in Washington at least three years immediately prior to receiving the diploma (or its equivalent), and lived continuously in Washington state after receiving the diploma (or its equivalent) until the time of admittance to an institution of higher education (defined as a public university, college, or community college within the state of Washington). In addition, the person must provide an affidavit to the institution indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so. Furthermore, the individual must indicate a willingness to engage in other activities necessary to acquire citizenship, including, but not limited to, citizenship or civics review courses; or~~

~~(d) Is a student who is); or~~

(B) Received the equivalent of a high school diploma;

(ii) Has resided in Washington at least thirty-six months immediately prior to receiving the diploma or equivalent;

(iii) Has resided continuously in Washington state after receiving the diploma or equivalent until the time of admittance to the institution determining residency; and

(iv) Has provided an affidavit to the institution indicating one of the following:

(A) That the student will file an application to become a permanent resident at the earliest opportunity the student is eligible to do so and that the student is willing to engage in other activities necessary to acquire citizenship including, but not limited to, citizenship or civics review courses; or

(B) That the student is a citizen or permanent resident of the United States; or

(f) Has resided in Washington primarily for purposes other than educational for at least one year immediately prior to commencement of the first day of the semester or quarter for which the student has registered at any institution, and who has met any of the following:

(i) Holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L);

(ii) Holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L); or

(iii) Holds or previously held lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L) as a principal or derivative and has filed an application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a); or

(g) Is on active military duty stationed in the state~~((--or who))~~ of Washington or is a member of the Washington national guard~~((--or~~

~~(e))~~ (Washington national guard member does not need to be on "active duty" status in order to qualify); or

(h) Is on active military duty or a member of the Washington national guard and meets all of the following:

(i) Entered service as a Washington resident;

(ii) Has maintained a Washington domicile; and

(iii) Is stationed out-of-state; or

(i) Is the spouse or dependent of a person as defined in (h) of this subsection; or

(j) Is the spouse or dependent of ~~((an active duty military person))~~ a person on active military duty stationed in the state of Washington. If the person on active military duty is reassigned out-of-state, the student shall retain resident student status so long as the student is continuously enrolled in a degree program; or

~~((f) Is a student who resides in))~~ (k) Resides in the state of Washington and is the spouse or dependent of a member of the Washington national guard; or

~~((g) Is a student of an out-of-state institution of higher education who is))~~

(l)(i) Separated from the uniformed services with any period of honorable service after at least ninety days of active duty service and is eligible for benefits under the federal all-volunteer force educational assistance program (38 U.S.C. Sec. 3001 et seq.), the federal Post-9/11 Veterans Educational Assistance Act of 2008 (38 U.S.C. Sec. 3301 et seq.), or any other federal law authorizing educational assistance benefits for veterans after separating (a student who has had a dishonorable discharge from the uniformed services qualifies if the student is receiving veterans administration educational assistance benefits); and

(ii) Enters an institution within three years of the date of separation from the uniformed services (student shall retain resident student status for as long as student remains continuously enrolled at an institution, regardless of years after separation); or

(m)(i) Is entitled to veterans administration educational assistance benefits based on the student's relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service (if the individual who separated from the uniformed services has had a dishonorable discharge from the uniformed services, the student qualifies if the student is receiving veterans administration educational assistance benefits); and

(ii) Enters an institution within three years of the service member's date of separation (student shall retain resident student status for as long as student remains continuously enrolled at an institution, regardless of years after separation); or

(n)(i) Is receiving or entitled to veterans administration educational assistance benefits based on the student's relationship with a deceased member of the uniformed services who completed at least ninety days of active duty service and died in the line of duty; and

(ii) Enters an institution within three years of the service member's death (student shall retain resident student status for as long as student remains continuously enrolled at an institution, regardless of years after separation); or

(o) Resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood

River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington; or

(p) Resides in Washington and is the spouse or a dependent of a person as defined in (o) of this subsection. If the person on active military duty moves from Washington or is reassigned out of the Oregon counties identified in (o) of this subsection, the student shall retain resident student status so long as the student resides in Washington and is continuously enrolled in a degree program;

(q) Is attending ((a Washington state institution of higher education)) an institution pursuant to a home tuition ((program)) agreement with an out-of-state institution of higher education under RCW 28B.15.725; or

((h) Is a student) (r)(i) Was domiciled for one year immediately prior to enrollment at an institution in one or a combination of the following states: Idaho, Montana, Oregon, or Washington(, and is); and

(ii) Is a member of a federally recognized tribe whose traditional and customary tribal boundaries included portions of the state of Washington, or whose tribe was granted reserved lands within the state of Washington. (The official list of federally recognized Washington tribes maintained by the governor's office of Indian affairs shall be used to determine eligibility(, and

(i) Is a student who is) and will be made available by the council); or

(s) Is a resident of Oregon residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county((The student must meet)); and who meets one of the following ((conditions)):

(i) Is eligible to pay Oregon resident tuition rates under Oregon laws and has been domiciled in one or more of the designated Oregon counties for at least ninety days immediately prior to enrollment at ((a community college located in the following Washington counties: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla)) Clark College, Columbia Basin College, Grays Harbor College, Lower Columbia College, and Walla Walla Community College; or

(ii) Is ((a student)) enrolled for eight credits or less at the Tri-Cities branch or Vancouver branch of Washington State University(,); or

(t) Meets all of the following:

(i) Is currently domiciled in Washington;

(ii) Relocated to Washington from one of the Oregon counties identified in (s) of this subsection within the previous twelve months;

(iii) Was domiciled in one or more of the Oregon counties identified in (s) of this subsection for at least ninety days immediately prior to relocating to Washington and was eligible to pay Oregon resident tuition rates under Oregon laws during that time; and

(iv) Enrolled at Clark College, Columbia Basin College, Grays Harbor College, Lower Columbia College, or Walla Walla Community College; or enrolled for eight credits or less at the Tri-Cities branch or Vancouver branch of Washington State University.

(2) A student shall be classified as a "nonresident" for tuition and fee purposes if ((he or she)) the student does not

qualify as a resident student under the provisions of subsection (1) of this section. A nonresident student shall include a student ((if he or she:

~~(a) Will be financially dependent for the current year or was financially dependent for the calendar year prior to the year in which application is made and who does not have a parent or legally appointed guardian who has maintained a bona fide domicile in the state of Washington for one year immediately prior to the commencement of the semester or quarter for which the student has registered at an institution;~~

~~(b)) who:~~

(a) Attends an institution with financial assistance provided by another state or governmental unit or agency thereof wherein residency in that state is a continuing qualification for such financial assistance((, such nonresidency continuing for one year after the completion of the quarter or semester for which financial assistance is provided)). Such financial assistance relates to that which is provided by another state, governmental unit or agency thereof for direct or indirect educational purposes and does not include retirements, pensions, or other noneducational related income. A student loan guaranteed by another state or governmental unit or agency thereof on the basis of eligibility as a resident of that state is included within the term "financial assistance((,"

(e))," Nonresidency will continue for one year after the completion of the quarter or semester for which financial assistance was last provided. This subsection shall not apply to students who qualify for resident tuition under subsection (1)(q), (s), or (t) of this section; or

(b) Is not a citizen of the United States of America, unless such person ((holds)) meets one of the following:

(i) Holds permanent or temporary resident immigration status, "refugee - parolee(," or)" status, "conditional entrant" status ((or is not)), refugee status, asylee status, temporary protected status, withholding of removal status, or is otherwise permanently residing in the United States under color of law and further meets and complies with all applicable requirements of WAC 250-18-030 and 250-18-035; or

(ii) Fulfills the requirements outlined in subsection (1)(c) of this section.

(3) The one year waiting period for establishing domicile for individuals who are excepted from the definition of nonresident student pursuant to subsection (2)(b)(i) of this section starts on the date of application for said status provided that the individual further meets and complies with all applicable requirements of WAC 250-18-030 and 250-18-035 on that date.

(4) A person does not lose a domicile in the state of Washington by reason of residency in any state or country while a member of the civil or military service of this state or of the United States, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas if that person returns to the state of Washington within one year of discharge from said service with the intent to be domiciled in the state of Washington.

~~((4))~~ (5) Any ((resident)) financially dependent resident student who remains in this state when such student's parents or legal guardians, having theretofore been domiciled in this state for a period of at least one year immediately prior to commencement of the first day of the semester or quarter

for which the student has registered at any institution, move from this state, shall ~~((be entitled to continued classification as a))~~ retain resident student status so long as such student is continuously enrolled during the academic year.

AMENDATORY SECTION (Amending WSR 03-13-056, filed 6/13/03, effective 7/14/03)

**WAC 250-18-025 Classification procedure.** (1) After a student has registered at any institution ~~((as a nonresident))~~, such student's residency classification shall remain unchanged in the absence of evidence of a sufficient quantity and quality to satisfy the institution to the contrary. The provision of such evidence to the contrary may be initiated by the student or the institution.

(2) Application for a change in classification shall be accepted up to the thirtieth calendar day following the first day of the instruction of the quarter or semester for which application is made. Applications made after that date in any quarter or semester shall be considered to have been filed as of the first day of the subsequent quarter or semester.

(3) Any change in classification, either nonresident to resident, or the reverse, shall be based upon written evidence maintained in the files of the institution.

(4) Approval of an application for resident status shall be made only after satisfaction ~~((that the requirements of domicile and independency or dependency have been made in compliance with))~~ that the requirements outlined in RCW 28B.15.012 and WAC 250-18-020, 250-18-030, and 250-18-035 have been met. Reclassification from nonresident to resident status preliminarily approved sixty days or more prior to the satisfaction of a one-year durational domicile shall be supplemented with additional documented proof of domicile if deemed necessary by the institution prior to final approval.

~~((5) The burden of proof that a student, parent, or legally appointed guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.~~

~~((6) For any student classified as a resident or authorized to pay resident fees or exempted from the payment of the nonresident differential on a basis other than an established domicile in the state of Washington, the fee paying status of such student shall be subject to determination each term on the basis of chapter 28B.15 RCW.))~~

AMENDATORY SECTION (Amending WSR 03-13-056, filed 6/13/03, effective 7/14/03)

**WAC 250-18-030 Establishment of a domicile.** The domicile of any person shall be determined according to the individual's overall situation and circumstances and is not determined on the basis of a single factor; nor is a predetermined number of factors required. Institutions shall require evidence of a Washington domicile that is of sufficient quantity and quality to negate the existence of a domicile in a state other than Washington.

A nonresident student who is enrolled for more than six hours per semester or quarter shall be presumed to be in the state of Washington for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state

unless such student proves that ~~((he or she))~~ the student has, in fact, established a bona fide domicile in this state primarily for purposes other than educational. The burden of proof that a person has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

To aid the institutions in determining whether a ~~((student, parent, legally appointed guardian, or the person having legal custody of a student))~~ person has established a bona fide domicile in the state of Washington primarily for purposes other than educational, ~~((the following))~~ such as those listed in subsections (1) through (14) of this section are to be considered ~~((for both the individual and his or her spouse))~~. The weight assigned to any given factor should depend on the ease with which it might be established and the degree to which it demonstrates commitment to domicile as a matter of common sense and as part of the individual's overall circumstances. Factors include, but are not limited to:

(1) Location and duration of registration or payment of taxes or fees on any motor vehicle, mobile home, travel trailer, boat, or any other item or personal property owned or used by the person;

(2) State and duration of any driver's license for the previous one year;

(3) Location and duration of any continuous full-time employment of the previous one year;

(4) Address and other pertinent facts listed on a true and correct copy of federal and state income tax returns for the calendar year prior to the year in which application is made;

(5) Location and duration of any voter registration for the previous one year;

(6) Location and duration of primary residence, evidenced by title, lease agreement, or monthly rental receipts for the previous one year;

(7) Residence status in all secondary and postsecondary schools attended outside the state of Washington;

(8) Location and duration of any checking accounts, savings accounts, and/or safety deposit boxes for the previous one year;

(9) Address listed on selective service registration;

(10) Location of membership in professional, business, civic or other organizations;

(11) Receipt of benefits under a public assistance program(s);

(12) State claimed as residence for obtaining eligibility to hold a public office or for judicial actions;

(13) State claimed as residence for obtaining state hunting or fishing licenses;

(14) State in which a custodial parent or legal guardian has a child attending public schools.

AMENDATORY SECTION (Amending WSR 03-20-053, filed 9/26/03, effective 10/27/03)

**WAC 250-18-035 Evidence of financial dependence or independence.** (1) A ~~((person))~~ student is financially independent if ~~((he or she))~~ the student:

(a) Has not been claimed as a dependent exemption on an income tax return for the calendar year prior to the year in which the student enrolls at an institution and will not be

claimed as ~~((an exemption))~~ a dependent exemption on an income tax return for the calendar year in which the student enrolls at an institution; and

(b) Has not received and will not receive significant financial assistance in any form directly or indirectly from ~~((his or her))~~ the student's parents, relatives, legal guardians, or others for the ~~((current calendar year and for the calendar year immediately prior to the year in which application is made))~~ twelve months immediately prior to and the twelve months immediately after commencement of the first day of the semester or quarter for which the student has registered at any institution.

~~((4))~~ (2) To consider a claim that a ~~((person))~~ student is financially independent, the institution may require such documentation as deemed necessary~~((s))~~ including, but not limited to, the following:

(a) ~~((That individual's))~~ The student's sworn statement.

(b) A true and correct copy of the state and federal income tax returns of the ~~((person))~~ student for the calendar year ~~((immediately))~~ prior to the year in which ((application is made)) the student enrolls at an institution.

Should a ~~((person))~~ student not have filed a state or federal income tax return because of minimal or no taxable income, documented information concerning the receipt of such nontaxable income may be submitted.

(c) A true and correct copy of the ~~((person's))~~ student's W-2 forms filed for the ~~((previous))~~ calendar year prior to the year in which the student enrolls at an institution.

(d) Other documented financial resources, which may include but are not limited to the sale of personal or real property, inheritance, trust funds, state or financial assistance, gifts, loans, or statement of earnings of ~~((the spouse of a married student))~~ the student's spouse.

(e) A true and correct copy of the first and signature page of the state and federal tax returns of at least one of the student's parents~~((, legally appointed))~~ or legal guardians~~((, or person or persons having legal custody of the student for the calendar year immediately prior to the year in which application is made))~~ for the calendar year prior to the year in which the student enrolls at an institution.

The ~~((extent of the))~~ tax returns disclosure ~~((required concerning the parent's or legal guardian's state and federal tax returns))~~ shall be limited to the listing of dependent~~((s claimed))~~ exemptions and the signature of the taxpayer and shall not require disclosure of financial information contained in the returns.

(f) A student whose parents are ~~((both))~~ deceased or who has been made an official ward of the court may be required to provide documentation attesting to the fact of such circumstances.

(g) Evidence of coverage for medical, life, automobile, and property insurance.

~~((2))~~ (3) To aid institutions in determining the financial independence of a student whose parents~~((, legally appointed guardian, or person having legal custody of the student))~~ or legal guardians do not provide the documentation because of total separation or other reasons from the student, documentation clearly stating the student's status and relationship with ~~((his or her))~~ the student's parents or legal guardians from a

responsible third person, e.g., family physician, lawyer, or social worker may be submitted.

~~((3))~~ (4) To be considered financially independent, a student must demonstrate by evidence satisfactory to the institution that ~~((he or she))~~ the student has met, through ~~((his or her))~~ the student's income, the expenses associated with college tuition and living for the ~~((current calendar year and the calendar year immediately prior to the year in which application is made. Personal loans, PLUS loans (parent loan for undergraduate students), gifts, and cash earnings shall not be counted as income in this calculation))~~ twelve months immediately prior to and the twelve months immediately after commencement of the first day of the semester or quarter for which the student has registered at any institution. Financial aid grants, scholarships and loans authorized by the financial aid office in the student's name may be considered as personal income. Personal loans, parent PLUS loans, gifts, and cash earnings shall not be counted as income in this calculation.

~~((4))~~ (5) A trust or other account available to the student shall be considered evidence of financial dependence. If the account was created before the student entered high school, there shall be a rebuttable presumption of dependence.

~~((5))~~ (6) Information submitted by the student to the institution on the financial aid form may be used to affirm the authenticity of information submitted on an application.

~~((6))~~ (7) In all cases, the burden of proof that a student is financially independent lies with the student.

**AMENDATORY SECTION** (Amending WSR 82-19-015, filed 9/8/82)

**WAC 250-18-055 Recovery of fees for improper classification of residency.** To aid the institutions in the determination of accuracy of statements made by a student, institutions shall require that a student affirm the authenticity of all information and supporting documentation provided by ~~((his or her))~~ the student's signature thereon.

If erroneous, untrue, or incorrect information submitted results in an improper classification of resident or nonresident status, or if a final determination is reversed through ~~((the appeals process))~~ a subsequent appeal, institutions shall recover from the student or refund to the student, as the case may be, an amount equal to the total difference in tuition and fees had the proper classification been made.

**AMENDATORY SECTION** (Amending WSR 03-20-053, filed 9/26/03, effective 10/27/03)

**WAC 250-18-060 Exemptions from nonresident status.** In accordance with RCW 28B.15.014, certain nonresidents may be exempted from paying the nonresident tuition and fee differential. Exemption from the nonresident tuition and fee differential shall apply only during the term(s) such persons shall hold such appointments or classifications, or be so employed. To be eligible for such an exemption, a nonresident student must provide documented evidence that ~~((he or she does reside in the state of Washington, and))~~ the student meets any of the following:

(1) Resides in the state of Washington and holds a graduate service appointment, designated as such by an institution, involving not less than twenty hours per week;

(2) Resides in Washington and is employed for an academic department in support of the instructional or research programs involving not less than twenty hours per week;

(3) Is a faculty member, classified staff member, or administratively exempt employee who resides in the state of Washington and is holding not less than a half-time appointment at an institution, or the spouse or dependent child of such a person;

(4) Is an immigrant having refugee classification (~~from the U.S. Immigration and Naturalization Service~~) granted by the U.S. Citizenship and Immigration Services or the spouse or dependent child of such refugee, if the refugee meets any of the following:

(a) Is on parole status(~~(-or)~~);

(b) Has received an immigrant visa(~~(-)~~); or

(c) Has applied for United States citizenship; or

(5) Is a dependent of a member of the United States Congress representing the state of Washington.

### WSR 17-01-140

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed December 20, 2016, 4:52 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-08-390 Acquisition, security, retention, disclosure and destruction of health information.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on February 7, 2017, at 10:00 a.m.

Date of Intended Adoption: February 21, 2017.

Submit Written Comments to: Sean Krier, P.O. Box 47890, Olympia, WA 98504-7890, email <https://fortress.wa.gov/doh/policyreview>, by February 7, 2017.

Assistance for Persons with Disabilities: Contact Sean Krier by February 1, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prior to 2014, RCW 70.02.290 requires the agency to adopt rules for health care information acquisition, retention and security. An update to the law in 2014, required state and local agencies to include rules covering how they handle health care information they inadvertently receive. The proposed changes address this change in law.

Reasons Supporting Proposal: The underlying statute was updated to address situations where health care information is inadvertently disclosed to state and local government agencies. This statute requires agencies to adopt rules specifying that they will return or destroy health care information they receive inadvertently and that they will not disclose it.

Statutory Authority for Adoption: RCW 70.02.290.

Statute Being Implemented: RCW 70.02.290.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Krier, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-3917; Implementation and Enforcement: Bruce Dempsey, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(b), a small business economic impact statement is not required for proposed rules that relate only to internal governmental operations and that are not subject to violation by a nongovernmental party.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 20, 2016

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 92-07-080, filed 3/17/92, effective 4/17/92)

**WAC 246-08-390 Acquisition, security, retention, disclosure and ~~(security)~~ destruction of health ~~(care)~~ information.** ~~((This section sets forth the process by which the department of health or disciplining authority obtains and protects health care information under RCW 70.02.050. This section does not apply to health care information obtained by the department through other sources.~~

~~(1) Acquisition.~~

~~(a) The department shall request health care information in writing.~~

~~(b) Health care providers shall provide the requested information pursuant to RCW 70.02.050.~~

~~(2) Retention. The department shall maintain health care information obtained under this section as long as necessary to perform agency functions.~~

~~(3) Security. The department shall secure the records and protect confidentiality.~~

~~(a) The manager of the program within the department that requested the records shall act as the custodian of records, and shall provide access to the information only as necessary to perform agency responsibilities.~~

~~(b) The custodian shall monitor the location and security of the information.~~

~~(4) The department shall not make health care information obtained under RCW 70.02.050 available for public inspection and copying except as may be required by chapter 42.17 RCW. No health care information containing patient identifying data shall be made available for public inspection and copying under chapter 42.17 RCW. Health care information obtained under this section may be released to public agencies or entities as required by law or upon agreement by the agency or entity that the health care information will be~~

~~used only for authorized statutory purposes and will not be disclosed further-))~~ This section establishes how the department acquires, secures, retains, discloses, and destroys health care information under chapter 70.02 RCW and health-related data under RCW 43.70.050.

(1) The department of health (department) is the single department in state government with the primary responsibilities for the preservation of public health, monitoring health care costs, the maintenance of minimal standards for quality in health care delivery, and the general oversight and planning for all the state's activities as they relate to the health of its citizenry. In this capacity, the department regularly obtains individually identifiable health care information and health-related data necessary for the department to carry out public health activities.

(2) For the purposes of this section "health information" means "health care information" as defined in chapter 70.02 RCW and "health-related data" as described in RCW 43.70.050.

(3) Acquisition.

(a) The department may obtain health information as authorized by state and federal law.

(b) The department will identify its statutory authority to obtain health information when the department makes a request for health information.

(c) The department will identify its statutory authority to obtain and to disclose health information when entering into a data sharing agreement.

(4) Privacy and security.

(a) The department protects the privacy of individuals and secures health information consistent with state and federal law and applicable information security standards and guidelines set by the National Institute of Standards and Technologies (NIST).

(b) The department shall appoint a chief information security officer and a privacy officer with delegated agency wide authority to protect the availability, integrity, confidentiality, and privacy of all health information acquired by the department.

(c) Managers of any programs within the department that receive health information act as the primary data steward and assure health information is protected consistent with applicable law and agency privacy, confidentiality and security policies, standards, and practices.

(d) The department will notify a person whose health information is disclosed in violation of state or federal law. The department will make a notification as soon as practicable pursuant to the department's confidential information policy and procedure.

(5) Retention. The department will retain health information in accordance with the department's records retention schedules and copying.

(6) Public inspection and copying.

(a) Chapters 70.02 and 42.56 RCW apply to the public inspection and copying of health information.

(i) Health information that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care is not available for public inspection and copying. Health information that is not individually identifiable is described as "deidentified."

(ii) "Deidentified" has the same meaning as defined in chapter 70.02 RCW.

(iii) The department may consider analogous federal standards for deidentification of protected health information when determining if deidentification of health information is possible.

(b) Permitted disclosures of information and records related to sexually transmitted diseases and information and records related to mental health services are found in chapter 70.02 RCW.

(c) RCW 43.70.050(2) and chapter 42.56 RCW apply to the public inspection and copying of health information as described in RCW 43.70.050(2).

(i) Health information in any form where the patient or provider of health care can be identified shall not be disclosed.

(ii) The department's use of health information shall be in accordance with state and federal confidentiality laws.

(7) Sharing identifiable health information with public health partners. The department may disclose identifiable health information, including information and records related to sexually transmitted diseases and information and records related to mental health services, for public health purposes as described in chapter 70.02 RCW or as otherwise permitted by law.

(8) Health information received by the department that the department has not requested and is not authorized to receive. As required by RCW 70.02.290, the department will not make health information the department has not requested and the department is not authorized to receive available for public inspection and copying. The department will destroy such health care information or the department may securely return such health information to the sender if the sender is a health care facility or health care provider subject to chapter 70.02 RCW.

(9) Destruction. The department shall destroy health information in a manner that reduces it to an illegible condition. Destruction shall take place as soon as practicable after the approved records retention period ends.

**WSR 17-01-141**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed December 20, 2016, 4:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-090.

Title of Rule and Other Identifying Information: Chapter 246-805 WAC, Applied behavior analysis, creating a new chapter to implement a program for certified and licensed applied behavior analysis (ABA) professionals, including licensing, certification and practice standards and credentialing fees.

Hearing Location(s): Department of Health, Point Plaza East, Room 152, 111 Israel Road S.E., Tumwater, WA 98501, on January 25, 2017, at 10:00.

Date of Intended Adoption: February 10, 2017.

Submit Written Comments to: Brett Lorentson, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by January 25, 2017.

Assistance for Persons with Disabilities: Contact Brett Lorentson by January 16, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 18.380 RCW (chapter 118, Laws of 2015) directs the secretary to adopt rules necessary to implement a program for certified and licensed ABA professionals. The proposed rules establish three new health care credentials: Certified behavior technician (CBT), licensed behavior analyst (LBA), and licensed assistant behavior analyst (LABA), and set licensing, certification, and practice standards. The proposed rules also establish fees to regulate these new credentials.

Reasons Supporting Proposal: The proposed rules establish enforceable credentialing requirements that will enhance and protect patient safety by having qualified ABA professionals certified and licensed in Washington state. The department has determined through fee analysis that the proposed fees should be adequate to cover the costs of administering the ABA program. This is required in RCW 43.70.250, which states that the cost of each licensing program must be fully borne by the professional's members and licensing fees must be based on the licensure costs.

Statutory Authority for Adoption: RCW 18.122.050, 43.70.250, and chapter 18.380 RCW.

Statute Being Implemented: Chapter 18.380 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Lorentson, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4611.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SECTION [SECTION] 1: Describe the proposed rule, including a brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

The department of health (department) is proposing a new chapter in rule to establish three new health care credentials: LBA, LABA, and CBT. The proposed rules set:

- Minimum qualifications for licensure of behavior analysts and assistant behavior analysts;
- Minimum qualifications for certification of behavior technicians;
- Supervised experience requirements for assistant behavior analysts;
- Requirements for approved behavior technician training programs;
- Allowable tasks behavior technicians are authorized to perform;

- Supervision standards for behavior technicians; and
- Fees for each credential.

SSB 5488, enacted in 2015 and codified as chapter 18.380 RCW, establishes the ABA program. Chapter 18.380 RCW grants the secretary rule-making authority to set licensing and practice standards for LBAs, LABAs, and CBTs. The statute establishes a new advisory committee, the applied behavior analysis advisory committee (advisory committee) to consult with the secretary in determining the qualifications for licensure and certification. As of July 1, 2017, chapter 18.830 [18.380] RCW prohibits the practice of ABA without holding the necessary credential.

The behavior analyst certification board (BACB) is the national certifying body that sets professional standards for ABA professionals and administers a national examination to qualify for certification. The BACB defines ABA as "a systematic approach for influencing socially important behavior through the identification of reliably related environmental variables and the production of behavior change techniques that make use of those findings".<sup>1</sup> The United States Surgeon General asserts that ABA has been proven effective in promoting the health and well-being of children with autism spectrum disorder (ASD) and other conditions by decreasing unwanted or harmful behaviors and increasing positive behaviors.<sup>2</sup> ABA is practiced in a variety of settings including hospitals, clinics, private homes, schools, nursing homes, group homes, and businesses.

<sup>1</sup> BACB, <http://bacb.com/about-behavior-analysis/>.

<sup>2</sup> Mental Health: A Report of the Surgeon General (1999), page 164, [www.surgeongeneral.gov](http://www.surgeongeneral.gov).

Chapter 18.380 RCW closely parallels the department's recommendations in a 2014 sunrise review on this issue.<sup>3</sup> A sunrise review is an evaluation of a proposal to change the laws regulating health professions in Washington. Unregulated health profession must go through a sunrise review by the department to determine whether there is a need to require a state credential. The department evaluates whether the profession meets criteria in the law that show unregulated practice can clearly harm or endanger the public<sup>4</sup>. The department makes recommendations to the legislature based on these criteria.

<sup>3</sup> Behavior Analyst Sunrise Review, Department of Health Publication, Number 631-05, (December 2014).

<sup>4</sup> Sunrise Act (RCW 18.120.010).

The 2014 sunrise review was requested by the legislature to review a proposal to establish licensure of behavior analysts and assistant behavior analysts. The proposal was based on BACB certification. The sunrise recommendations supported the proposal because it met the criteria, finding a strong potential for harm from the unregulated practice of ABA. The department added a recommendation to require department certification of behavior technicians, who have unsupervised contact with vulnerable clients in their homes.

Rules establish enforceable licensing and certification requirements for the credentials identified in statute, and provide a safety mechanism for clients receiving ABA services. These safety mechanisms include minimum education, training, and supervision standards.



The following sections are anticipated to create compliance costs for businesses:

- The requirements with which small businesses will need to comply are found in WAC 246-805-230 LABA—Supervised experience and 246-805-320 Behavior technician training program.
- WAC 246-805-230 creates compliance standards for supervisors of LABA supervised experience. To comply with the proposed rule, small businesses such as behavioral therapy agencies and independent LBAs will incur costs to develop a supervision plan and to supervise the assistant behavior analyst.
- WAC 246-805-320 creates compliance standards for agencies and individuals who develop and oversee training programs for behavior technician trainees. To comply with the proposed rule, behavioral therapy agencies and independent LBAs will incur costs to provide and supervise the training, evaluate the competency of the trainee, and provide supervision within hearing and sight when the trainee is working with clients.

The department estimated compliance costs to implement the proposed rules from stakeholder feedback during the six stakeholder workshops held in the summer and fall of 2016 and received in writing.

**SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

There is no NAICS four- or six-digit code that closely aligns with ABA provider businesses. While ABA is not considered mental health treatment, the closest code found was 621330 - Offices of mental health practitioners (except physicians).

**Table A.**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll
621330	Office of Mental Health Practitioners (except Physicians)	591	\$1,130.00

**SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The following sections are anticipated to create compliance costs for businesses:

**WAC 246-805-230 LABA—Supervised experience.**

The statute requires applicants seeking an assistant behavior analyst license to complete one thousand hours of supervised experience in behavior analysis (or an alternative approved by the secretary), but does not describe required elements of the experience. The proposed rule describes these elements including: Minimum hours the LABA trainee must be supervised, what activities the supervisor must observe the

trainee performing, a required supervisory plan, and supervisor qualifications.

Small businesses such as behavioral therapy agencies and independent LBAs or board certified behavior analysts (BCBA) may incur the costs of developing a supervision plan and the actual hours required to supervise the LABA trainee. The proposed rule requires that at least five percent of the total one thousand hours (at least fifty hours) of experience be supervised by an LBA or BCBA<sup>5</sup>. The proposed rule aligns with the supervised experience required for national certification as a board certified assistant behavior analyst (BCaBA) from BACB.

<sup>5</sup> Before July 1, 2017, there will be no LBAs, so the rule allows supervision of LABA students in Washington state by BACB-certified CBAs. As of July 1, 2017, only LBAs may provide student supervision in Washington. But the rule anticipates that LABA candidates trained outside of Washington may be supervised by CBAs.

Supervision costs may be incurred by the employer or the individual pursuing an LABA credential (through a contractual agreement with an ABA agency or behavior analyst). The employer-incurred costs would include providing supervision in-house or by contracting with outside training entities. The estimated cost for a private ABA agency or individual behavior analyst providing supervision during this experience is \$3,500 to \$5,000 (see Table B).

It is anticipated that compliance will not add additional costs for ABA agencies or providers who already train and supervise individuals as part of their employment practices, and for individuals seeking to meet the BACB's national certification requirement of supervised experience. Other ABA agencies and providers choosing to train prospective LABA applicants may incur new costs of developing training plans and providing the fifty hours of directly supervised experience. For agencies that are offering the opportunity for supervised experience for LABA credential candidates, the activities may affect the supervisor's time working directly with ABA clients. The supervisor would not need to focus on meeting the supervised experience requirements with the LABA trainee.

These activities have the potential to reduce business revenue due to the LBA or BCBA repurposing their time spent with clients towards the supervised experience activities. The reduced revenue will depend on the type of services that would not be able to be performed with new or existing clients, and based on the type of reimbursement source.<sup>6</sup> The impact to revenue will also be determined on the amount charged by an ABA professional. The estimated wage range for a BCaBA is \$24-33 per hour;<sup>7</sup> and for a BCBA the estimated median hourly wage is \$40<sup>8</sup>. The potential added cost to an employer will range from \$3250-3650.

<sup>6</sup> Health care authority ABA Treatment Fee Schedule (effective July 1, 2016). Provider billing guides and fee schedules. ABA. <http://www.hca.wa.gov/billers-providers/claims-and-billing/professional-rates-and-billing-guides>.

<sup>7</sup>[http://www.payscale.com/research/US/Job=Board\\_Certified\\_Assistant\\_Behavior\\_Analyst/Hourly\\_Rate](http://www.payscale.com/research/US/Job=Board_Certified_Assistant_Behavior_Analyst/Hourly_Rate).

<sup>8</sup>[http://www.payscale.com/research/US/Certification=Board\\_Certified\\_Behavior\\_Analyst\\_\(BCBA\)/Hourly\\_Rate](http://www.payscale.com/research/US/Certification=Board_Certified_Behavior_Analyst_(BCBA)/Hourly_Rate).

**Cost of Compliance**

**Table B. Examples of costs of supervision by an LBA or BCBA during the LABA trainee's supervised experience**

Source	Description	Cost
Washington Association of Behavior Analysis (WABA)	At least 50 hours of direct supervision at \$100 per hour minimum. \$5000 would be market value what an outside person would be paid.	\$5,000
Imagine Behavioral & Developmental Services	Estimated a cost of \$4000 for the agency to provide BCaBA level supervision.	\$4,000
Institute for Behavioral Training	Offers BCaBA supervision to meet BACB supervision requirements at \$70 per hour. The services include one-to-one and small group supervision formats, professional guidance and support, supervision via video conferencing, assessment and curriculum. (50 hours x \$70)  <a href="http://www.ibehavioraltraining.com/">http://www.ibehavioraltraining.com/</a>	\$3,500
Leaps and Beyond	<a href="http://www.leapsandbeyond.com/#!__bcba-bcaba-supervision">http://www.leapsandbeyond.com/#!__bcba-bcaba-supervision</a>  BCaBA Supervision Options - For all supervision options, supervision hours include; video review and feedback, phone conferencing, review and discussion of data collection and analysis, functional behavioral assessment and analysis, assistance and feedback related to program development and research review and discussion.  Options: One year or eighteen months. Includes 50 hours of supervision, and requires the trainee work an average of 15-20 hours each week or more within the field of ABA.	\$3,750

**WAC 246-805-320 Behavior technician training program.**

The statute requires behavior technician applicants to complete forty hours of training plus any other requirements set by the secretary. In addition to a forty-hour training component, the proposed rules require an ABA agency, individual ABA provider or training entity to observe the trainee with clients and perform a competency assessment.

The course work portion of the training program may be provided directly by the entity staff, or from outside training providers either in-person or online. The competency evaluation and assessment could be conducted by the training entity, or separately by an LBA or BCBA. The cost range for employer-led trainings with experiential training and competency component is \$1,140-\$2,754. The cost range for only the course work required by statute is \$85-\$680. The combined cost range for course work, observation, and competency assessment is estimated to be between \$1,820 and \$2,754. See Table D.

Supervision is an integral part of the training program. The proposed rule also requires that a supervising LBA or BCBA must be within sight and hearing and available to intervene when a behavior technician trainee is working with clients. This may require the supervisor to either:

- Limit the number of hours a trainee works with clients to those times when an LBA or BCBA is available to

directly supervise. This would limit the cost to the agency or individual trainer, estimated at a cost of \$50 to \$100 per hour for supervision. This could result in loss of revenue for the hours the LBA/BCBA is supervising a trainee and is not available to work with clients. The proposed rule does not set the number of hours a trainee must work with clients during the training program.

- Allow the trainee to gain experience by working alongside (shadowing) the supervising LBA or BCBA serving clients. This option may result in no loss of revenue to the agency or LBA. However, the supervising agency or LBA would incur wage expenses if they are paying the trainee throughout the precredential training period.

Some agencies/behavior analysts report paying trainees a training wage of between \$9.74 and \$12 per hour (see Table C). Stakeholders have raised concern about needing to pay wages of behavior technician trainees even when they are not serving clients due to the requirement for the supervisor to be within sight and hearing until the technician obtains his/her CBT credential from the department. While this concern is noted, the department determined that reducing the risk to ABA clients being served by noncredentialed trainees outweighs the cost to ABA agencies and LBAs of providing hearing and sight supervision.

**Cost of Compliance**

**Table C. Examples of CBT training program costs.**

Source	Description	Cost
	<b>Employer led trainings with competency evaluation and assessment.</b>	<b>\$1,820-\$2,754</b>

Source	Description	Cost
Imagine Behavioral & Developmental Services	The agency pays for a 40 hour training module which is typically \$200 plus the hourly trainee pay rate of \$12 per hour (\$12 x 40 hrs=\$480). Subtotal: \$480+\$200= \$680 Additional 20 hours of implementation at \$12 trainee pay rate=\$240. Cost of the trainer is \$45 x 20 hrs=\$900. Subtotal = 1140.00	Cost for 40 hour training module: \$200
		Cost for 40 hour training module and trainee wage: \$680
		Cost for supervisor led-instruction to include practice, observation, and competency = \$1140
		Total cost = \$1820
Magnolia Behavior Therapy	<ul style="list-style-type: none"> <li>• Online registered behavior technicians (RBT) training: \$300 (Relias, a learning management provider)</li> <li>• Instructor time with hands on training: Between \$500 and \$1,500, depending on how many hours the BT needs to get up to speed (in addition to the online training, a BCBA administers training protocols).</li> <li>• Shadow/observation sessions: \$250 (time paid to the BT for non-billable sessions in which they shadow another BT).</li> <li>• Supervisor competency assessment: \$250 (BCBA time spent educating and training the BT so they can pass the competency assessment, in order to be able to sit for the RBT exam).</li> <li>• Travel time: \$75 (estimated costs of travel reimbursements, to and from shadow sessions, training sessions with a BCBA and the exam site).</li> <li>• Training rate at \$9.47/ hour for a minimum of 40 hours = \$379</li> </ul>	Cost for 40 hour course work = \$300
		Cost for supervisor led-instruction to include practice, observation and competency = \$1,454 - \$2,454
		Total cost = \$1,745 - \$2,754

**SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

The proposed rules are anticipated to impose more than minor costs to business that must comply. Training LABA or CBT candidates is voluntary in these proposed rules. Some LABA's and CBT may be trained in college settings that are exempt from these rules by statute. However, many ABA agencies and LBAs need to train and employ LABAs and/or CBTs in order to meet the demand for ABA client services.

The estimated costs of complying with the supervised training requirement is between \$3,000 to \$5,000 per LABA trainee, and between \$1,755 and \$2,755 per CBT trainee. These costs exceed the minor cost threshold of \$1,130 either separately or combined. A small business economic impact statement is required for the proposed rules.

**Table D. Proposed WAC sections are not expected to create costs to businesses, or if there are costs they would not be more than minor:**

WAC Section	Section Title
246-805-010	Definitions.
246-805-200	Application requirements.
246-805-300	Application requirements.
246-805-900	Fees.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the**

**largest businesses required to comply with the proposed rule.**

All ABA agencies and provider businesses in Washington are small businesses (fifty or fewer employees). The proposed rules may impact the smaller businesses with fewer alternatives for supervising LABA or CBT training than larger ABA businesses that may have multiple potential training supervisors.

Small businesses have an option to minimize the impact of the proposed rules by hiring RBTs or department-credentialed agency affiliated counselors.<sup>9</sup> There are an estimated one thousand three hundred agency affiliated counselors with sufficient ABA training to qualify for a CBT credential without further training. The estimated number was determined by analyzing DOH's professions database (ILRS) which reported active agency affiliated counselors who are associated with an approved ABA agency or reported providing ABA services.

<sup>9</sup> An agency affiliated counselor is a person who is engaged in counseling and employed by an agency, county or federally recognized tribe. They must be registered under chapter 18.19 RCW.

Small businesses do have the option to reduce the impact of the proposed behavior technician training program. The small business may identifying [identify] less costly training options through outside providers who meet the rule requirements and offer training in the content areas for the behavior technician training program.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to**

**reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.**

We have made an effort to mitigate costs by considering that training does not solely need to be provided inhouse by the employer, and some training content may be presented to the trainee via online providers. By providing training through online providers, the supervisor will not have to develop the content or deliver the training, thus reducing the amount of contact hours with the trainee. The supervisor is still responsible for determining the content of the training and adherence to the training.

Additional efforts to mitigate costs includes the portions of the supervisor led-instruction activities during the training program. These activities:

- Include the trainee practicing in simulated situations and when the trainee is with clients.
- Were originally in addition to the instruction to learn ABA content.
- Are now incorporated into the overall forty hours of the training program, thus potentially reducing the time a trainee may be assessed at an entry level competency.

The department considered mitigating supervision costs for CBT trainees by reducing the requirement for the supervisor to be within direct hearing and sight to twenty percent of the hours the trainee works with clients. However, the department determined this alternative created an undue risk to the public because it would not provide a level of supervision that would adequately protect the health and safety of clients and would not allow the department to take disciplinary action on the trainee if he or she acted in a manner that jeopardized the health and safety of the client.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

The advisory committee held six meetings which were open to the public. Out of these six meetings, two specifically addressed the CBT training program rule. At most of the meetings, draft language was presented to small ABA business stakeholders, and these stakeholders contributed significant input to the content of the proposed rule.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

ABA stakeholders and businesses reported a high demand for ABA services within Washington state. As reported in the article titled the Next Generation of ABA Providers, the demand for services is not just a Washington state issue.<sup>10</sup> The proposed rules provide viable pathways to get an ABA credential that will help providers to legally provide ABA services after July 1, 2017. We do not anticipate any lost jobs as a result of compliance with the proposed rules.

<sup>10</sup> The Next Generation of ABA Providers by Mark R. Dixon. Behavior Analysis in Practice—Association for Behavior Analysis International *Behav Anal Pract.* 2014 Oct; 7(2): 145-146. Published online 2014 Jul 29. doi: [10.1007/s40617-014-0009-0](https://doi.org/10.1007/s40617-014-0009-0). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711752/>.

We anticipate that with the proposed rule, which includes an option for CBT applicants to meet the training program requirement through a postsecondary school or col-

lege accredited by a regional or national accrediting organization, may create jobs when such school or college programs are developed to meet the initial training needs of behavior technicians.

A copy of the statement may be obtained by contacting Brett Lorentson, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4611, fax (360) 236-2901, email [Brett.Lorentson@doh.wa.gov](mailto:Brett.Lorentson@doh.wa.gov).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brett Lorentson, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4611, fax (360) 236-2901, email [Brett.Lorentson@doh.wa.gov](mailto:Brett.Lorentson@doh.wa.gov).

December 20, 2016  
John Wiesman, DrPH, MPH  
Secretary

**Chapter 246-805 WAC**

**APPLIED BEHAVIOR ANALYSIS**

NEW SECTION

**WAC 246-805-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly states otherwise:

- (1) "ABA" means applied behavior analysis.
- (2) "Behavior Analysis Certification Board" or "BACB" means a national organization that certifies individuals as meeting education, training, supervised experience and examination standards of the behavior analytical profession.
- (3) "Board certified assistant behavior analyst" or "BCaBA" means a person certified with the BACB as meeting the education, training, supervised experience, and examination standards of the BACB.
- (4) "Board certified behavior analyst" or "BCBA" means a person certified with the BACB as meeting the education, training, supervised experience and examination standards of the BACB.
- (5) "Certified behavior technician" or "CBT" means a person certified under chapter 18.380 RCW.
- (6) "Close, ongoing supervision" means procedures or tasks that are performed under a supervisor's overall direction and control. The supervisor must be accessible, but the supervisor's presence is not required during the performance of the procedures or tasks.
- (7) "Department" means the Washington state department of health.
- (8) "In good standing" means an active credential issued by the department of health without:
  - (a) Conditions;
  - (b) Current discipline;
  - (c) Pending discipline; or
  - (d) Restrictions on the practice of ABA.
- (9) "Licensed assistant behavior analyst" or "LABA" means a person licensed under chapter 18.380 RCW.
- (10) "LABA trainee" means a person participating in a supervised experience described in WAC 246-805-230.
- (11) "Licensed behavior analyst" or "LBA" means a person licensed under chapter 18.380 RCW.

(12) "Registered behavior technician" or "RBT" means a person registered with the BACB as meeting the education and training standards of the BACB.

(13) "Secretary" means the secretary of the department of health or the secretary's designee.

(14) "Trainee" means a person participating in a behavior technician training program described in WAC 246-805-310.

## LICENSED BEHAVIOR ANALYST

### NEW SECTION

**WAC 246-805-100 Licensed behavior analyst—Application requirements.** An applicant for initial licensure as a LBA shall submit the following to the department:

(1) A completed application on forms provided by the department;

(2) Proof of completion of at least four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(3) Fees as required in WAC 246-805-990; and

(4) Proof of:

(a) Current BACB certification as a BCBA. Department verification of the applicant's BCBA certification number is accepted as proof of current certification; or

(b) Meeting the requirements in RCW 18.380.050 (1)(a) including:

(i) A master's or doctorate degree in behavior analysis or other natural science, education, human services, engineering, medicine, or field related to behavior analysis approved by the secretary;

(ii) Successful completion of a minimum of two hundred twenty-five classroom hours of graduate level instruction in behavior analysis topics;

(iii) Successful completion of a supervised experience requirement, consisting of a minimum of one thousand five hundred hours; and

(iv) Successful completion of the national BACB examination as meeting the requirement in RCW 18.380.050 (1)(iv).

## LICENSED ASSISTANT BEHAVIOR ANALYST

### NEW SECTION

**WAC 246-805-200 Licensed assistant behavior analyst—Application requirements.** An applicant for initial licensure as a LABA shall submit the following to the department:

(1) A completed application on forms provided by the department;

(2) Proof of completing at least four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(3) Proof of supervision;

(4) Fees as required in WAC 246-805-990; and

(5) Proof of:

(a) Current certification as a BCaBA from the BACB. Department verification of the applicant's BCaBA certification number is accepted as proof of current certification; or

(b) Meeting the requirements in RCW 18.380.050 (1)(b);

(i) Graduation from a recognized bachelor's degree program under WAC 246-805-210;

(ii) Proof of successful completion of a minimum of one hundred thirty-five classroom hours of instruction in behavior analysis topics described in WAC 246-805-220; and

(iii) Proof of successful completion of a supervised experience requirement under WAC 246-805-230.

### NEW SECTION

**WAC 246-805-210 Licensed assistant behavior analyst—Recognized educational programs.** The department will accept a bachelor's degree in any discipline from an institution accredited by the council for higher education accreditation or United States Department of Education as meeting the requirements under RCW 18.380.050 (1)(b)(i) for applicants applying for a LABA credential.

### NEW SECTION

**WAC 246-805-220 Licensed assistant behavior analyst—Required topics for classroom hours.** (1) An applicant for initial licensure as a LABA shall complete one hundred thirty-five classroom hours of instruction in specific behavior analysis topics from a recognized educational institution in compliance with WAC 246-805-210. Topics must include the following content areas and the minimum number of hours specified:

(a) Ten hours of ethical considerations;

(b) Forty hours of definitions and characteristics and principles, processes, and concepts;

(c) Twenty hours of experimental evaluation of interventions, measurement of behavior, and displaying and interpreting behavioral data;

(d) Twenty-five hours of behavioral assessment and selecting intervention outcomes and strategies; and

(e) Forty hours of behavior change procedures and systems support.

(2) Classroom hours under this section may be taken as part of or in addition to the applicant's bachelor's degree program.

### NEW SECTION

**WAC 246-805-230 Licensed assistant behavior analyst—Supervised experience.** (1) Prior to submitting an application to the department, an applicant for initial licensure for a LABA license shall complete a minimum of one thousand hours of supervised experience in behavior analysis.

(2) The LABA trainee must be enrolled in or have completed the requirements contained in WAC 246-805-220 to be eligible to begin the required supervised experience as a LABA trainee.

(3)(a) The LABA trainee must complete his or her supervised experience within five years of the start date of the supervised experience.

(b) When actively participating in a supervised experience, the LABA trainee must participate in supervised experience at least ten hours and no more than thirty hours per week.

(c) At least five percent of the total monthly hours of supervised experience must be under the supervision of a LBA or BCBA.

(d) Supervision must be conducted at least every two weeks.

(4) A person is qualified to supervise a LABA trainee if he or she:

(a) Holds an active license in good standing as a LBA, or holds a current certification as a BCBA and meets the BACB supervisory requirements;

(b) Has practiced by providing at least one thousand five hundred hours of behavior analytic services to clients as a LBA or a BCBA; and

(c) Is not related to, subordinate to, or employed by the LABA trainee during the supervised experience period. Employment does not include compensation received by the supervisor from the LABA trainee for supervision services.

(5) Supervision shall include:

(a) Observing and providing feedback to the LABA trainee on his or her behavior analytic activities with a client in the natural environment;

(b) Observing the LABA trainee by synchronous (real time) web camera, video conferencing, or similar means when the supervisor is not physically present; and

(c) Supervising in small groups of up to six LABA trainees for no more than half of the total supervision required in subsection (3) of this section.

(6) The LABA trainee shall perform the following activities during the supervised experience:

(a) Directly implementing behavioral programs delivering therapeutic and instructional procedures, which may not exceed fifty percent of the total accrued experience hours; and

(b) Designing and systematically monitoring behavioral programs, naturalistic observation, staff and caregiver training, researching literature related to the program, and conducting assessments related to the need for behavioral intervention.

(7) Supervised experience must include the following content areas:

- (a) Ethics and professional conduct;
- (b) Measurement;
- (c) Experimental design;
- (d) Behavior-change considerations;
- (e) Fundamental elements of behavior change;
- (f) Behavior-change procedures;
- (g) Behavior-change systems;
- (h) Problem identification;
- (i) Assessment;
- (j) Intervention;
- (k) Implementation, management and supervision;
- (l) Philosophical assumptions of behavior analysis;
- (m) Verbal operants; and
- (n) Respondent and operant conditioning.

(8) The supervisor and LABA trainee must develop a supervision plan before the LABA trainee begins performing any behavior analytic tasks. The supervision plan must be maintained in the LABA trainee's file for seven years after completion of supervised experience. The supervision plan shall include:

(a) Types of duties and responsibilities the LABA trainee will perform;

(b) Dates, time and duration of supervision;

(c) Type of supervision, as described in subsection (5) of this section;

(d) Brief description of supervision activities; and

(e) Signatures of both the supervisor and LABA trainee.

(9) A supervised experience under this section may be completed as part of or in addition to the LABA trainee's bachelor's degree program.

## BEHAVIOR TECHNICIAN CERTIFICATION

### NEW SECTION

**WAC 246-805-300 Certified behavior technician—Application requirements.** An applicant for initial certification as a CBT shall submit the following to the department:

(1) A completed application on forms provided by the department;

(2) Proof of being at least eighteen years of age;

(3) Proof of a high school diploma or equivalent;

(4) Proof of completing at least four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(5) Proof of:

(a) Current registration as a RBT from the BACB. Department verification of the RBT registration number is accepted as proof of current registration;

(b) Current behavior technician registration or certification from a nationally accredited professional credentialing entity accepted by the secretary; or

(c) Successful completion of a behavior technician training program outlined in WAC 246-805-320.

(6) Proof of supervision that meets the requirements of WAC 246-805-330; and

(7) Fees as required in WAC 246-805-990.

### NEW SECTION

**WAC 246-805-310 Behavior technician training program.** An applicant who does not hold RBT registration under WAC 246-805-300 (5)(a) or other behavior technician registration or certification accepted by the secretary under WAC 246-805-300 (5)(b) may qualify for a CBT credential by completing a behavior technician training program.

(1) Behavior technician training programs meeting the requirements described in this section are approved by the secretary.

(2)(a) The behavior technician training program must be affiliated with a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or

(b) The behavior technician training program must be through an agency, business or individual meeting the following criteria:

(i) Has a supervisor within sight and hearing and available for immediate intervention when the trainee is working with clients.

(ii) Has a supervisor that is:

(A) A LBA who holds a current and active credential in good standing with at least one year of full-time equivalency;

or an active BCBA with at least one year of full-time equivalency who meets the supervisor requirements of the BACB.

(B) Responsible for the conduct of the trainee at all times when working with clients under his or her supervision.

(iii) Responsible for the training program, who will be referred to as the "training program supervisor," and shall:

(A) Be unrelated, subordinate to, or employed by the supervisee during the training period. Employment does not include compensation received by the supervisor from the supervisee for supervision services.

(B) Be responsible for determining the content of the training, adherence to the training, and ascertaining the competency of the trainee.

(C) Supervise the trainee until he or she demonstrates entry level competency, as provided in subsection (2)(a)(v) of this section.

(iv) The behavior technician training program must include at least forty hours of classroom, online or supervisor-led instruction in the following content areas:

- (A) Measurement;
- (B) Assessment;
- (C) Skill acquisition;
- (D) Behavior reduction;
- (E) Documentation and reporting; and
- (F) Professional conduct and scope of practice.

(v) Supervisor-led instruction:

(A) Practicing techniques in a simulated situation incorporating content areas in this subsection (b)(iv).

(B) Observing and performing behavior analytic services with clients incorporating content areas in this subsection (b)(iv).

(vi) Evaluation and assessment of knowledge and skills of this subsection (b)(iv) and (v) by the training program supervisor demonstrating entry level competency of the trainee.

(3) Trainees who only complete the forty hours through classroom or online instruction in the content areas in subsection (2)(b)(iv) of this section, from a training provider who is not a training program supervisor affiliated with an agency, business, or individual, must meet the requirements of subsection (2)(b)(v) of this section.

(4) After the trainee demonstrates entry level competency, as provided in subsection (2)(b)(vi) of this section, supervision may be provided by any behavior analyst who meets the requirements of subsection (2)(b)(i) and (ii) of this section.

(5) Prior to or at the time of the first visit with a client, the supervisor shall make sure that the client or client's parent or guardian is notified in writing that the trainee is participating in a behavior technician training program. The notification must be within the client's treatment plan or other documentation that must include the supervisor's name and contact information.

(6) A trainee must complete the training program and submit an application to the department on a form provided by the department within one hundred eighty days of starting the training program.

(7) Documentation of all behavior analytic training, supervision, duties, and responsibilities of the trainee must be completed and signed by the training program supervisor and

the trainee, and placed in the trainee's personnel file. Copies of the documentation will be maintained by both the trainee and the training program supervisor.

(8) Upon successful completion of the training program, the training program supervisor will sign an attestation that the trainee has completed the behavior technician training.

#### NEW SECTION

**WAC 246-805-320 Certified behavior technician—Tasks.** (1) A CBT shall not:

(a) Initiate or implement a treatment program with a client until the client has been evaluated by a LBA or LABA, and a written treatment and instructional program has been prepared by a LBA or LABA;

(b) Independently perform a client assessment or evaluation, but may assist in the process under the direction of a LBA or LABA; and

(c) Independently design or modify client treatment plans or instructional programs.

(2) A CBT shall:

(a) Monitor the need for reassessment and report changes in status that may warrant reassessment or referral by or under the direction of a LBA or LABA; and

(b) Immediately discontinue and notify the supervising LBA or LABA about any treatment procedure that appears harmful to the client.

#### NEW SECTION

**WAC 246-805-330 Certified behavior technician—Continuing supervision.** (1) A CBT must work under close, ongoing supervision of a LBA or LABA for each client receiving ABA services.

(2) A supervisor:

(a) Must hold an active license in good standing as a LBA or LABA; and

(b) Shall be responsible for the conduct of the CBT at all times when working with clients under his or her supervision.

(3) The CBT and the supervisor must develop a supervision plan before the CBT begins to provide any behavior analytic tasks. A copy of the supervision plan must be maintained both by the supervisor and CBT. The supervision plan must include, but not be limited to:

(a) Duties and responsibilities the CBT will perform;

(b) Type and frequency of supervision, as described in subsection (5) of this section; and

(c) Signature of both the supervisor and supervisee.

(4) The supervisor shall review the CBT's progress with the CBT as necessary but at least every six months.

(5) The supervisor shall:

(a) Meet in person with the CBT to provide guidance in working with new clients;

(b) Provide supervision for a minimum of five percent of the CBT's hours with client per month;

(c) Conduct at least two face-to-face contacts per month with the CBT. Face-to-face contact may occur in-person, on-site or by videoconferencing;

(d) Observe the CBT at least once per month when CBT is providing services to clients. Observation may occur in-person, on-site or by videoconferencing; and

(e) Observe the CBT with each client on his or her case-load at least once every three months.

NEW SECTION

**WAC 246-805-990 Applied behavior analysis fees and renewal cycle.** (1) Credentials in this section must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

<b>Title of Fee</b>	<b>Fee</b>
<b>Licensed behavior analyst</b>	
<b>Initial application</b>	
Application and initial license	\$250.00
<b>Active license renewal</b>	
Renewal	350.00
Late renewal penalty	175.00
<b>Duplicate license</b>	30.00
<b>Verification of license</b>	30.00
<b>Licensed assistant behavior analyst</b>	
<b>Initial application</b>	
Application and initial license	160.00
<b>Active license renewal</b>	
Renewal	175.00
Late renewal penalty	90.00
<b>Duplicate license</b>	30.00
<b>Verification of license</b>	30.00
<b>Certified behavior technician</b>	
<b>Original application</b>	
Application and initial license	95.00
<b>Active license renewal</b>	
Renewal	150.00
Late renewal penalty	75.00
<b>Duplicate license</b>	30.00
<b>Verification of license</b>	30.00