

WSR 21-08-001
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 24, 2021, 12:14 p.m., effective April 24, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Emergency rules were filed in January 2021 to amend WAC 181-79A-228 to extend timeframe for emergency certificates. These WAC amendments were adopted as permanent rule in [the] March 2021 board meeting.

Citation of Rules Affected by this Order: Amending WAC 181-79A-228.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-04-105 on March 18, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2021.

Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-034, filed 7/25/20, effective 8/25/20)

WAC 181-79A-228 Emergency teacher certificates. Emergency teacher certificates, valid for one year, may be issued by the superintendent of public instruction under the following conditions:

(1) A teacher preparation program approved by the professional educator standards board has recommended the candidate as having met all requirements for program completion with the exception of one or more of the following:

(a) The performance assessment as described in WAC 181-78A-232 (~~and 181-78A-300~~);

(b) The content knowledge assessment as described in ~~chapter 181-78A~~ WAC (~~181-78A-300 (2)(b)~~); and

(c) The basic skills assessment as described in WAC 181-78A-232 (~~and 181-78A-300~~).

(2) During the validity period of the certificate, preparation program providers are required to inform, advise, and support applicants on assessment requirements as described in WAC 181-78A-231(3).

(3) Teacher preparation programs may recommend candidates for an emergency certificate under this section through (~~June 30~~) December 31, 2021.

(4) One additional one-year emergency certificate may be issued upon recommendation by the preparation program provider. Teacher preparation programs may recommend candidates for this additional one-year emergency certificate through (~~December 31, 2021~~) June 30, 2022.

(5) Candidates recommended for an emergency certificate under this section must apply for that certificate through the office of superintendent of public instruction no later than December 31, 2022.

WSR 21-08-002
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed March 24, 2021, 1:09 p.m., effective April 24, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 446-65-010(2) defines the harvest dates starting on February 1 and ending on November 30 of each year. This part of the WAC is not consist[ent] with RCW 46.32.130, which states that harvest dates is [are] January 1 through December 31 of each year.

Citation of Rules Affected by this Order: Amending WAC 446-65-010.

Statutory Authority for Adoption: RCW 46.32.020 and 46.48.170.

Adopted under notice filed as WSR 21-03-062 on January 18, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: March 24, 2021.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 18-06-029, filed 2/28/18, effective 3/1/18)

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), as they exist on October 1, 2017, for motor carriers used in intrastate or interstate commerce in their entirety:

- (a) Part 40 Procedures for transportation workplace drug and alcohol testing programs.
- (b) Part 325 Compliance with interstate motor carrier noise emission standards.
- (c) Part 350 Commercial motor carrier safety assistance program.
- (d) Part 355 Compatibility of state laws and regulations affecting interstate motor carrier operations.
- (e) Part 365 Rules governing applications for operating authority.
- (f) Part 367 Standards for registration with states.
- (g) Part 372 Exemptions, commercial zones and terminal areas.
- (h) Part 373 Receipts and bills.
- (i) Part 376 Lease and interchange of vehicles.
- (j) Part 379 Preservation of records.
- (k) Part 380 Special training requirements.
- (l) Part 381 Waivers, exemptions, and pilot programs.
- (m) Part 382 Controlled substances and alcohol use and testing.
- (n) Part 383 Compliance with commercial driver's license program.
- (o) Part 385 Safety fitness procedures.
- (p) Part 387 Minimum levels of financial responsibility for motor carriers.
- (q) Part 390 General.
- (r) Part 391 Qualification of drivers. Provided that 49 C.F.R. 391 subpart D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.
- (s) Part 392 Driving of motor vehicles.
- (t) Part 393 Parts and accessories necessary for safe operation.
- (u) Part 395 Hours of service of drivers: Except if a company has drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce provided that:
 - (i) The driver must:
 - (A) Operate within a one hundred air-mile radius of the location where the driver reports to work and the driver must return to the work reporting location at the end of each duty tour;
 - (B) Have at least ten consecutive hours off duty separating each on-duty period;
 - (C) Not drive:
 - More than twelve hours following at least ten hours off duty; or
 - After the fourteenth hour after coming on duty on at least five days of any period of seven consecutive days; and
 - After the sixteenth hour after coming on duty on no more than two days of any period of seven consecutive days; and
 - After having been on duty for eighty hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicle every day of the week; or
 - After having been on duty for ninety hours in eight consecutive days if the employing motor carrier operates commercial motor vehicle every day of the week; in any period of

seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.

(ii) The motor carrier that employs the driver must maintain and retain for a period of twelve months accurate and true time recordings showing:

- (A) The time the driver reports for duty each day;
 - (B) The total number of hours the driver is on duty each day;
 - (C) The total number of hours the driver drives each day;
 - (D) The time the driver is released from duty each day; and
 - (E) The total time the driver is driving and on duty for the preceding seven days.
- (v) Part 396 Inspection, repair, and maintenance.
- (w) Part 397 Transportation of hazardous materials; driving and parking rules.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined ~~((as starting February 1 and ending November 30 of each year))~~ in RCW 46.32.130.

(3) Links to the C.F.R.s. are available on the Washington state patrol website at www.wsp.wa.gov. Copies of the C.F.R.s. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

WSR 21-08-006

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 24, 2021, 3:24 p.m., effective April 24, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In light of the public health emergency, the Centers for Medicare and Medicaid Services waived rules requiring in-person assessments. In addition, this change clarifies instances in which the in-person interviews are not required. Therefore, the department is amending WAC 388-106-0050 What is an assessment?

The department wants to continue providing personal care services to vulnerable people during the pandemic. To do that, federal medicaid law requires an assessment of the person's functional eligibility. Because of the COVID-19 pandemic, in-person assessments increase the risk of transmission, and the beneficiaries are often in high risk groups. Amendment of this rule is necessary for the preservation of the public health and safety because without it the department may not be able to safely assess vulnerable adults so that they can receive needed medicaid services. Without the amendment it may be difficult for the department to comply with medicaid regulations and receive federal financial participation. Existing federal law allows for the assessment to be performed remotely if the person agrees. The requirement that the beneficiary agrees to a remote assessment has been temporarily waived by the Centers for Medicaid and Medicare

Services. The amendment aligns the state rule with federal requirements.

Citation of Rules Affected by this Order: Amending WAC 388-106-0050.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 21-04-107 on February 1, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least every twelve months, or more often when there are significant changes necessitating revisions to your CARE plan, or at your request. If your assessment did not take place in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in

a change to your benefits. You will also receive a new service summary and assessment details, if requested.

(4) An assessment interview does not need to be in-person under the following circumstances:

(a) You agree to the interview being conducted remotely, and have adequate support to participate in the assessment if you need it; or

(b) An in-person interview is not required by the applicable federal regulation or the requirement is waived by the centers for medicare and medicaid services.

WSR 21-08-008

PERMANENT RULES

BELLEVUE COLLEGE

[Filed March 25, 2021, 12:49 p.m., effective April 25, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Bellevue College is codifying its weapons and fireworks policy in the Washington Administrative Code under chapter 132H-121 WAC, General conduct, in order to maintain the educational mission and safety of the campus community. Changes include:

(1) Clarifying the rules regarding the possession, holding, wearing, transportation, storing or exhibiting of weapons on college property.

(2) Restricting the possession, distribution, or discharge of fireworks on college property in accordance with City of Bellevue regulations.

(3) Updating the name of the college and student conduct code WAC section numbers.

Citation of Rules Affected by this Order: New WAC 132H-121-030, 132H-121-040 and 132H-121-050; and amending WAC 132H-121-010 and 132H-121-020.

Statutory Authority for Adoption: RCW 28B.50.140 (13); chapter 34.05 RCW.

Adopted under notice filed as WSR 21-01-212 on December 23, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 2, Repealed 0.

Date Adopted: March 24, 2021.

Tracy Biga MacLean
Associate Director

AMENDATORY SECTION (Amending WSR 00-21-013, filed 10/6/00, effective 11/6/00)

WAC 132H-121-010 Smoking. It shall be the policy of Bellevue ((Community)) College, consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public, to maintain a smoke/tobacco free indoor campus environment. Smoking and tobacco use is permitted only in designated locations. Receptacles for smoking materials are provided and are required to be used to maintain litter free campus grounds.

Information regarding the Bellevue ((Community)) College smoking policy is available in Campus Operations, located in K100.

AMENDATORY SECTION (Amending WSR 95-19-050, filed 9/14/95, effective 10/15/95)

WAC 132H-121-020 Hazing rules. Community College District VIII board of trustees has authorized the college to adopt rules to regulate hazing activities within college sponsored organizations, associations, or living groups.

(1) Hazing is prohibited. Hazing means any method of initiation into a student organization, association, or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or post-secondary institution.

PENALTIES

(1) Any organization, association, or living group that knowingly permits hazing shall:

(a) Be liable for harm caused to persons or property resulting from hazing, and

(b) Be denied recognition by Bellevue ((Community)) College as an official organization, association or student living group on the Bellevue ((Community)) College campus. If the organization, association or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(2) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships or awards for not less than one academic quarter and up to and including permanent forfeiture, based upon the seriousness of the violation(s).

(3) The student code of Community College District VIII may be applicable to hazing violations, WAC ((132H-120-200 (1)(3), 132H-120-210 through 132H-120-475)) 132H-126-100(12), 132H-126-010 through 132H-126-340.

(4) Hazing violations are also misdemeanors punishable under state criminal law according to RCW ((9A.20.021)) 28B.10.901.

SANCTIONS FOR IMPERMISSIBLE CONDUCT NOT AMOUNTING TO HAZING

(1) Impermissible conduct associated with initiation into a student organization or living group or any pastime or

amusement engaged in, with respect to the organization or living group, will not be tolerated.

(2) Impermissible conduct which does not amount to hazing may include conduct, not otherwise protected by law, which causes embarrassment, sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

(3) Impermissible conduct not amounting to hazing ((is)) and not otherwise protected by law may be subject to sanctions available under WAC ((132H-120-200 (1)(3), 132H-120-210 through 132H-120-475)) 132H-126-100(12), 132H-126-010 through 132H-126-340, the student code of Community College District VIII, depending upon the seriousness of the violation.

NEW SECTION

WAC 132H-121-030 Definitions. For the purposes of this chapter, the following definition shall apply:

"College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled land, buildings, facilities, vehicles, equipment, and any other property owned or used by the college, including study abroad program, retreat, and conference sites.

NEW SECTION

WAC 132H-121-040 Weapons. Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on college property, subject to the following exceptions:

(1) Commissioned law enforcement personnel or legally authorized military personnel are not subject to these restrictions while in performance of their duties;

(2) Bank-related security personnel required by their office to carry such weapons or devices are not subject to these restrictions;

(3) Licensed and bonded third-party security personnel hired for hosted events are not subject to these restrictions, subject to approval by the director of public safety;

(4) An individual with a valid concealed weapons permit may store a pistol in their vehicle parked on college property in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view;

(5) The president or their designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonable and related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission;

(6) Possession of a knife or ceremonial dagger for religious purposes is not prohibited. Maximum length of the knife or ceremonial dagger should not exceed seven inches in length;

(7) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited;

(8) Possession of knives for cooking or cutting instruments used for the purposes of work on campus is not prohibited.

Violations of this section will be subject to appropriate disciplinary and/or legal action.

NEW SECTION

WAC 132H-121-050 Fireworks. The possession, distribution, or discharge of fireworks is prohibited on college property. The city of Bellevue prohibits the discharge of fireworks by ordinance within city limits. Violations of this section will be subject to appropriate disciplinary and/or legal action.

WSR 21-08-012
PERMANENT RULES
BIG BEND

COMMUNITY COLLEGE

[Filed March 26, 2021, 11:35 a.m., effective April 26, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Big Bend Community College edited sections and created new sections to update current chapter 132R-04 WAC, Student conduct code, in order to be in compliance with: (1) The new United States Department of Education Title IX regulations that went into effect on August 14, 2020; and (2) the Washington State Court of Appeals Division III decision in *Nelson v. Spokane Community College*, 14 Wn. App.2d 40, 469 P.3d 317 (2020).

Citation of Rules Affected by this Order: New WAC 132R-04-300, 132R-04-305, 132R-04-310, 132R-04-315, 132R-04-320, 132R-04-325, 132R-04-330, 132R-04-335 and 132R-04-350; and amending WAC 132R-04-057.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Other Authority: 34 C.F.R. Part 106; *Nelson v. Spokane Community College*, 14 Wn. App.2d 40, 469 P.3d 317 (2020).

Adopted under notice filed as WSR 21-04-071 on January 29, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 1, Repealed 0.

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

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

Date Adopted: March 24, 2021.

Melinda Owens Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 18-17-026, filed 8/6/18, effective 9/6/18)

WAC 132R-04-057 Student code of conduct violations. The college may impose sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act of misconduct. Misconduct for which the college may impose sanctions includes, but is not limited to, any of the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, or fabrication.

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment, and also includes providing false or deceptive information in an instructional course concerning the completion of an assignment.

(d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

(e) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

(2) **Other dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, bullying is repeated or aggressive unwanted behavior, not otherwise protected by law, that humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive(s) of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject

to such terms or conditions incorporated in the written permission.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) Alcohol. The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human growth hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132R-04-103.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct (~~(of a sexual nature)~~), including unwelcomed sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a

gendered nature that is sufficiently ((serious)) severe, persistent, or pervasive as to:

~~(i) Deny or limit((-and that does deny or limit, based on sex;)) the ability of a student to participate in or benefit from the college's educational programs or activities ((or that));~~

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create((s)) an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex. This includes, but is not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse ((is)). Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact ((is)). Any ((intentional)) actual or attempted sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

~~(iii) ((Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

~~(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.~~

~~(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.~~

~~(vi)) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.~~

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the

victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(viii) Consent((is)). Clear, knowing, and voluntary permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to,

physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Abuse of process.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena or order to appear at a hearing;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student disciplinary committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(20) **Unsafe vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(21) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(23) **Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132R-04-300 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132R-04-010 through 132R-04-200, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132R-04-305 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis,

tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct 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.

NEW SECTION

WAC 132R-04-310 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132R-04-010 through 132R-04-200.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132R-04-315 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132R-04-320 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132R-04-130. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132R-04-325 Rights of parties. (1) The college's student conduct procedures, WAC 132R-04-010 through 132R-04-200, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132R-04-330 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132R-04-335 Initial order. (1) In addition to complying with WAC 132R-04-140, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132R-04-340 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132R-04-150.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

WSR 21-08-016

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed March 26, 2021, 3:08 p.m., effective April 26, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-622 WAC, Agriculture marketing and fair practices, by aligning with recent changes to chapter 15.83 RCW. These changes include: (1) Expanding the list of agricultural products regulated under the chapter to include pears; and (2) adding provisions for recouping the costs associated with administering the accreditation process and defending decisions related to appeals.

Citation of Rules Affected by this Order: Amending WAC 16-622-001, 16-622-005, 16-622-010, 16-622-015, 16-622-025, 16-622-030, 16-622-045, 16-622-050, 16-622-055, and 16-622-060.

Statutory Authority for Adoption: RCW 15.83.100; chapter 176, Laws of 2020.

Adopted under notice filed as WSR 21-03-088 on January 20, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 0.

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

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

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

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

Date Adopted: March 26, 2021.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-001 Purpose. The department of agriculture promulgates this chapter to implement the provisions of the Agricultural Marketing and Fair Practices Act, chapter 15.83 RCW (~~((chapter 355, Laws of 1989))~~). The purpose of this act is to establish standards of fair practices required of handlers, producers, and association of producers dealing in sweet corn (~~and~~), potatoes, or pears and to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-005 Definitions. (~~Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be

the exclusive negotiating agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means pears, sweet corn, and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the Federal Agriculture Marketing Act of 1929 or in section 1 of 42 Stat. 388.

(5) "Department" means the department of agriculture of the state of Washington.

(6) "Director" means the director of the department of agriculture or duly authorized representative.

(7) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(8) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date for sweet corn and potatoes, or at least sixty days before the normal harvest date for pears, and concluding within thirty days ((prior to)) of the normal planting date for sweet corn and potatoes, or within thirty days of the normal harvest date for pears, to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: Provided, That neither party shall be required to disclose proprietary business or financial records or information.

(9) "Negotiating unit" means a negotiating unit approved by the director under the provisions of this chapter and shall include all members of an accredited association of producers supplying qualified commodities to a single processing facility.

(10) "Person" means an individual, partnership, corporation, association, or any other entity.

(11) "Processing facility" means a facility operated by a processor at a single location where qualified commodities purchased from producers are canned, frozen, dried, dehydrated, cooked, pressed, powdered, or otherwise processed in a manner for eventual resale.

(12) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

~~((12))~~ (13) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

~~((13))~~ (14) "Qualified commodity" means agricultural products as defined in subsection (3) of this section.

~~((14) "Processing facility" means a facility operated by a processor at a single location where qualified commodities purchased from producers are canned, frozen, dried, dehydrated, cooked, pressed, powdered, or otherwise processed in a manner for eventual resale.)~~

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-010 Application for accreditation of an association of producers. An association of producers requesting accreditation to serve as the exclusive negotiating agent on behalf of its members who are within a proposed negotiating unit with respect to any qualified commodity shall file with the director an application to accredit a negotiating unit containing the following information:

(1) The name and address of the processing facility for which accreditation of a negotiating unit is being requested~~((:));~~

(2) A description of the geographical boundaries of the proposed negotiating unit, stated in terms of the number of miles, from the processing facility in each direction of the most distant producer in the proposed unit~~((:));~~

(3) A list of the names of producers who are members of the proposed negotiating unit and the total number of acres of qualified commodities contracted for delivery by those producers to the processing facility for each of the previous two years~~((:));~~

(4) The total number of members of the association of producers proposing the negotiating unit, a list of the counties in which those members reside, and the total number of acres of qualified commodities the association of producers had contracts to represent on behalf of its producer members for the previous growing season; and

(5) A statement expressing their agreement to reimburse the department for all anticipated and uncovered costs incurred by the department for actions necessary to carry out the provisions of this chapter and chapter 15.83 RCW.

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-015 Accreditation file. (1) Both the association of producers requesting accreditation of a negotiating unit and the person operating the processing facility for

which the negotiating unit is being proposed shall create and maintain in their possession an accreditation file for the purpose of allowing the director to determine if the association of producers has met the requirements for the accreditation of the negotiating unit. The file shall be available to the department during normal working hours with reasonable advance notice.

(2) Documents contained in the file shall become a permanent part of the file and shall be serially numbered and indexed to assure the integrity of the file. Copies of original documents may be placed in the file or new documents may be created to satisfy the requirements of this chapter.

(3) The director may examine other records as necessary to confirm the validity of the information contained in the accreditation file.

(4) The accreditation files shall be maintained at the principal business address of the association of producers and the person operating the processing facility. In the case where the principal business address of the person operating a processing facility is located outside of the state of Washington, the accreditation file shall be maintained at the processing facility or at some other location within the state of Washington as approved by the director.

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-025 Accreditation file—Processor. The processor shall create and maintain an accreditation file for each processing facility where a negotiating unit is being proposed by an association of producers, which shall include the following:

(1) A list of the names of producers for each facility with whom the processor had an advance contract for qualified commodities for each of the previous two growing seasons;

(2) The total number of acres of qualified commodities the processing facility had contracted to receive the production from under the provisions of advance contracts for each of the previous two growing seasons~~((:));~~ and

(3) A copy of the contract between the processor and producer supplying the affected commodities.

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-030 Accreditation procedure. (1) The director shall, upon receipt of an application for accreditation of a negotiating unit, promptly notify in writing the processor who operates the processing facility. The director shall schedule a time to examine the accreditation files of both the association of producers and the processor operating the processing facility. This examination shall not occur prior to five working days following the receipt of the notice to the processor of the application for accreditation of the negotiating unit.

(2) The director shall issue a report of findings resulting from the examination of the accreditation files of both parties which shall include:

~~((1))~~ (a) Whether the association of producers is owned and controlled by producers and that one of its functions is to

act as principal or agent for its members in negotiations with processors;

~~((2))~~ (b) Whether the association of producers has valid and binding contracts with its members who are part of the proposed negotiating unit;

~~((3))~~ (c) Whether the members of the proposed negotiating unit represent more than fifty percent of the total average number of producers of record at the processing facility with advance contracts for the previous two growing seasons, or whether the number of acres of qualified commodities produced by members of the proposed negotiating unit, who were producers of records at the processing facility, represents more than fifty percent of the total average number of acres of qualified commodity obtained through advance contracts for the previous two growing seasons; and

(d) Sufficient resources, including public funds and any funds to be provided by the applicant under reimbursement agreements, will be available to cover department costs for services provided by the department in carrying out the provisions of this chapter, including department costs to defend a decision made by the department under this chapter and chapter 15.83 RCW if such a decision is appealed.

~~(3)~~ If the director's findings regarding subsection ~~((1), (2), and (3) above)~~ (2) of this section are that the association meets the criteria for accreditation, a notice of accreditation of the negotiating unit will be issued to both parties. If the findings regarding ~~((any of the subsections above is))~~ subsection (2) of this section are that the association fails to meet any of the criteria for accreditation, a notice citing the specific deficiency will be issued to both parties pending the filing of an amended application in a timely manner.

~~(4)~~ The director shall not accredit more than one ~~((bargaining))~~ negotiating unit for each processing facility. Should more than one proposed ~~((bargaining))~~ negotiating unit meet the criteria for accreditation, the director shall accredit the proposed negotiating unit that would function as the most effective agent for producers in negotiating with the processor. The director, when considering the accreditation of proposed negotiating units, shall consider the ratio of the number of producers to acres previously contracted by those producers, with substantial weight given to the number of acres contracted.

~~(5)~~ The department shall provide the association of producers an estimate of expenses that may be incurred prior to the department's provision of services.

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-045 Hearings. A hearing, conducted under the provisions of chapter 34.05 RCW, to determine whether alleged violations of RCW 15.83.030 or 15.83.040 have occurred may be held concurrently with the hearing for civil penalty under ~~((section (9) of the act))~~ RCW 15.83.080.

AMENDATORY SECTION (Amending WSR 92-07-030, filed 3/10/92, effective 4/10/92)

WAC 16-622-050 Negotiating period. The negotiating period provided in RCW 15.83.010 shall commence each year on January 15th for potatoes and sweet corn and June 1st

for pears. Negotiations may begin at any time prior to this date and may continue past the date which is ~~((forty-five))~~ thirty days following this date by mutual consent of the affected parties. Contracts which are agreed to during this mutual consent period will be considered advance contracts.

AMENDATORY SECTION (Amending WSR 90-08-069, filed 4/2/90, effective 5/3/90)

WAC 16-622-055 Deadline for application for or review of negotiating unit accreditation. Applications for accreditation of a negotiating unit or petitions by affected parties for renewal of an existing negotiating unit shall be received by the director by September 1st of each year to allow sufficient time to determine if the criteria for accreditation has been met. Applications or petitions received after that date will be considered for the next succeeding negotiating period. ~~((Applications for accreditation of negotiating units for the 1990 growing season will be accepted until January 10, 1990.))~~

AMENDATORY SECTION (Amending WSR 92-07-030, filed 3/10/92, effective 4/10/92)

WAC 16-622-060 Report of negotiating session. (1) Each accredited association of producers and handler shall, within a reasonable time following a negotiating session, place a copy of a summary of the discussions into their respective accreditation file maintained for that negotiating unit. For the purposes of this section, a negotiating session is a meeting of the parties at which pertinent information is exchanged. Each summary shall accurately reflect the substance of discussions and the points raised by either side. Each summary shall be signed by an authorized representative of the association of producers or handler which prepared it. Each summary shall contain the last offer of contract terms placed on the table during that negotiating session. Either party may place supplementary materials regarding the negotiation into their file.

(2) At the conclusion of the forty-five day negotiating period which is thirty days prior to the normal planting date for sweet corn and potatoes or sixty days prior to the normal harvest date for pears, each of the parties to a negotiation shall place, in their respective accreditation file for that negotiating unit, a report summarizing the negotiations and indicating whether an agreement was reached.

WSR 21-08-019

PERMANENT RULES SOUTH PUGET SOUND COMMUNITY COLLEGE

[Filed March 29, 2021, 9:07 a.m., effective April 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The college's code of student rights and responsibilities were last updated in February 2012. The college made changes to the student conduct rules to update them for compliance with current best practices. In addition, the Department of Education (DOE) issued updated Title IX

rules which took effect August 14, 2020. The updated rules incorporate new Supplemental Title IX student conduct code requirements that necessitate South Puget Sound Community College amend and supplement chapter 132X-60 WAC, code of student rights and responsibilities rules to remain in compliance with the updated DOE requirements. A related WAC in chapter 132X-90 WAC (WAC 132X-90-040) is being updated to best practices. Several WAC are being repealed as part of the update.

Citation of Rules Affected by this Order: New general student conduct code, WAC 132X-60-005, 132X-60-011, 132X-60-109, 132X-60-115, 132X-60-155, 132X-60-165, 132-60-175, 132X-60-185, 132X-60-190 and 132X-60-195; Supplemental Title IX Procedures, WAC 132X-60-200, 132X-60-210, 132X-60-220, 132X-60-230, 132X-60-240, 132X-60-250, 132X-60-260, 132X-60-270 and 132X-60-280; repealing WAC 132X-60-010, 132X-60-030, 132X-60-035, 132X-60-037, 132X-60-040, 132X-60-045, 132X-60-046, 132X-60-050, 132X-60-060, 132X-60-065, 132X-60-070, 132X-60-080, 132X-60-160 and 132X-60-170; and amending WAC 132X-60-015, 132X-60-020, 132X-60-090, 132X-60-100, 132X-60-105, 132X-60-120, 132X-60-140, and 132X-90-040.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 21-01-177 on December 21, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 10, Amended 7, Repealed 14.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 19, Amended 8, Repealed 14.

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

Date Adopted: February 9, 2021.

Dr. Timothy S. Stokes
College President

NEW SECTION

WAC 132X-60-005 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. Unless otherwise specified, the student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132X-60-011 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-015 Definitions. ((As used in this *Code of Student Rights and Responsibilities* the following words and phrases shall mean:

~~(1) Associated student body (ASB) SPSCC senate means the representative governing body for students, also referred to as student government, at South Puget Sound Community College recognized by the board of trustees.~~

~~(2) Assembly means any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.~~

~~(3) Board means the board of trustees of South Puget Sound Community College District 24, state of Washington.~~

(4) **College** means South Puget Sound Community College, District 24.

(5) **College facilities** means and includes any or all real and personal property owned or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.

(6) **College personnel** refers to any person employed by Community College District 24 on a full-time or part-time basis.

(7) **Disciplinary action** means and includes dismissal or any lesser sanction of any student by the vice president for student services, the student judicial board, or the college president for the violation of any of the provisions of the code of student rights and responsibilities for which such sanctions may be imposed.

(a) The college president or designee shall have the authority to take any disciplinary action including the authority to suspend any student of the college for a period not to exceed ten academic calendar days.

(b) The college president or designee shall have the authority to take any disciplinary action including the authority to dismiss any student of the college.

(8) **District** means Community College District 24, state of Washington.

(9) **Hazing** includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college. Hazing does not include customary athletic events or other similar contests or competitions.

(10) **Initiation** means the ceremonies or rites by which a person is admitted into a club, organization, or living group not amounting to hazing. Initiation conduct may include embarrassments, ridicule, sleep deprivation, verbal abuse or personal humiliation.

(11) **President** means the duly appointed chief executive officer of South Puget Sound Community College, District 24, state of Washington, or in his/her absence, the designee.

(12) **Recognized student organization** means and includes any group or organization composed of students which is recognized formally by the college.

(13) **A sponsored event or activity** means any activity that is scheduled by the college or a recognized student organization and is supervised and controlled by college personnel. Such sponsorship shall continue only as long as the event is supervised and controlled by college personnel. When the sponsored event or activity is of a prolonged nature, and free time periods are permitted to the students participating in the event, any activity taking place during such a free time period outside of the supervision and control of college personnel responsible for the event or activity shall be deemed to be a nonsponsored activity.

(14) **Student**, unless otherwise qualified, means and includes any person who is enrolled for classes.)) The following definitions shall apply for purpose of this student conduct code:

(1) **"Business day"** means a weekday, excluding weekends and college holidays.

(2) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) **"Complainant"** is an alleged victim of sexual misconduct.

(4) **"Conduct review officer"** is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(5) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings. See 132X-60-105 for a general overview of appeals process.

(7) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) **"Respondent"** is the student against whom disciplinary action is initiated.

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

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

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

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

(10) **"Sexual misconduct"** has the meaning ascribed to this term in WAC 132X-60-090.

(11) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(12) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(13) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-020 Jurisdiction. ((All rules herein adopted shall apply to every student whenever said student is present upon or in any college facility and whenever said student is present at or engaged in any college or recognized student organization sponsored activity or function which is held on or in noncollege facilities.

Persons aiding or abetting a student's breach of this code shall be subject to having their privilege removed as to remaining on college property or engaging in college sponsored activities, and/or appropriate disciplinary action pursuant to this code, college policies and procedures, and/or state civil or criminal law. If the privilege to remain on campus is revoked, trespassers shall be subject to possible arrest and prosecution under the state criminal trespass law.)) (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities;

or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-090 ((Violations:)) Prohibited student conduct. ((Any student found to have committed or to have attempted to commit any of the following violations on college-owned or controlled property or at college-sponsored or supervised functions is subject to the disciplinary sanctions outlined in WAC 132X-60-120:

~~(1) Abusive conduct: Physical and/or verbal abuse of any person or conduct, including hazing and initiations which is intended to threaten imminent bodily harm or to endanger the health or safety of any person.~~

~~(2) Destroying or damaging property: Malicious damage to or malicious misuse of college property, or the property of any person.~~

~~(3) Dishonesty: All forms of dishonesty including: Cheating; plagiarism; knowingly furnishing false information to the college; intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency;; forgery; alteration or use of college documents or instruments of identification with intent to defraud.~~

~~(4) Disorderly conduct: Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college.~~

~~(5) Drugs: Using, possessing, furnishing, or selling any narcotic or dangerous drug as those terms are used in Washington statutes, except when the use or possession of a drug is specifically prescribed to the student as medication by an authorized medical practitioner.~~

~~(6) Inciting others: Intentionally inciting others to engage in any prohibited conduct as defined herein, which incitement directly leads to such conduct. Inciting is the advocacy which prepares the group or individual addressed for immediate action and compels that individual or group to engage in the prohibited conduct.~~

~~(7) Insubordination: Failure to comply with lawful directions of college personnel acting in performance of their official duties.~~

~~(8) Liquor: Possessing, consuming, or furnishing of alcoholic beverages where prohibited by law or college rules.~~

~~(9) Theft: Theft or conversion of college property or private property.~~

~~(10) Trespass/unauthorized presence: Entering or remaining unlawfully, as defined by state law, or using college premises, facilities, or property, without authority.~~

~~(11) Sexual harassment: Unwelcome sexual advances, requests for sexual favors, other conduct soliciting sexual favors, or other conduct of a sexual nature which conduct objectively and subjectively creates a hostile environment that substantially interferes with a student's educational performance, or substantially interferes with an individual's work, regardless of whom is initiating or receiving that conduct. That is, sexual harassment conduct of employees toward students, supervisors toward supervisees, students toward students, students toward employees. Sexual harassment complaints are covered by the college's Nondiscrimination Policy and Discrimination Complaint/Grievance Procedures at <http://www.spsee.etc.edu/getting-to-know-us/policies>.~~

~~(12) Weapons: Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.~~

(13) Computers – Misuse of technology: Use of college computers and/or computer programs for any purpose other than legitimate college business.

(14) Other violations: Students may be accountable to civil and criminal authorities and to the college for acts which constitute violations of federal, state, or local law as well as college rules and policy. The college may refer any such violation to civil and criminal authorities for disposition.) The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic sanctions for failing to meet the college's standards for satisfactory scholarship and academic integrity may be imposed at the discretion of a faculty member, program chair, dean, or academic review panel, as set forth in the college's academic standards policy. Students should refer to each faculty course syllabus, and the college's academic standards policy, which is separate and distinct from the policies and procedures associated with the college's student conduct code, Title IX, and final course grade appeals.

(2) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession (where possession is illegal under federal, state, or local law), delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession (where possession is illegal under federal, state, or local law), delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(3) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(4) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(5) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(6) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offen-

sive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(11) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(12) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that materially or substantially interferes with, impedes, or otherwise unreasonably hinders the educational process.

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(13) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(14) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(17) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132X-60-210 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without

consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(18) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(19) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) Weapons. Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-100 Disciplinary proceedings. ((+)) Initiation of disciplinary action. Alleged violations shall be reported in writing to the vice president for student services within ten calendar days of occurrence.

(2) Notice requirements. Any student charged with an alleged violation shall receive written notice from the office of the vice president for student services delivered to the student personally or by registered or certified mail to the student's last known address no later than two calendar weeks after a reported violation. The notice shall not be ineffective if presented later due to student's absence. The notice to the accused student shall:

(a) Inform the student what provision(s) of the student code he/she is charged with allegedly violating; and

(b) Specify the exact time and date the student is required to meet with the vice president for student services; and

(c) Inform the student that failure to appear at the appointed time to meet with the vice president for student services may subject the student to suspension from the institution for a stated or indefinite period of time.

(3) Meeting with the vice president for student services.

(a) At the meeting with the vice president for student services the student shall be reformed of the provision(s) of the code of student rights and responsibilities that are involved, and that the student may appeal any sanction imposed by the vice president for student services as outlined in WAC 132X-60-105.

(b) After considering the evidence in the case and, as appropriate, interviewing the student or students involved, the vice president for student services may take any of the following actions:

(i) Terminate the proceedings exonerating the student or students; or

(ii) Impose disciplinary sanctions as provided for in WAC 132X-60-120.

(c) A student accused and found guilty of violating any provision of this code shall, within ten calendar days, be

given notification of any disciplinary action taken by the vice president for student services, including a brief statement of the reasons for the decision and notice of their right to appeal to the student judicial board within ten calendar days of the disciplinary action taken by the vice president.

~~(d) Disciplinary action taken by the vice president for student services is final unless the student exercises the right of appeal to the student judicial board.~~) (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132X-60-120.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protec-

tion, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-105 Student judicial board appeals process. ~~((1) Composition. The college shall have a student judicial board composed of six members, who shall be chosen and appointed to serve until their successors are appointed. The membership of the board shall consist of two members of the exempt staff, excepting the vice president for student services, appointed by the president; two faculty members appointed by the faculty senate; and two students appointed by the associated student body president. Any student entitled to a hearing before the student judicial board shall choose, in writing, three members of the board to hear and decide the appeal, provided the student must choose at least one student, one faculty member and one exempt staff from the six member board. In the event that unforeseen circumstances prevent a previously selected board member from attending the hearing, the student must choose a replacement from among the balance of the board.~~

~~(2) Disciplinary hearing procedures.~~

~~(a) The three members of the student judicial board will hear the appeal within ten days of receipt of the appeal from the student.~~

~~(b) The three members of the student judicial board shall elect from among themselves a chairperson for the purpose of presiding at the disciplinary hearing.~~

~~(c) At least seven calendar days in advance, the student shall be given written notice of the time, date, and location of the hearing; the specific charges against him/her; and shall be given reasonable access to a list of witnesses who will appear with a brief summary of the witness expected testimony and other evidence. The evidence will be retained by the vice president for student services.~~

~~(d) Student judicial board hearings shall be held in closed session. The complainant, accused student and their representative/advocate, if any, the vice president for student services, college counsel, counsel for the judicial board, and a court reporter or person operating audio recording equipment shall be allowed to attend the entire portion of the student judicial board hearing, excluding deliberation. Admission of any other person to the student judicial board hearing shall be at the election of the accused student.~~

~~(e) The chairperson shall exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the accused student, who disrupts a hearing or who fails to adhere to the rulings of the chairperson or board may be excluded from the proceedings and may be subject to disciplinary action as set forth in this code.~~

~~(f) The accused student has the right to be assisted by any person they choose, at their own expense. The chosen person~~

is not permitted to speak or participate directly in any hearing before the judicial board. If the accused student chooses a licensed attorney, the accused student must notify the vice president for student services at least five calendar days prior to the hearing, of the attorney's intended appearance.

(g) The accused student, vice president for student services and/or their counsel may arrange for witnesses to present pertinent information to the student judicial board. Witnesses will provide information under oath and answer questions.

(h) Formal rules of evidence and procedure shall not be applicable in disciplinary proceedings conducted under this code. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the student judicial board at the discretion of the chairperson. All procedural questions are subject to the final decision of the chairperson of the student judicial board.

(i) There shall be a single verbatim record, such as a tape recording or transcript, of all student judicial board hearings, excluding deliberations. The record shall be the property of the college.

(3) Hearing conclusions. After considering the evidence in the case, the student judicial board shall decide by majority vote whether to:

(a) Affirm the disciplinary sanctions imposed by the vice president for student services; or

(b) Terminate the proceedings exonerating the student(s); or

(c) Impose other appropriate disciplinary sanctions as provided in WAC 132X-60-120.

Final decisions of the student judicial board, reasons for the decision, including findings of fact, and conclusions of law, shall be delivered within ten calendar days of the hearing by return receipt requested mail to the student's last known address and a copy filed with the office of the vice president for student services.

The decision of the student judicial board is final.) (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

NEW SECTION

WAC 132X-60-109 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review

is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132X-60-115 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-120 Disciplinary sanctions and terms and conditions. ~~((The following sanctions may be imposed by the vice president for student services or the student judicial board upon any student found to have violated the code of student rights and responsibilities:~~

~~(1) Warning. Notice to a student, either verbally or in writing. Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary sanctions described below.~~

~~(2) Reprimand. Formal action censuring a student for violation of the college code. Reprimands shall be made in writing to the student with copies filed in the office of the vice president for student services. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary sanctions described below.~~

~~(3) Fines. Assess monetary fines against individual students for violation of the college code. The fines imposed will be deposited in the appropriate college account. Failure to pay such fines within thirty days may, at the discretion of the vice president for student services, result in suspension for an indefinite period of time as set forth in subsection (6) of this section, provided that a student may be reinstated upon payment of the fine.~~

~~(4) Restitution. An individual student may be required to make restitution for damage or loss to college or other property and for injury to persons. Failure to make restitution within thirty days may, at the discretion of the vice president for student services, result in suspension for an indefinite period of time as set forth in subsection (8) of this section, provided that a student may be reinstated upon payment.~~

~~(5) Forfeit of state-funded grants, scholarships or awards. A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.~~

~~(6) Deprivation of official recognition of organization, association, student living group or club. Any organization, association, student living group or club that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.~~

~~(7) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of the college code. Written notice of disciplinary probation will specify the period of probation and any conditions, such as limiting the student's participation in extracurricular activities or access to specific areas of the college's facilities. Copies of the notice shall be kept on file in the office of the vice president for student services and, at the discretion of the vice president for student services, in the student's official educational records. Disciplinary probation will be for a specified term.~~

~~(8) Suspension/dismissal. Temporary, summary or permanent dismissal of a student from the college for violation of college code. The written notification suspending a student~~

will state the term of the suspension, any special conditions which must be met before readmission, and the provision for appeal for readmission as outlined in WAC 132X-60-130. Notice shall be on file in the office of the vice president for student services and in the student's official education record.

~~Students who are suspended from the college may be denied access to all or any part of the campus or other facility during the duration of the period of suspension.~~

~~Refund of tuition and fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund rules.~~

~~(9) Withholding transcripts and/or degree. The college may withhold issuing transcripts or awarding a degree otherwise earned until completion of the process set forth in this code.~~

~~(10) More than one of the sanctions listed above may be imposed for any single violation.)) (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.~~

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately cer-

tified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-140 Summary suspension procedures. ((1) Initiation of summary suspension procedures. The vice president for student services, or designee, may suspend any student of the college for not more than ten calendar days pending investigation, action or initiating disciplinary proceedings of alleged violation(s) of the college code, if the vice president for student services has reason to believe the student's presence presents an immediate danger to the public health, safety or welfare requiring immediate action.

(2) Permission to enter or remain on campus. During the period of summary suspension, the suspended student shall not enter the campus of the college or any facility under the operation of the college other than to meet with the vice president for student services or to attend the disciplinary hearing. However, the vice president for student services may grant the student special permission to enter a campus for the express purpose of meeting with faculty, staff, or students in preparation for the disciplinary hearing.

(3) Notice of order of summary suspension proceedings.

(a) If the vice president for student services or designee finds it necessary to exercise the authority to summarily suspend a student, he/she shall:

(i) Send a notice including a brief statement of reason for the decision (findings of fact and conclusions of law); and

(ii) The corrective action or punishment which may be imposed against the student; that anything the student says to the vice president may be used against the student; and that the student may either accept the disciplinary action or, within forty-eight hours or two academic days following receipt of the notice, file at the office of the vice president for

student services, an appeal to the student judicial board. If the appeal is not filed within the prescribed time, it will be deemed waived. The college shall maintain its official record and documents considered or prepared regarding the matter.

(b) Appeal and disciplinary hearing. The hearing shall be held according to the process set forth in WAC 132X-60-105. Failure by the student to appear at the hearing with the student judicial board may result in the vice president for student services or designee suspending the student from the college.

(4) Classroom summary suspension and appeal process. Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order when they have reason to believe that such action is necessary for the public health, safety or welfare requiring immediate college action or where the student's conduct materially and substantially disrupts the educational process.

(a) Such summary action in the form of removal from the classroom shall be effective for a period not to exceed three scheduled classroom days.

(b) The faculty member must immediately report such suspension to the vice president for student services who will follow the process in subsections (1), (2) and (3) of this section.

(c) Any summary action may be appealed immediately in writing by the student to the vice president for student services.

(d) The vice president for student services must decide the appeal within twenty-four hours' receipt of the appeal and their decision is final.) (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass

shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

((LOSS OF ELIGIBILITY STUDENT ATHLETIC PARTICIPATION))

NEW SECTION

WAC 132X-60-155 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

NEW SECTION

WAC 132X-60-165 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132X-60-175 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision;

or

(b) Serve an decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

NEW SECTION

WAC 132X-60-185 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make clos-

ing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132X-60-190 Appeal from student conduct committee's initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student con-

duct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132X-60-195 Sexual misconduct proceedings.

Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132X-60-010	Preamble.
WAC 132X-60-030	Right to demand identification.
WAC 132X-60-035	Trespass regulations.
WAC 132X-60-037	Freedom of access to higher education.
WAC 132X-60-040	Freedom of association and organization.
WAC 132X-60-045	Freedom of expression.
WAC 132X-60-046	Student participation in college governance.
WAC 132X-60-050	Student records.
WAC 132X-60-060	Student publications.
WAC 132X-60-065	Posting of materials.
WAC 132X-60-070	Use of college facilities.
WAC 132X-60-080	Student complaints.
WAC 132X-60-160	Athletics—Grounds for ineligibility.
WAC 132X-60-170	Initiation of athletic ineligibility proceedings.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132X-60-200 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with South Puget Sound Community College's standard disciplinary procedures in chapter 132X-60 WAC, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132X-60-210 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, South Puget Sound Community College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sex-

ual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct 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.

NEW SECTION

WAC 132X-60-220 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code in chapter 132X-60 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the vice president for student services or their designee will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132X-60-230 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the vice president for student services or their

designee will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the vice president for student services or their designee determines that there are sufficient grounds to proceed under these supplemental procedures, the vice president for student services or their designee will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
 - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132X-60-240 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with chapter 132X-60 WAC. In no event will the hearing date be set less than ten business days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five business days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132X-60-250 Rights of parties. (1) The college's standard student conduct procedures in chapter 132X-60 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132X-60-260 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132X-60-270 Initial order. (1) In addition to complying with chapter 132X-60 WAC, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
- (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132X-60-280 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in chapter 132X-60 WAC.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-90-040 Brief adjudicative procedure. This rule adopts the provision of RCW 34.05.482 through 34.05.494. Brief adjudicative procedures (~~may, at the election of college, be used in all appeals~~) shall be used in all matters related to:

- (1) Residency classifications made pursuant to RCW 28B.15.013;
- (2) Outstanding debts of college employees or students;
- (3) Loss of eligibility to participate in athletic events;
- (4) Contents of educational records pursuant to 34 C.F.R. (~~section~~) Sec. 99.21;
- (5) Denial of mandatory tuition and fee waivers;
- (6) Denial of tuition and fee refunds;
- (7) Use of college facilities;
- (8) Any other rule adopted by college which specifically provides for a brief adjudicative procedure; and
- (9) Student conduct disciplinary proceedings.

WSR 21-08-021

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 29, 2021, 11:31 a.m., effective May 1, 2021]

Effective Date of Rule: May 1, 2021.

Purpose: The agency revised this section to clarify that as part of participation in the 340B program, providers must agree, via an annual attestation form, that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. The agency amended subsection (4) to include under the medicaid fee-for-service program.

Citation of Rules Affected by this Order: Amending WAC 182-530-7900.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-01-021 on December 3, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 29, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act. (1) Providers dispensing or administering 340B drugs to Washington apple health clients are required to submit their valid medicaid provider number(s) or national provider identification (NPI) number to the PHS health resources and services administration, office of pharmacy affairs. See WAC 182-530-7500 for information on the drug rebate program.

(2) Drugs purchased under section 340B of the Public Health Service (PHS) Act can be billed to Washington apple health only by PHS-qualified entities. The Washington medicaid rebate process excludes 340B claims from invoicing only when the drug is billed by a medicaid provider number or national provider identification (NPI) number listed on the PHS office of pharmacy affairs national medicaid exclusion file. See WAC 182-530-7500 for information on the drug rebate program.

(3) As part of participation in the 340B program, providers must submit a completed annual attestation form (HCA 13-0047) to the agency acknowledging that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. Providers who fail to submit a completed attestation form to the agency may receive a compliance audit and be at risk of duplicate discounts.

(4) With the exception of claim types identified in subsection ~~((4))~~ (5) of this section, all 340B purchased drugs under the medicaid fee-for-service program must be billed to the medicaid agency at the 340B actual acquisition cost (340B AAC).

~~((4))~~ (5) Exceptions to the 340B AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology.

WSR 21-08-022
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 29, 2021, 11:42 a.m., effective April 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The professional educator standards board and office of superintendent of public instruction convened a stakeholder workgroup to make recommendations regarding the improvement of the administration of professional educator certificate discipline in Washington. This rule making reflects recommendations from the stakeholder workgroup to board policy.

This rule making includes changes to the code of conduct, changes to procedures in disciplinary orders and actions, and nonsubstantive updates and clarification.

The board considered the workgroup's recommendations at meetings in November 2020, January 2021, and March 2021, listened to stakeholder feedback, and made the decision to adopt them.

Citation of Rules Affected by this Order: New WAC 181-87-062, 181-86-012 and 181-86-045; repealing WAC 181-87-030; and amending WAC 181-87-003, 181-87-010, 181-87-015, 181-87-025, 181-87-035, 181-87-045, 181-87-055, 181-87-070, 181-87-080, 181-87-095, 181-88-020, 181-88-030, 181-88-060, 181-86-003, 181-86-011, 181-86-013, 181-86-014, 181-86-035, 181-86-065, 181-86-070, 181-86-075, 181-86-080, 181-86-085, 181-86-090, 181-86-095, 181-86-100, 181-86-105, 181-86-110, 181-86-116, 181-86-120, 181-86-130, 181-86-135, 181-86-140, 181-86-145, 181-86-150, 181-86-170, 181-86-175, 181-86-180, 181-86-185, 181-85-085, and 181-85-106.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-04-102 on March 18, 2021 [February 1, 2021].

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 41, Repealed 1.

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

Date Adopted: March 23, 2021.

Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-085 In-service education records. Holders of certificates affected by this chapter shall retain the necessary in-service records from the approved in-service provider for the purpose of any audit by the superintendent of public instruction. Such holders shall be notified on such form that the ~~((intentional))~~ falsification or deliberate misrepresentation, including omission, of a material fact on such form subjects the holder to revocation of his or her certificate under RCW 28A.410.090(6), and chapters 181-86 and 181-87 WAC ~~((and that))~~. A copy of such completed form should be retained by the holder for possible disputes arising under this chapter and for other purposes that may arise, including verification of in-service hours completed for a current or prospective employer.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-85-106 Filing requirement with SPI. Each certificate holder, affected by the continuing education requirements of this chapter, ~~((shall be))~~ is responsible for filing with the superintendent of public instruction, ~~((prior to))~~ before the lapse date, a verification form supplied by the superintendent of public instruction, which indicates compliance with the continuing education requirements of this chapter. Such form shall:

(1) Provide space for indicating how the certificate holder met the continuing education requirement.

(2) Include an attestation by the certificate holder as to the accuracy of the information provided.

(3) State thereon that falsification or deliberate misrepresentation, including omission, of any material fact shall be an act of unprofessional conduct for which the holder's certificate may be revoked.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-003 Authority. The authority for this chapter is RCW ~~28A.410.010 and~~ 28A.410.090 which authorizes the professional educator standards board to establish, publish, and enforce rules (~~and regulations~~) determining eligibility for certification of personnel employed in the common schools of this state. (Note: RCW ~~((28A.02.201))~~ 28A.195.010 (3)(a) requires most private school classroom teachers to hold appropriate Washington state certification with few exceptions.)

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-011 Valid certificate required. Persons serving as teachers in the public or private schools or as principals or educational staff associates in public schools under chapter 181-79A WAC and in (~~voational~~) career and technical education positions (~~as established by~~) under chapter 181-77 WAC shall hold certificates authorized by the professional educator standards board for service in the respective roles as required by statute or rules of the professional educator standards board.

Any certificate issued (~~pursuant to~~) under chapter 181-77 or 181-79A WAC or previous standards of the professional educator standards board shall entitle the holder thereof to be employed by a public or nonpublic school for the performance of duties encompassed by the type of certificate as specified in WAC 181-79A-140 if such certification is required by statute or rules of the professional educator standards board, unless such certificate is under suspension or until such certificate expires, lapses, or is revoked or surrendered.

NEW SECTION

WAC 181-86-012 Definitions. The following definitions apply to terms used in this chapter:

- (1) "Education practitioner" has the same meaning as defined in chapter 181-87 WAC.
- (2) "Student" has the same meaning as defined in WAC 181-87-040.
- (3) "Colleague" has the same meaning as defined in chapter 181-87 WAC.

AMENDATORY SECTION (Amending WSR 15-11-069, filed 5/19/15, effective 6/19/15)

WAC 181-86-013 Good moral character and personal fitness—Definition. As used in this chapter, the terms "good moral character and personal fitness" means character and personal fitness necessary to serve as a certificated employee in schools in the state of Washington, including character and personal fitness to have contact with, to teach, and to perform supervision of children. Good moral character and personal fitness includes, but is not limited to, the following as described in RCW 28A.400.322:

- (1) No conviction (~~of any felony crime involving~~

~~(a) The physical neglect of a child under chapter 9A.42 RCW;~~

~~(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;~~

~~(c) The sexual exploitation of a child under chapter 9.68A RCW;~~

~~(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;~~

~~(e) The promotion of prostitution under chapter 9A.88 RCW;~~

~~(f) The sale or purchase of a child under RCW 9A.64.030;~~

~~(g) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal and crimes in other states committed against a child;~~

~~(h) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;~~

~~(i) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea) or plea of guilty to any felony crime occurring after July 23, 1989, and before July 26, 2009, involving:~~

~~(a) The physical neglect of a child under chapter 9A.42 RCW;~~

~~(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;~~

~~(c) Sexual exploitation of a child under chapter 9.68A RCW;~~

~~(d) Sexual offenses under chapter 9A.44 RCW where a minor is the victim;~~

~~(e) Promoting prostitution of a minor under chapter 9A.88 RCW;~~

~~(f) The sale or purchase of a minor child under RCW 9A.64.030;~~

~~(g) Violation of laws of another jurisdiction that are similar to those specified in (a) through (f) of this subsection.~~

~~(2) No conviction or plea of guilty to any felony crime, including attempts, conspiracies, or solicitations to commit a felony crime, occurring on or after July 26, 2009, involving:~~

~~(a) A felony violation of RCW 9A.88.010, indecent exposure;~~

~~(b) A felony violation of chapter 9A.42 RCW involving physical neglect;~~

~~(c) A felony violation of chapter 9A.32 RCW;~~

~~(d) A violation of RCW 9A.36.011, assault 1; RCW 9A.36.021, assault 2; RCW 9A.36.120, assault of a child 1; RCW 9A.36.130, assault of a child 2; or any other felony violation of chapter 9A.36 RCW involving physical injury except assault 3 where the victim is eighteen years of age or older;~~

~~(e) A sex offense as defined in RCW 9.94A.030;~~

~~(f) A violation of RCW 9A.40.020, kidnapping 1; or RCW 9A.40.030, kidnapping 2;~~

~~(g) A violation of RCW 9A.64.030, child selling or child buying;~~

~~(h) A violation of RCW 9A.88.070, promoting prostitution 1;~~

~~(i) A violation of RCW 9A.56.200, robbery 1; or~~

(j) A violation of laws of another jurisdiction that are similar to those specified in (a) through (i) of this subsection.

~~((2))~~ (3) No conviction of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as a professional within the public and private schools of the state. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to practice, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as a professional educator within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person certified under the laws of the state of Washington in a suspension or revocation action, the effect on the education profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or ~~((certificate holder))~~ education practitioner has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or ~~((certificate holder))~~ education practitioner.

~~((3))~~ (4) No behavioral problem which endangers the educational welfare or personal safety of students, teachers, ~~((or other))~~ colleagues, or other affected persons within the educational setting.

~~((4))~~ (5) No practice within the state of Washington within the previous five school years with an expired, lapsed, suspended, surrendered, or revoked certificate in a professional position for which certification is required under the rules of the professional educator standards board.

(6) For the purpose of this section "child" means a minor as defined by the applicable state or federal law.

(7) For the purpose of this section "conviction" shall include a guilty plea.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-014 Good moral character and personal fitness—Continuing requirement. The good moral character and personal fitness requirement of applicants for certification under the laws of the state of Washington is a continuing requirement for holding a professional educa-

tional certificate under ~~((regulations))~~ rules of the professional educator standards board.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-035 Suspension order—Definition. As used in this chapter, the term "suspension order" means an official document issued by the superintendent of public instruction which contains:

(1) Findings of fact.

(2) One or more conclusions of law stating one or more of the following:

(a) The commission of an act of unprofessional conduct.

(b) The lack of good moral character.

(c) The lack of personal fitness.

(3) An order suspending the education practitioner from practicing for a stated period of time.

(4) Such order may contain a requirement that the ~~((certificate holder))~~ education practitioner fulfill certain conditions ~~((precedent to))~~ before resuming professional practice and certain conditions ~~((subsequent to))~~ after resuming professional practice.

NEW SECTION

WAC 181-86-045 Letter of concern. (1) Upon mutual agreement of an education practitioner and the superintendent of public instruction, the superintendent of public instruction may issue a letter of concern in lieu of reprimand to an education practitioner.

(2) As used in this chapter, the term "letter of concern" means an official document issued by the superintendent of public instruction which contains:

(a) Findings of fact; and

(b) An agreement to not continue or repeat the conduct.

(3) Grounds for issuance of a letter of concern. The superintendent of public instruction may issue a letter of concern whenever the superintendent of public instruction determines that all of the following are met:

(a) The education practitioner has committed an act of unprofessional conduct and the evidence is sufficient to meet the preponderance of the evidence standard for a reprimand;

(b) The violation and the consequence are not serious, and the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a letter of concern; and

(c) The education practitioner has admitted the commission of an act of unprofessional conduct and has agreed not to continue or repeat the conduct described in the findings of fact.

(4) A letter of concern may not be appealed and is not a disciplinary action by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-065 Grounds for issuance of a reprimand order. (1) The superintendent of public instruction

may issue a reprimand order whenever the superintendent of public instruction determines one or more of the following:

~~((1))~~ (a) That the ~~((certificate holder))~~ education practitioner has admitted the commission of an act of unprofessional conduct or lack of good moral character or personal fitness and has presented to the superintendent of public instruction an agreed order to not continue or repeat the conduct described in the findings of fact.

~~((2))~~ (b) That the ~~((certificate holder))~~ education practitioner has committed an act of unprofessional conduct but the evidence is probably insufficient to meet the clear and convincing proof standard for suspension or revocation.

~~((3))~~ (c) That the ~~((certificate holder))~~ education practitioner has committed an act of unprofessional conduct but the violation and the consequence were not serious and the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a reprimand.

~~((4))~~ (2) Provided, that the superintendent of public instruction, in the administration of this chapter, shall place a high priority on processing complaints that allege circumstances which appear to warrant a suspension or revocation and, in order to do so, may elect not to pursue, when necessary, any and all complaints which appear to only warrant a reprimand.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-070 Grounds for issuance of suspension order. (1) The superintendent of public instruction may issue a suspension order under one of the following conditions:

~~((1))~~ (a) The ~~((certificate holder))~~ education practitioner has admitted the commission of an act of unprofessional conduct or lack of good moral character or personal fitness and has presented to the superintendent of public instruction an agreed order to not serve as an education practitioner for a stated period of time and the superintendent of public instruction has agreed that the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. Such order may contain a requirement that the ~~((certificate holder))~~ education practitioner fulfill certain conditions ~~((precedent to resuming professional practice and certain conditions subsequent to resuming practice))~~ before requesting reinstatement of the suspended certificate, and certain conditions after the reinstatement of the suspended certificate.

~~((2))~~ (b) The ~~((certificate holder))~~ education practitioner has committed an act of unprofessional conduct or lacks good moral character but the superintendent of public instruction has determined that a suspension as applied to the particular ~~((certificate holder))~~ education practitioner will probably deter subsequent unprofessional or other conduct which evidences lack of good moral character or personal fitness by such ~~((certificate holder))~~ education practitioner, and believes the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. Such

order may contain a requirement that the ~~((certificate holder))~~ education practitioner fulfill certain conditions ~~((precedent to resuming professional practice and certain conditions subsequent to resuming practice))~~ before requesting reinstatement of the suspended certificate, and certain conditions after the reinstatement of the suspended certificate.

~~((3))~~ (c) The ~~((certificate holder))~~ education practitioner lacks personal fitness but the superintendent of public instruction has determined the deficiency is correctable through remedial action and believes the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension which states the education practitioner fulfill certain conditions ~~((precedent to resuming professional practice and which also may state certain conditions subsequent to resuming practice))~~ before requesting reinstatement of the suspended certificate, and certain conditions after the reinstatement of the suspended certificate.

~~((4) Provided, That)~~ (2) Suspension shall never be appropriate if the ~~((certificate holder))~~ education practitioner has committed a felony crime under WAC 181-86-013 (1) or (2).

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-075 Grounds for issuance of a revocation order. The superintendent of public instruction may issue a revocation order under one of the following conditions:

(1) The superintendent of public instruction has determined that the ~~((certificate holder))~~ education practitioner has committed a felony crime under WAC 181-86-013 (1) or (2), which bars the ~~((certificate holder))~~ education practitioner from any future practice as an education practitioner.

(2) The ~~((certificate holder))~~ education practitioner has not committed a felony crime under WAC 181-86-013 (1) or (2) but the superintendent of public instruction has determined the ~~((certificate holder))~~ education practitioner has committed an act of unprofessional conduct or lacks good moral character or personal fitness and revocation is appropriate.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-080 Factors to be considered ~~((prior to))~~ before issuing orders. ~~((Prior to))~~ Before issuing any disciplinary order under this chapter the superintendent of public instruction or designee shall consider, at a minimum, the following factors to determine the appropriate level and range of discipline, if any:

(1) The seriousness of the act(s) and the actual or potential harm to persons or property;

(2) The person's criminal history including the seriousness and amount of activity;

(3) The age and maturity level of participant(s) at the time of the activity;

(4) The proximity or remoteness of time in which the acts occurred;

- (5) Any activity that demonstrates a disregard for health, safety or welfare;
- (6) Any activity that demonstrates a behavioral problem;
- (7) Any activity that demonstrates a lack of fitness;
- (8) Any information submitted regarding discipline imposed by any governmental or private entity as a result of acts or omissions;
- (9) Any information submitted that demonstrates aggravating or mitigating circumstances;
- (10) Any information submitted to support character and fitness; and
- (11) Any other relevant information submitted.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-085 Admissions and professional conduct advisory committee—Creation and composition. The superintendent of public instruction shall appoint a nine-member admissions and professional conduct advisory committee. ~~((Prior to))~~ Before making appointments to such committee, the superintendent of public instruction shall consult with one or more officers within recognized professional associations regarding possible appointments. The advisory committee shall consist of three teachers, one of whom shall be a private school teacher, three educational staff associates, and three administrators. Advisory committee members must be practicing in such designated roles while serving on the advisory committee.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-090 Admissions and professional conduct advisory committee—Operational procedures. The following shall govern the operational procedures of the admissions and professional conduct advisory committee:

- (1) Meetings of the advisory committee shall be open to the public except when it is considering the admission or professional conduct of a particular ~~((certificate holder))~~ education practitioner unless such affected ~~((certificate holder))~~ education practitioner requests the meeting to be open to the public.
- (2) Each member of the advisory committee shall have one vote.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-095 Admissions and professional conduct advisory committee—Duties. The duties of the admissions and professional conduct advisory committee are as follows:

- (1) To advise the superintendent of public instruction and the professional educator standards board on matters related to good moral character, personal fitness, and unprofessional conduct regarding education practitioners.
- (2) To review informal appeals conducted ~~((pursuant to))~~ under WAC 181-86-140 and provide recommendations to the review officer on the content of the written decision.

AMENDATORY SECTION (Amending WSR 14-24-012, filed 11/20/14, effective 12/21/14)

WAC 181-86-100 Reprimand or certificate suspension or revocation—Initiation of proceedings. ~~((The initiation of reprimand, suspension, or revocation proceedings by the superintendent of public instruction shall commence as a result of the following:))~~

(1) Whenever the superintendent of public instruction or the designated administrative officer of the superintendent of public instruction having responsibility for certification becomes aware from whatever source that ~~((a certificate holder))~~ an education practitioner has had a professional license revoked or suspended by a licensing agency, has voluntarily surrendered a license or has been arrested, charged, or convicted for any felony offense included within WAC 181-86-013 (1) or (2), the superintendent of public instruction or the designated administrative officer shall cause an investigation.

(2) In all other cases, the initiation of investigative proceedings ~~((shall commence))~~ may begin only upon receipt of a written complaint from a school district or educational service district superintendent or the chief administrative officer of an approved private school or the chief administrative officer of a charter school. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted. The superintendent of public instruction shall provide the affected ~~((certificate holder))~~ education practitioner with a copy of such written complaint and a copy of WAC 181-86-180.

(3) Upon receipt of a written complaint from a school district or educational service district superintendent or the chief administrative officer of an approved private school or chief administrative officer of a charter school, the superintendent of public instruction will review the complaint and any supporting materials to determine whether a formal investigation should be pursued.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-105 Duty of educational service district superintendent to investigate complaints. (1) Each educational service district superintendent shall cause to be investigated all written and signed complaints, from whatever source, that allege that a certificated education professional within ~~((his or her))~~ their educational service district is not of good moral character or personal fitness or has committed an act of unprofessional conduct. If the educational service district superintendent themselves is the subject of the complaint, the educational service district superintendent will forward the complaint to the superintendent of public instruction for investigation.

(2) If the educational service district superintendent investigates and determines the facts are reliable and further investigation by the superintendent of public instruction is warranted, the educational service district superintendent shall forward the written complaint and the results of ~~((his or her))~~ their investigation to the superintendent of public instruction ~~((: Provided, That))~~.

(3) If the educational service district superintendent, after consultation with the assistant attorney general assigned to ~~((his or her))~~ their educational service district, determines that the substance of the complaint would not constitute grounds for reprimand, suspension, or revocation if true, then such educational service district superintendent need not investigate the complaint ~~((: Provided further, That))~~.

(4) If the educational service district superintendent receives a written assurance from the superintendent of public instruction, a district superintendent, or a chief administrative officer of an approved private school that such official is investigating or will investigate the same or a substantially similar complaint, the educational service district superintendent shall be deemed to have caused an investigation in compliance with this section.

AMENDATORY SECTION (Amending WSR 14-02-073, filed 12/30/13, effective 1/30/14)

WAC 181-86-110 Duty of ESD superintendent, district superintendent and private school administrator to file complaints. (1) When an educational service district superintendent, a district superintendent, chief administrative officer of a charter school, or the chief administrative officer of an approved private school possesses sufficient reliable information to believe that a certificated employee within such district or approved private school is not of good moral character or personally fit or has committed an act of unprofessional conduct, such superintendent or chief administrative officer, within a reasonable period of time of making such determination, shall file a written complaint with the superintendent of public instruction ~~((: Provided, That))~~.

(2) If an educational service district, charter school, or school district is considering action to discharge an employee of such district, the educational service district, charter school, or school district superintendent need not file such complaint until ten calendar days after making the final decision to serve or not serve formal notice of discharge.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-116 Investigative priorities—Levels of acts or omissions of misconduct. (1) ~~((The superintendent of public instruction or designee shall prioritize))~~ In prioritizing the investigation of alleged ((certificated individual)) misconduct, lack of fitness, or unprofessional conduct ((in)) by an education practitioner, the superintendent of public instruction or designee may consider the following ((descending)) in order((:)) from Level I of higher priority to Level IV of lower priority.

In determining priority for investigation, the superintendent of public instruction or designee may also consider the efficient use of available resources, the relative urgency or lack of urgency in resolving various complaints in the public interest, the provisional contract status of the education practitioner, and the right to recommend forms of discipline appropriate to the offenses committed.

(a) **Level I.** Level I actions ~~((shall have the highest investigative priority and))~~ are those allegations, if proven true, for which permanent mandatory revocation ~~((shall be))~~ is the

appropriate disciplinary action. They include the following convictions for which permanent revocation of a certificate is mandatory under RCW 28A.410.090(~~:~~):

~~((i) Physical neglect of a child under chapter 9A.42 RCW;
(ii) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW);~~

~~((iii) Sexual exploitation of a child under chapter 9.68A RCW;~~

~~((iv) Sexual offenses under chapter 9A.44 RCW where a minor is the victim;~~

~~((v) Promoting prostitution of a minor under chapter 9A.88 RCW;~~

~~((vi) The sale or purchase of a minor child under RCW 9A.64.030; or~~

~~((vii) Violation of similar laws of another jurisdiction)).~~

The following convictions are as described under RCW 28A.400.322.

(i) Guilty plea or conviction occurring after July 23, 1989, and before July 26, 2009, for any of the following felony crimes:

(A) Any felony crime involving the physical neglect of a child under chapter 9A.42 RCW;

(B) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

(C) Sexual exploitation of a child under chapter 9.68A RCW;

(D) Sexual offenses under chapter 9A.44 RCW where a minor is the victim;

(E) Promoting prostitution of a minor under chapter 9A.88 RCW;

(F) The sale or purchase of a minor child under RCW 9A.64.030;

(G) Violation of laws of another jurisdiction that are similar to those specified in (a)(i)(A) through (F) of this subsection.

(ii) Guilty plea or conviction for any felony crime, including attempts, conspiracies, or solicitations to commit a felony crime, occurring on or after July 26, 2009, involving:

(A) A felony violation of RCW 9A.88.010, indecent exposure;

(B) A felony violation of chapter 9A.42 RCW involving physical neglect;

(C) A felony violation of chapter 9A.32 RCW;

(D) A violation of RCW 9A.36.011, assault 1; RCW 9A.36.021, assault 2; RCW 9A.36.120, assault of a child 1; RCW 9A.36.130, assault of a child 2; or any other felony violation of chapter 9A.36 RCW involving physical injury except assault 3 where the victim is eighteen years of age or older;

(E) A sex offense as defined in RCW 9.94A.030;

(F) A violation of RCW 9A.40.020, kidnapping 1; or RCW 9A.40.030, kidnapping 2;

(G) A violation of RCW 9A.64.030, child selling or child buying;

(H) A violation of RCW 9A.88.070, promoting prostitution 1;

(I) A violation of RCW 9A.56.200, robbery 1; or

(J) A violation of laws of another jurisdiction that are similar to those specified in (a)(ii)(A) through (I) of this subsection.

(b) **Level II.** Level II actions (~~(shall have the next investigative priority and)~~) are those allegations, if proven true, for which revocation may be the appropriate disciplinary action. They include, but are not limited to the following:

- (i) Sexual activity with children and/or students;
- (ii) Engaging in acts of violence leading to bodily injury;
- (iii) Selling and/or manufacturing illegal drugs; or
- (iv) Other activity that if convicted would result in a felony conviction.

(c) **Level III.** Level III actions (~~(shall have the next investigative priority and)~~) are those allegations, if proven true, for which suspension may be the appropriate disciplinary action. They include, but are not limited to the following:

- (i) Illegal drug possession and/or use;
- (ii) Threats related to persons or property;
- (iii) Alcohol abuse;
- (iv) Reckless conduct where no bodily injury results;
- (v) Engaging in unauthorized corporal punishment;
- (vi) Verbal or physical sexual harassment of students;
- (vii) Engaging in activity that demonstrates poor professional judgment; or
- (viii) Other activity that if convicted would result in a misdemeanor conviction.

(d) **Level IV.** Level IV actions (~~(shall have the next investigative priority and)~~) are those allegations, if proven true, for which a reprimand may be the appropriate disciplinary action. They include, but are not limited to the following:

- (i) Practicing with a lapsed or expired certificate, or a certificate not valid for the position;
- (ii) Isolated failure to timely evaluate certificated personnel; or
- (iii) Intentionally hiring a person for a certificated role who does not possess a valid certificate.

(2) All cases shall be monitored periodically to determine if their priority level should change as a result of information uncovered during the investigation.

~~((3) Notwithstanding any provision of this section to the contrary, the office of professional practices reserves the right to reprioritize the investigation of complaints based upon the efficient use of available resources and/or the relative urgency or lack of urgency in resolving various complaints in the public interest, and the right to recommend forms of discipline appropriate to the offenses committed.))~~

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-120 Issuance of denial order by superintendent of public instruction. Whenever the superintendent of public instruction takes action to deny an application, the superintendent of public instruction, in accordance with the provisions of this chapter, shall issue an order of denial of application for certification or endorsement to the applicant or affected (~~(certificate holder)~~) education practitioner and

shall provide such person a copy of applicable administrative appeal procedures provided in this chapter.

AMENDATORY SECTION (Amending WSR 06-19-010, filed 9/8/06, effective 10/9/06)

WAC 181-86-130 Issuance of order for reprimand, suspension, or revocation by superintendent of public instruction. Whenever the superintendent of public instruction takes action to suspend or revoke a certificate or reprimand (~~(a certificate holder)~~) an education practitioner, the superintendent of public instruction, in accordance with the provisions of this chapter, shall issue an order of reprimand, suspension, or revocation to the affected (~~(certificate holder)~~) education practitioner and shall provide such person a copy of applicable administrative appeal procedures provided in this chapter. If the order is to suspend or revoke a certificate and the superintendent of public instruction has knowledge that such (~~(certificate holder)~~) education practitioner is employed within the common school system or by an approved private school, the superintendent of public instruction shall advise such employer that an order has been sent to the employee.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-135 Issuance of final order for lapsing, reprimand, suspension, or revocation by superintendent of public instruction. Final orders for lapsing, reprimand, suspension, and revocation shall be issued by the superintendent of public instruction as follows:

(1) If the (~~(certificate holder)~~) education practitioner fails to appeal a proposed order (~~(pursuant to)~~) under this chapter within thirty calendar days following the date of mailing the proposed order, the superintendent of public instruction shall issue a final order of lapsing, reprimand, suspension, or revocation.

(2) If the (~~(certificate holder)~~) education practitioner appeals a proposed order (~~(pursuant to)~~) under this chapter, the superintendent of public instruction shall not issue a final order until completion of the informal review process by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 11-14-112, filed 7/6/11, effective 8/6/11)

WAC 181-86-140 Appeal—General. Any person who applies directly to the superintendent of public instruction for a certificate, particular endorsement, certificate renewal, or certificate reinstatement whose application is denied or any person who is notified that (~~(his or her)~~) their certificate is suspended or revoked or that a reprimand order has been issued shall be advised that (~~(he or she is)~~) they are entitled to appeal that decision to the superintendent of public instruction if (~~(he or she)~~) they follow(~~(s)~~) the procedures established in this chapter (~~(-Provided, That)~~).

The appeal procedure may not be used to seek reinstatement of a certificate if that certificate has been revoked in the preceding twelve months by the superintendent of public instruction.

The appeal procedure to the superintendent of public instruction consists of two levels, one informal and one formal. The use of the informal level is a condition precedent to use of the formal level. In addition, RCW 34.05.570 provides for judicial review of such decisions.

AMENDATORY SECTION (Amending WSR 19-24-101, filed 12/4/19, effective 1/4/20)

WAC 181-86-145 Appeal procedure—Informal SPI review. Any person who appeals the decision or order to deny ~~((his or her))~~ their application, the issuance of a reprimand, or the order to suspend or revoke ~~((his or her))~~ their certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of postmarked mailing or other notification, whichever is earlier, from the section of the superintendent of public instruction's office responsible for certification of the decision or order. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes ~~((his or her))~~ their application should have been granted or why ~~((his or her))~~ their certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, ~~((he or she))~~ they shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or ~~((certificate holder))~~ education practitioner, the office of superintendent of public instruction, and/or counsel for the applicant or ~~((certificate holder))~~ education practitioner with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee ~~((: Provided, That))~~. However, the notice of appeal must be received at least ~~((fifteen))~~ thirty calendar days in advance of a scheduled meeting.

(3) Send by certified mail a written decision (i.e., findings of fact and conclusions of law) on the appeal within thirty calendar days from the date of post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may uphold, reverse, or modify the

decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) ~~((Provided, That))~~ In the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

(6) Forms of written notice accepted will be as published by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 13-20-029, filed 9/23/13, effective 10/24/13)

WAC 181-86-150 Appeal procedure—Formal SPI review process. Formal appeals to the superintendent of public instruction shall be provided as follows:

(1) Any person who has filed an appeal in accordance with WAC 181-86-140 and desires to have the decision of the review officer formally reviewed by the superintendent of public instruction may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of post-marked mailing of the review officer's written decision. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings ~~((pursuant to))~~ under RCW 28A.300.120 to hear a particular appeal. Decisions in cases formally appealed ~~((pursuant to))~~ under this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority ~~((pursuant to))~~ under RCW 28A.300.120.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the decision is to reprimand, suspend, or revoke, the appellant shall be notified that such order takes effect upon signing of the final order.

The superintendent of public instruction or the administrative law judge, whichever is applicable, may uphold, reverse, or modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate.

(4) Forms of written notice accepted will be as published by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-86-170 Burden and standard of proof. The following burden and standard of proof shall be applicable:

(1) If an application for certification or reinstatement has been denied for lack of good moral character or personal fitness, the evidence submitted by the applicant must prove by clear and convincing evidence that he or she is of good moral character and personal fitness or the application will be denied.

(2) In a suspension or revocation proceeding, the superintendent of public instruction must prove by clear and convincing evidence that the ~~((certificate holder))~~ education practitioner is not of good moral character or personal fitness or has committed an act of unprofessional conduct.

(3) In all other proceedings, including reprimand, the standard of proof shall be a preponderance of evidence.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-175 Emergency suspension of certificate. Notwithstanding any other provision of this chapter, the superintendent of public instruction, ~~((pursuant to))~~ under RCW 34.05.479, may emergency suspend a certificate if the superintendent of public instruction finds that the public health, safety, or welfare of students, colleagues, or the general public imperatively requires emergency action. In such cases, the holder of the certificate who is subjected to emergency suspension of ~~((his or her))~~ their certificate shall have the right to ~~((commence))~~ begin an informal review of such action within forty-eight hours of filing a notice of appeal with the superintendent of public instruction or, if applicable, to sign an agreement ~~((pursuant to))~~ under WAC 181-86-180. If such an agreement is signed or, if not, unless the superintendent of public instruction sustains the emergency action within seven calendar days of the filing of the notice of appeal, the emergency suspension shall be void. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings, ~~((pursuant to))~~ under RCW ~~((28A-03-050))~~ 28A.300.120, to hear the appeal and sustain the emergency action.

AMENDATORY SECTION (Amending WSR 18-21-014, filed 10/4/18, effective 11/4/18)

WAC 181-86-180 Voluntary surrender of certificates. A holder of a certificate who has not received a final order for revocation of ~~((his or her))~~ their certificate may voluntarily surrender ~~((his or her))~~ their certificate to the superintendent of public instruction for any reason other than conviction of a felony crime stated ~~((within))~~ under WAC 181-86-013 (1) and (2).

~~((A certificate holder))~~ An education practitioner voluntarily surrendering a certificate shall provide the superintendent of public instruction the following affidavit.

"I hereby voluntarily surrender my certificate(s). Certificate #

I further understand that the superintendent of public instruction will notify other states and public and private

school officials with the state of Washington that I have voluntarily surrendered my certificate(s)."

Name:

Certificate Number:

Upon request for reinstatement of such certificate, the applicant must comply with chapter 181-77 or 181-79A WAC and, in addition, must disclose in full the reasons for the voluntary surrender of the certificate. ~~((In the event))~~ If the surrendered certificate would have expired or lapsed but for the surrendering of the certificate, the applicant must meet all requirements for reinstating an expired or lapsed certificate.

AMENDATORY SECTION (Amending WSR 06-19-010, filed 9/8/06, effective 10/9/06)

WAC 181-86-185 Notification of denial, surrender, suspension, or revocation of certificates. The superintendent of public instruction shall notify all other states whenever an applicant has been denied a certificate for failure to possess good moral character or personal fitness or whenever a certificate has been suspended, surrendered, or revoked and shall provide the full name and certificate number, if applicable, to the agency responsible for certification in each state. The superintendent of public instruction shall notify appropriate public or private school officials within the state the name and certification number of all ~~((certificate holders))~~ education practitioners whose certificates have been suspended, surrendered, or revoked.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-87-003 Authority. The authority for this chapter is RCW ~~((28A-410-090))~~ 28A.410.010 which authorizes the professional educator standards board to establish, publish, and enforce rules ~~((and regulations))~~ determining eligibility for and certification of personnel employed in the common schools of this state. This authority is supplemented by RCW 28A.410.090 which authorizes the revocation and suspension of certificates, as well as reprimands, for unprofessional conduct. (Note: RCW ~~((28A-02-201))~~ 28A.195.010 (3)(a) requires most private school classroom teachers to hold appropriate Washington state certification with few exceptions.)

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-87-010 Public policy goals of chapter. The public policy goals of this chapter are as follows:

(1) To protect the health, safety, and general welfare of students within the state of Washington.

(2) To assure the citizens of the state of Washington that education practitioners are accountable for acts of unprofessional conduct.

(3) To define and provide notice to education practitioners within the state of Washington of the acts of unprofessional conduct for which they are accountable ~~((pursuant to))~~ under the provisions of chapter 181-86 WAC.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-87-015 Accountability for acts of unprofessional conduct. Any educational practitioner who commits an act of unprofessional conduct proscribed within this chapter may be held accountable for such conduct ~~((pursuant to))~~ under the provisions of chapter 181-86 WAC.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-87-025 Exclusivity of chapter. No act, for the purpose of this chapter, ~~((shall be))~~ is defined as an act of unprofessional conduct unless it is included in this chapter.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-87-035 Education practitioner—Definition. As used in this chapter, the term "education practitioner" means any certificate holder licensed under ~~((rules))~~ Title 181 WAC of the professional educator standards board to serve as a certificated employee, or any person serving in a position for which certification is required under Title 181 WAC of the professional educator standards board.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-87-045 Colleague—Definition. As used in this chapter, the term "colleague" ~~((means any person with whom the education practitioner has established a professional relationship and includes fellow workers and employees regardless of their status as education practitioners))~~ includes a certificated educator or any individual employed on a permanent or temporary basis.

AMENDATORY SECTION (Amending WSR 14-21-056, filed 10/8/14, effective 11/8/14)

WAC 181-87-055 Alcohol or controlled substance abuse. Unprofessional conduct includes:

(1) Being under the influence, as defined in RCW 46.61.-506, of alcohol, marijuana or of a controlled substance, as defined in chapter 69.50 RCW, on school premises or at a school-sponsored activity involving students, following:

(a) Notification to the education practitioner by ~~((his or her))~~ their employer of concern regarding alcohol or substance abuse affecting job performance;

(b) A recommendation by the employer that the education practitioner seek counseling or other appropriate and available assistance; and

(c) The education practitioner has had a reasonable opportunity to obtain such assistance.

(2) The possession, use, or consumption on school premises or at a school sponsored activity of a Schedule 1 controlled substance, as defined by the state pharmacy quality assurance commission, or a Schedule 2 controlled substance, as defined by the state pharmacy quality assurance commission, without a prescription authorizing such use.

(3) The consumption of an alcoholic beverage on school premises or at a school sponsored activity involving students if such consumption is contrary to written policy of the school district or school building.

(4) The possession of marijuana or marijuana-infused product on school premises or at a school sponsored activity involving students if such possession violates Washington law or is contrary to written policy of the school district or school building.

(5) The use or consumption of marijuana or marijuana-infused product on school premises or at a school sponsored activity.

NEW SECTION

WAC 181-87-062 Digital communication. (1) Unprofessional conduct includes inappropriate digital communication with a student including, but not limited to: Cell phone, text messaging, email, instant messaging, blogging, or other social media or social network communication.

(2) Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

(a) The nature, purpose, timing, and amount of the communication;

(b) The subject matter of the communication;

(c) Whether the communication was made openly, or the educator attempted to conceal the communication;

(d) Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship, was sexually explicit, or involved discussion of the sexual history, activities, or preferences of either the educator or the student.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-87-070 Unauthorized professional practice. (1) Any act performed without good cause that materially contributes to one of the following unauthorized professional practices is an act of unprofessional practice.

~~((1))~~ (a) The intentional employment of a person to serve as an employee in a position for which certification is required by rules of the professional educator standards board when such person does not possess, at the time of commencement of such responsibility, a valid certificate to hold the position for which such person is employed.

~~((2))~~ (b) The assignment or delegation in a school setting of any responsibility within the scope of the authorized practice of nursing, physical therapy, or occupational therapy to a person not licensed to practice such profession unless such assignment or delegation is otherwise authorized by law, including the rules of the appropriate licensing board.

~~((3))~~ (c) The practice ~~((of education by a certificate holder during any period in which such certificate has been suspended))~~ with an expired, lapsed, suspended, surrendered, or revoked certificate in a position for which certification is required under Title 181 WAC of the professional educator standards board.

~~((4))~~ (d) The failure of ~~((a certificate holder))~~ an education practitioner to abide by the conditions within an agree-

ment, executed ~~((pursuant to))~~ under WAC 181-86-160, to not continue or to accept education employment.

~~((5))~~ (c) The failure of ~~((a certificate holder))~~ an education practitioner to comply with any condition, limitation, or other order or decision entered ~~((pursuant to))~~ under chapter 181-86 WAC.

~~((6) Provided, That)~~ (2) For the purpose of this section, good cause includes, but is not limited to, exigent circumstances where immediate action is necessary to protect the health, safety, or general welfare of a student, colleague, or other affected person.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-87-080 Sexual misconduct with students. As used in this chapter, "sexual misconduct with students" means:

(1) Unprofessional conduct includes the commission by an education practitioner of any sexually exploitive act with or to a student including, but not limited to, the following:

~~((1))~~ (a) Any sexual advance, verbal or physical;

~~((2))~~ (b) Sexual intercourse as defined in RCW 9A.44-010;

~~((3))~~ (c) Indecent exposure as defined in RCW 9A.88-010;

~~((4))~~ (d) Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student;

~~((5) Provided, That)~~ (e) Engaging in sexual grooming of a student, such as befriending and/or establishing a connection with a student or a student's family to lower the student's inhibitions for the purpose of a sexual relationship.

(2) The provisions of this section shall not apply if at the time of the sexual conduct the participants are married to each other.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-87-095 Failure to file a complaint. The intentional or knowing failure of an educational service district superintendent, a district superintendent, or a chief administrator of a private school to file a complaint ~~((pursuant to))~~ under WAC 181-86-110 regarding the lack of good moral character or personal fitness of an education practitioner or the commission of an act of unprofessional conduct by an education practitioner is an act of unprofessional conduct.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-87-030 Prospective application of chapter and amendments.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-88-020 Employee—Definition. As used in this chapter, the term "employee" means any employee or former employee of a school district, including all classified employees, all certificated employees, ~~((and))~~ all substitute employees, and all contractors.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-88-030 Student—Definition. For purposes of this chapter, "student" shall have the same meaning as defined in WAC ~~((180-87-040))~~ 181-87-040.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-88-060 Sexual misconduct—Definition. As used in this chapter, "sexual misconduct" means:

(1) Any sexually exploitive act with or to a student. Sexually exploitive acts include, but are not limited to, the following:

(a) Any sexual advance, verbal, written or physical.

(b) Sexual intercourse, as defined in RCW 9A.44.010.

(c) Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student.

~~((Any activities determined to be grooming behavior for purposes of establishing))~~ Engaging in sexual grooming of a student, such as befriending and/or establishing a connection with a student or a student's family to lower the student's inhibitions for the purpose of a sexual relationship.

(e) The provisions of (a) through (d) of this subsection shall not apply if at the time of the sexual conduct the participants are married to each other.

(2) Indecent exposure, as defined in RCW 9A.88.010.

(3) Sexual harassment of another as defined under local employer policy.

(4) Commission of a criminal sex offense as defined under chapter 9A.44 RCW.

(5) Sexual abuse or sexual exploitation of any minor as found in any dependency action under chapter 13.34 RCW or in any domestic relations proceeding under Title 26 RCW.

(6) For purposes of this section, sexual misconduct occurs only when a school district determines it has sufficient information to conclude that an employee engaged in the sexual misconduct and it resulted in the employee leaving a position with the school district. Under RCW 28A.400.301, a district is prohibited from entering into any contract or agreement that has the effect of suppressing information about the misconduct of a present or former employee or has the effect of expunging such information from employer files, and a district must forward information regarding sexual misconduct to prospective employing districts.

WSR 21-08-023
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 29, 2021, 1:50 p.m., effective April 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Current preparation program standards and requirements language need to be clarified and reorganized.

Citation of Rules Affected by this Order: Repealing WAC 181-77A-080, 181-78A-210, 181-78A-300; and amending WAC 181-80-010, 181-77A-029, 181-77-031, 181-79A-030, 181-78A-100, 181-78A-105, 181-78A-205, 181-78A-207, 181-78A-209, 181-78A-215, 181-78A-220, 181-78A-231, 181-78A-232, 181-78A-233, 181-78A-234, 181-78A-235, 181-78A-236, and 181-78A-237.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-04-101 on February 1, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 18, Repealed 3.

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

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

Date Adopted: March 26, 2021.

Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved teacher preparation programs in a career and technical education endorsement area. Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-155. Candidates shall complete preparation programs under the standards in chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from an accredited college or university ~~((which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought)).~~

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the career and technical education broad areas: Agriculture education, business and market-

ing education, family and consumer sciences education, and technology education, as listed in WAC 181-77-005.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of two thousand hours occupational experience in the broad area for which certification is sought. If all or part of the two thousand hours is more than ten years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience. The candidate must also apply for the residency teacher certificate or add the subject area to their teacher certificate in their subject area, take and pass the content knowledge test(s) for subject area, be issued the teacher certificate before the CTE initial can be issued.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) **Initial renewal.** Candidates for renewal of the initial certificate must complete one hundred continuing education credit hours in the subject area certified to teach since the initial certificate was issued, or four professional growth plans as defined in WAC 181-85-033. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least fifteen quarter hours or one hundred fifty continuing education credit hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) **Continuing certificate renewal.** Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate:

(a) Ten quarter hours or one hundred continuing education credit hours of career and technical education educator training, or four professional growth plans as defined in WAC 181-85-033. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77A-029 Procedures for approval and review of a career and technical education teacher preparation program for candidates applying under WAC 181-77-041. ~~((+))~~ A prospective provider desiring to establish a career and technical education teacher preparation program for candidates applying under WAC 181-77-041 shall comply with the policy established for program approval and review in chapter 181-78A WAC.

~~((2) Establish and maintain a representative program education advisory board including career and technical education teachers from the discipline, at least one first-year teacher (if applicable) who has completed the respective program, career and technical education administrators, and industry and/or community representatives.~~

~~The purpose of the program education advisory board is to advise, validate, and review the integrity of the respective career and technical education teacher education program.)~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-77A-080 Substitute pay for members of professional education advisory boards.

AMENDATORY SECTION (Amending WSR 20-16-027, filed 7/24/20, effective 8/24/20)

WAC 181-78A-100 Existing approved programs. Providers of programs approved by the board shall comply with the review process established in this chapter and published by the board.

(1) Teacher and principal preparation programs: The board will annually review performance data of all educator preparation programs based on components and indicators established in this chapter and published by the board. The professional educator standards board will provide annual updated written guidance to providers regarding the submission of annual program data.

(a) Notification: If annual preparation program data analysis indicates that program performance falls below thresholds during any given review period, the board staff will provide written notification to the educator preparation program provider. The educator preparation program provider may choose to submit a response to the board staff. The response must be received by board staff within four weeks following receipt of the notification by the provider. The response should offer evidence of factors and circumstances that explain why program performance is below board approved thresholds on the indicators identified in the notice. The board staff will offer providers guidance on content and timelines for submission of this optional response. The board will review responses concurrently with annual data analysis reports.

(b) Interventions: Providers with program performance below indicator thresholds are subject to graduated levels of intervention as follows:

(i) Intervention 1 - Required self-study report: If a provider that received written notification of performance below threshold on one or more indicators during the previous review period has performance below thresholds on the same indicator(s) during the subsequent review period, the board will send the provider a second notification. The provider must complete a self-study report related to the components and domain(s) identified in both notifications and submit it to the board. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also submit evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. If the board is satisfied with the self-study report, the board will approve it at a board meeting. If the board is not satisfied with the self-study report, staff will give providers additional written timelines and guidance to address the board's concerns.

(ii) Intervention 2 - Formal review: If a provider demonstrates performance below thresholds for a third successive review period or more, the professional educator standards board will provide a third notification. Based on its discretion and authorized by a vote, the board also may require a formal review related to the provider's performance in the domains of practice identified in the notifications. Prior to commencing

ing a formal review, the board will consider the notifications, responses, and self-study report to determine whether to proceed with or postpone a formal review.

(A) The formal review will incorporate the following elements:

(I) The board shall determine the schedule for formal reviews and whether an on-site visit or other forms of documentation and validation will be used to evaluate programs under program approval standards.

(II) The provider will submit requested evidence to the board staff.

(III) A review team, including at least one member of the board, will review the evidence. The review team may request additional information including information provided through interviews with provider staff or affiliates as needed.

(IV) The review team will provide a report to the board identifying areas of practice associated with the previous notifications where the provider is out of compliance with educator preparation program requirements (~~(established in WAC 181-78A-300 and the educator preparation program)~~), expectations, and outcomes established in chapter 181-78A WAC ((181-78A-220)). The review team may also identify areas of practice where the provider is out of compliance with educator preparation program requirements that were not associated with previous notifications but were noticed by the review team during the process of review. The report may also identify whether the approved indicators or thresholds are functioning as intended.

(V) Board staff serving on the review team will provide assistance to the review team during the review process but will not serve in an evaluative role.

(VI) The review team will submit its report and other appropriate documentation to the provider and the board within one year of the board designating the program for formal review.

(VII) The board may extend the length of the one-year period for submission of the review team's report up to two years at its discretion.

(B) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is to focus on the evidence, conclusions, and recommendations in the report but also may include additional evidence of factors and circumstances that explain why program performance is persistently below board approved thresholds on the indicators identified in the notice and self-study report. The board shall publish the process for submitting and reviewing the reply.

(C) In considering the review team's report, the board may request additional information or review, or take action to extend, or change the program's approval status per the provisions of WAC 181-78A-110.

(c) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-

08-035 no more than thirty calendar days from the decision date.

(d) The board will publish a schedule for its review of the domains, components, indicators and thresholds. This review will occur at least every five years and not more frequently than every two years.

(2) Superintendent programs: The board will annually review data related to the performance of all superintendent programs according to data reporting guidance published by the board.

(a) Annual data analysis: After each annual review period, the board will give superintendent program providers written analysis of the program's annual data submission.

(b) Superintendent program review: The professional educator standards board shall determine the schedule for formal reviews and whether an on-site visit or other forms of documentation and validation shall be used for evaluation.

(i) Superintendent program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Superintendent program providers will submit requested evidence to the staff of the professional educator standards board.

(iii) A review team, including at least one member of the professional educator standards board, will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include at least one P-12 practitioner with expertise related to the program scheduled for review and two individuals with expertise related to the domains of practice identified in annual written analyses.

(iv) One of the two providers with peer representatives on the review team will be scheduled for annual review during the subsequent review period.

(v) At least three months in advance of scheduled review, superintendent program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also provide evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the board as evidence pertinent to the program approval process.

(c) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements (~~(established in WAC 181-78A-300 and the program)~~), expectations, and outcomes established in chapter 181-78A WAC ((181-78A-220)).

(i) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(ii) The board may extend the length of the one-year report period up to two years at its discretion. The review team's report and other appropriate documentation will be submitted to the provider and the board within one year of the board designating the program for formal review.

(iii) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review. The board shall publish the process for submitting and reviewing the reply.

(iv) In considering the review team's report, the board may request additional information or review, or take action to extend or change the educator preparation program's approval status per the provisions of WAC 181-78A-110.

(d) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief, adjudicated hearings. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

(3) Program administrator programs: The board will annually review data related to the performance of all program administrator programs according to data and reporting guidelines published by the board.

(a) Program administrator programs implemented in conjunction with principal preparation programs will be reviewed concurrently with that provider's principal preparation program.

(b) Program administrator programs implemented in conjunction with superintendent preparation programs will be reviewed concurrently with that provider's superintendent preparation program.

(4) School counseling programs. School counseling program providers shall comply with accrediting procedures for council for the accreditation for counseling and related education programs, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of residency school counseling programs without approval from council for the accreditation for counseling and related education programs shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(b) The board will place any existing approved residency school counseling program not accredited from the council for the accreditation for counseling and related education programs into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifi-

cally approved to operate under alternative national standards per WAC 181-78A-225.

(5) School psychology programs. Providers of school psychology programs shall comply with accrediting procedures for the National Association for School Psychology. School psychology program providers shall comply with accrediting procedures for the National Association for School Psychology, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of school psychology programs without approval from the National Association for School Psychology shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(b) The board will place any existing approved school psychology program not accredited from the National Association of School Psychology into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(6) Career and technical education administrator and business and industry route educator preparation programs: The board will annually review data related to the performance of all such programs according to data reporting guidelines published by the board.

(a) Annual data analysis: After each annual review period, the board will give career and technical education administrator and business and industry route educator preparation program providers written analysis of the program's annual data submission.

(b) Career and technical education administrator and business and industry route educator preparation program review: The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs.

(i) Career and technical education administrator and business and industry route educator preparation program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) At least three months in advance of their scheduled review, career and technical education administrator and business and industry route educator preparation program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials.

(iii) Career and technical education administrator and business and industry route educator preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-235(3) as have been

designated by the board as evidence pertinent to the program approval and review processes.

(iv) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise in career and technical education related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses or in the program's self-study report. One of the two providers with peer representatives on the review team will be scheduled for the subsequent program review.

(v) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use the self-study report to identify program provider's goals and strategies for improvement.

(B) The review team and the preparation program provider will use preparation program data available at the time of review.

(C) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(vi) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(c) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

AMENDATORY SECTION (Amending WSR 19-12-005, filed 5/22/19, effective 6/22/19)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. A prospective provider desiring to establish a preparation program shall comply with the following:

(1) Notification of intent. Prospective providers must submit the appropriate form, published by the professional educator standards board, declaring an intent to apply for approval to offer an educator preparation program or a new educator certification program.

(a) The notification of intent will be posted on the board website as public notice.

(b) The board will contact the prospective provider to begin the preproposal process.

(2) Preproposal. The prospective provider will develop and submit a preproposal that addresses all requirements approved and published by the board including evidence of necessary capacity, resources, and projected sustainability of the program. After board staff verify the preproposal is complete, the preproposal will be brought to the board.

(3) Final proposal. The prospective provider may be approved to develop a final proposal or the preproposal may be denied.

(a) If denied, the provider may resubmit its preproposal informed by suggestions of the board.

(b) If the preproposal is approved by the board, the prospective provider must develop and submit a written plan which addresses all final proposal elements including domains, components, and other program approval requirements contained in chapter 181-78A WAC ((181-78A-220 and 181-78A-300 as established in this chapter)) and published by the board, including letters of support from partner districts and/or community agencies as evidence of how the program will meet Washington educator workforce needs.

(c) Final proposals submitted by prospective providers of school counselor preparation programs shall include verification of program approval by the council for the accreditation for counseling and related education programs.

(d) Final proposals submitted by prospective providers of school psychologist programs shall include verification of program approval by the National Association for School Psychology.

(4) After reviewing a prospective provider's final program proposal, the board may approve or deny the program approval:

(a) The program may be approved in a specific location(s) for an initial approval period of up to twenty-seven months following the beginning of instruction. The prospective provider must notify the board when instruction has begun. If initial approval is denied, the prospective provider may resubmit a revised plan informed by suggestions given by the board and its staff.

(b) School counselor and school psychologist programs: Approve the program for a time period to align with their respective national association approvals.

(5) Prior to the expiration of initial approval, staff of the board shall conduct a site visit to determine if the program is in full compliance and performance aligned with the state approval requirements. This includes a review of all applicable indicators and domain components for the type of program.

(a) The twenty-seven-month review is a formal review to evaluate recently approved educator preparation programs and consider them for continued approval.

(i) The formal review will incorporate the following elements:

(A) The board shall determine the schedule for formal reviews and the forms of documentation and validation that will be used for evaluation.

(B) Preparation program providers will submit requested evidence to the staff of the board.

(C) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the programs professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses.

(ii) The twenty-seven-month review team will use multiple data sources to address the specific goals listed in this section.

(A) The twenty-seven-month review team and the preparation program provider will use annual performance indicator data available at the time of review. Performance of programs on board approved indicators will be used by the review team to write the review report and by the board in consideration of the program's continued approval status.

(B) The twenty-seven-month review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(C) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has implemented the program in alignment with the goals and design for which it was approved. Fidelity to approved program designs and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(D) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has demonstrated continuous improvement in its implementation and outcomes. Providers' ability to demonstrate continuous improvement in processes and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(iii) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(A) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(B) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal twenty-seven-month review.

(C) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(D) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) The board's staff may provide technical assistance to providers to help them improve their performance as described in WAC 181-78A-110 (1)(b)(iv).

(b) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision. This request must be made within twenty days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035.

**PROFESSIONAL ((~~EDUCATION~~)) EDUCATOR
ADVISORY BOARDS—GENERAL PROVISIONS**

AMENDATORY SECTION (Amending WSR 20-20-092, filed 10/5/20, effective 11/5/20)

WAC 181-78A-205 Required professional ((~~educa-tion~~)) educator advisory board. Institutions and organizations seeking approval by the professional educator standards board as an approved preparation program, and in order to maintain such approval status, shall establish a professional ((~~education~~)) educator advisory board (PEAB) in accordance with the following:

(1) The program areas for which an institution or organization may seek approval and maintain an approved preparation program are:

- (a) Teacher.
- (b) Career and technical education business and industry route teacher.
- (c) Administrator.
- (d) Career and technical education ((~~business and industry route~~)) administrator.
- (e) Educational staff associate ((~~ESA~~)), school counselor.
- (f) Educational staff associate, school psychologist.

(2) Professional educator advisory board.

(a) All educator preparation program providers shall establish and maintain a professional educator advisory board to participate in and cooperate with the organization on decisions related to the development, implementation, and revision of preparation program(s).

(b) The professional educator advisory board shall adopt operating procedures and meet at least three times a year.

(c) The professional educator advisory board annually shall review and analyze data for the purposes of determining whether candidates have a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Student surveys, follow-up studies, employment placement records, student performance portfolios, course evaluations, program review indicators, and summaries of performance on the pedagogy assessment for teacher candidates.

(d) The professional educator advisory board shall make recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

(3) An institution or organization may combine educational staff associate professional ((~~education~~)) educator advisory boards as long as one-half or more of the voting members are appointed by the associations representing the ESA roles involved and are divided equally among those roles.

((~~3~~)) (4) An institution or organization may have separate administrator professional ((~~education~~)) educator advisory boards for each administrator role as long as one-half or more of the voting members are appointed by the association representing the administrator role involved: Each administrator PEAB shall include at least one member appointed by the Association of Washington School Principals (AWSP),

one appointed by the Washington Association of School Administrators (WASA), and one appointed by the Washington Federation of Independent Schools (WFIS).

((~~4~~)) (5) The failure of a designated organization, as specified in WAC 181-78A-209, to make appointments to the designated board, or to make such appointments in a timely manner, shall not cause the preparation program to lose its approval status.

AMENDATORY SECTION (Amending WSR 20-20-092, filed 10/5/20, effective 11/5/20)

WAC 181-78A-207 Qualification to be appointed to an institution or organization professional ((~~education~~)) educator advisory board. (1) Professional ((~~education~~)) educator advisory boards may authorize the appointment of additional representatives from other school districts or other public and private agencies as long as one-half or more of the members of the professional ((~~education~~)) educator advisory board consist of representatives who meet the qualifications of this subsection and who are from the role for which the professional ((~~education~~)) educator advisory board has responsibility.

(2) If any professional ((~~education~~)) educator advisory board receives a written request from other school districts or other public or private agencies for representation on such professional ((~~education~~)) educator advisory board, the current members of such professional ((~~education~~)) educator advisory board shall vote on such request at the next regular meeting of such board. A program may elect to add private school representatives to a professional ((~~education~~)) educator advisory board without adding to the representation from the role for which the professional ((~~education~~)) educator advisory board has responsibility if the professional ((~~education~~)) educator advisory board authorizes such action by a majority vote.

AMENDATORY SECTION (Amending WSR 20-20-092, filed 10/5/20, effective 11/5/20)

WAC 181-78A-209 Professional ((~~education~~)) educator advisory boards—Membership. The professional ((~~education~~)) educator advisory boards shall at a minimum consist of the following:

(1) **TEACHER.**

(a) One-half or more of the voting members are classroom teachers. All, but one, must be appointed by the president of the Washington Education Association. The remaining teacher must be employed in a state-approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one ((~~principal~~)) building level leader appointed by the president of the Association of Washington School Principals.

(c) At least one ((~~school administrator~~)) district level leader appointed by the Washington Association of School Administrators.

(d) At least one educational staff associate ((~~school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist~~))

appointed by the president of the individual's professional association.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(f) At programs where career and technical education programs are offered in conjunction with general educator residency certification programs, one career and technical education ~~((director))~~ administrator or career and technical education teacher, with expertise in one of the approved career and technical education programs at the institution or organization, appointed by the Washington Association of Career and Technical Administrators in cooperation with the institution or organization.

(2) CAREER AND TECHNICAL EDUCATION BUSINESS AND INDUSTRY ROUTE TEACHER.

(a) One-half or more of the voting members are career and technical education teachers. One-half of these teachers must be recommended by the Washington Association for Career and Technical Education. The remaining teachers must be appointed by the educator preparation program. At least one career and technical education teacher on the advisory board must be prepared through a Washington state business and industry route preparation program.

(b) At least one career and technical education ~~((director))~~ administrator recommended by the Washington Association for Career and Technical Administrators.

(c) At least one secondary ~~((school administrator))~~ building level leader recommended by the Washington Association of Career and Technical Administrators' area group associated with the educator preparation program.

(d) At least one career and technical education career guidance specialist, or one career and technical education occupational information specialist, or one career and technical education counselor.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(3) ADMINISTRATOR.

(a) One-half or more of the voting members are administrators. One-half of these administrators must be appointed by the president of the Washington Association of School Administrators. The remaining administrators shall be appointed by the president of the Association of Washington School Principals except one who shall be employed in an approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one or more ~~((classroom))~~ teachers appointed by the president of the Washington Education Association.

(c) At least one educational staff associate ~~((school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist))~~ appointed by the president of the individual's professional association.

(d) At least one institution or organization representative who may serve in a voting or nonvoting role.

(4) ~~((CTE))~~ CAREER AND TECHNICAL EDUCATION ADMINISTRATOR.

(a) One-half or more of the voting members are certificated career and technical education administrators. One-half of these administrators must be recommended by the Wash-

ington Association of Career and Technical Administrators' area group associated with the educator preparation program. The remaining administrators must be appointed by the educator preparation program.

(b) At least one or more career and technical education teacher recommended by the Washington Association for Career and Technical Education.

(c) At least one secondary ~~((school administrator))~~ building level leader recommended by the Washington Association of Career and Technical Administrators' area group associated with the program.

(d) At least one career and technical education career guidance specialist, or one career and technical education occupational information specialist, or one career and technical education counselor appointed by the educator preparation program.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(5) SCHOOL COUNSELOR.

(a) At least one-half of the voting members are school counselors appointed by the president of the Washington School Counselors Association.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one ~~((principal))~~ building level leader appointed by the Association of Washington School Principals.

(d) At least one ~~((administrator))~~ district level leader appointed by the Washington Association of School Administrators.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(6) SCHOOL PSYCHOLOGIST.

(a) At least one-half of the voting members are school psychologists appointed by the president of the Washington State Association of School Psychologists.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one ~~((principal))~~ building level leader appointed by the Association of Washington School Principals.

(d) At least one ~~((administrator))~~ district level leader appointed by the Washington Association of School Administrators.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(7) MEMBERSHIP APPOINTMENTS. Applicable to all professional association appointments, if the professional association does not respond to the program's request within sixty days of the receipt of the request, a program may appoint the representative of its choice in the role for which a representative is being sought. If the program makes an appointment, it must notify the appropriate professional association within one week that the appointment has been made. If an association is unable to appoint a representative due to the geographic restriction of possible candidates, the PEAB will appoint an alternate to represent that association with their consent.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-215 Substitute pay for members of professional ((education)) educator advisory boards. Service on professional ((education)) educator advisory boards by certificated employees is deemed by the professional educator standards board as a committee formed for the purpose of furthering education within the state. Accordingly, the superintendent of public instruction, in conformance with the provisions of RCW 28A.300.035, shall make payments to school districts for needed substitutes.

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-220 Program approval standards for approved preparation programs. The board shall adopt and revise program standards that describe domains of practice, program components, and other expectations for teacher and principal preparation programs to align and maintain currency with recognized national association standards for the specific certificate role. The board will use national standards as guidance for determining domains, components, and indicators used for program review.

(1) General domain outcome expectations for teacher, principal, career and technical education administrator, superintendent, and program administrator preparation programs are as follows:

(a) Candidates and cohorts. Providers of educator preparation programs recruit, select, and prepare diverse cohorts of candidates with potential to be outstanding educators.

(i) Providers conduct strategic and ongoing outreach to identify, recruit, admit, support, and transition promising educator candidates.

(ii) Providers of preparation programs use strategies to recruit and prepare a greater number of candidates from underrepresented groups including, but not limited to, candidates of color in effort to prepare an educator workforce that mirrors the characteristics of the student population in Washington state public schools.

(iii) Providers set, publish and uphold admission standards to ensure that candidates and cohorts are academically capable and prepared to succeed in educator preparation programs.

(b) Knowledge, skills and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(i) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(ii) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(iii) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the ((national)) professional standards adopted by the board for the role for which candidates are being prepared.

(iv) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(v) Providers ((require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements)) ensure that teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710 and WAC 181-78A-232.

(c) Novice practitioners. Providers prepare candidates who are role ready.

(i) Providers prepare candidates who are ready to engage effectively in their role and context upon completion of educator preparation programs.

(ii) Providers prepare candidates to develop reflective, collaborative, and professional growth-centered practices through regular evaluation of the effects of their teaching through feedback and reflection.

(iii) Providers prepare candidates for their role in directing, supervising, and evaluating paraeducators.

(iv) Providers require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(d) State and local workforce needs. Providers contribute positively to state and local educator workforce needs.

(i) Providers partner with local schools to assess and respond to educator workforce, student learning, and educator professional learning needs.

(ii) Providers use preparation program and workforce data in cooperation with professional educator advisory boards to assess and respond to local and state workforce needs.

(iii) Providers of teacher educator preparation programs prepare and recommend increasing numbers of candidates in endorsement areas identified by the professional educator standards board workforce priorities.

(e) Data systems. Providers maintain data systems that are sufficient to direct program decision making, inform state-level priorities, and report to the professional educator standards board.

(i) Providers develop and maintain effective data systems that are sufficient for program growth, evaluation, and mandated reporting.

(ii) Providers utilize secure data practices for storing, monitoring, reporting, and using data for program improvement.

(iii) Providers produce and utilize data reports in accordance with data and reporting guidance published by the professional educator standards board.

(f) Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(i) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement per WAC 181-78A-125.

(ii) Providers ensure that candidates integrate knowledge and skills developed through field experiences with the content of programs' course work.

(iii) Providers offer field experiences that are in accordance with chapter 181-78A WAC ((181-78A-300)) and the board approved candidate assessment requirements.

(iv) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status, or local population density.

(g) Program resources and governance. Providers ensure that programs have adequate resources, facilities, and governance structures to enable effective administration and fiscal sustainability.

(i) Providers ensure that programs utilize a separate administrative unit responsible for the composition and organization of the preparation program.

(ii) Providers ensure the program has adequate personnel to promote teaching and learning.

(iii) Providers ensure the program has adequate facilities and resources to promote teaching and learning.

(2) General knowledge and skills standards are as follows:

(a) Teacher: The board adopts the national knowledge and skills competencies most recently published by the Council of Chief State School Officers known as the *Interstate Teacher Assessment and Support Consortium Model Core Teaching Standards and Learning Progressions for Teachers* with any additions deemed necessary by the professional educator standards board.

Endorsement competencies will be aligned with the national standards of each content area/specialized professional organization, when such a national standard is available. Currently approved endorsement standards and competencies will be published on the board website.

(b) Principal: The board adopts the national knowledge and skills competencies most recently published by the National Policy Board for Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - Building Level* ((published in 2018, or as subsequently revised. Until the publication of the *National Educational Leadership Preparation (NELP) Standards - Building Level* published in 2018, providers of principal preparation programs will use Standard 5 as published)) with any additions deemed necessary by the professional educator standards board.

(c) Superintendent ((and program administrator)): The board adopts the national knowledge and skills competencies published by the University Council of Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - District Level* published in 2018, or as subsequently revised. Until the publication of the *National Educational Leadership Preparation (NELP) Standards - District Level* ((published in 2018, providers of superintendent and program administrator programs will use Standard 5)) with any additions deemed necessary by the professional educator standards board.

(d) Program administrator: Provider may select national knowledge and skills competencies published by the University Council of Educational Administration known as the

National Educational Leadership Preparation (NELP) Standards - Building Level or those known as the *National Educational Leadership Preparation (NELP) Standards - District Level* with any additions deemed necessary by the professional educator standards board.

(e) School counselor: The board adopts the national knowledge and skills competencies most recently published by the Council for Accreditation of Counseling and Related Educational Programs known as the CACREP standards with any additions deemed necessary by the professional educator standards board.

(f) School psychologist: The board adopts the national knowledge and skills competencies most recently published by the National Association for School Psychologists known as the National Association for School Psychologists standards for graduate preparation of school psychologists with any additions deemed necessary by the professional educator standards board.

(g) Standards for career and technical education teacher preparation programs resulting in an initial certificate area, as published by the professional educator standards board and as described in WAC 181-77A-165.

(h) Standards for career and technical education administrator preparation programs are as published by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-231 Teacher, principal, career and technical education ((director)) administrator, superintendent, and program administrator—Specific program approval domain standard—Candidates and cohorts. Candidates and cohorts. Providers of educator preparation programs recruit, select, support, and prepare diverse cohorts of candidates with potential to be outstanding educators.

(1) Providers conduct strategic and ongoing outreach to identify, recruit, admit, support, and transition promising educator candidates.

(a) Create, foster, and utilize effective partnerships to promote careers in teaching and educational leadership.

(b) Implement a targeted, data-informed outreach strategy that includes robust individualized enrollment support.

(c) Establish and monitor attributes and dispositions beyond academic ability that candidates must demonstrate at admissions and during the program.

(d) Providers of teacher preparation programs develop and utilize candidate recruitment strategies that address state, district, and workforce shortage areas.

(e) Providers of career and technical education business and industry route programs establish and expand meaningful and effective recruitment and admissions partnerships with local school districts.

(2) Providers of educator preparation programs use strategies to recruit, admit, and prepare a greater number of candidates from underrepresented groups including, but not limited to, candidates of color in effort to prepare an educator workforce that mirrors the characteristics of the student population in Washington state public schools.

(a) Demonstrate strategic outreach that is highly accessible and responsive to local communities of color.

(b) Gather and use data to assess strategic outreach to improve responsiveness and effectiveness.

(c) Identify needs and provide supports for enrollment and success in educator preparation programs for local communities of color and candidates representing linguistic and ability diversity.

(3) Providers set, publish, and uphold program admission standards to ensure that all educator candidates and cohorts are academically capable and technically prepared to succeed in educator preparation programs.

(a) Articulate clear criteria and requirements for program entry requirements to applicants.

(b) Articulate clear expectations for program completion to applicants and candidates.

(c) Inform, advise, and support applicants on assessment requirements, timelines, occupational experience requirements, and passing thresholds for board approved content and pedagogy assessments.

AMENDATORY SECTION (Amending WSR 19-24-103, filed 12/4/19, effective 1/4/20)

WAC 181-78A-232 Teacher, principal, career and technical education ((director)) administrator, superintendent, and program administrator—Specific program approval domain standard—Candidate knowledge, skills, and cultural responsiveness. Knowledge, skills, and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(1) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(a) Qualified faculty use multiple instructional strategies, pedagogies, and assessments to address ((students')) candidates' academic language ability levels and cultural and linguistic backgrounds.

(b) Providers create opportunities for faculty members and program personnel to pursue, apply, and practice ongoing professional learning to improve their knowledge, skill, effectiveness, and cultural responsiveness.

(c) Faculty within the program and the unit collaborate among one another, with content specialists, P-12 schools, members of the broader professional community, and diverse members of local communities for continuous program improvement.

(d) Faculty members and program leaders systematically and comprehensively evaluate faculty's effectiveness in teaching and learning.

(2) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(a) Candidates demonstrate knowledge and competence relative to the ((national)) standards related to the role((, which were)) adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate the most recently published InTASC Standards, candidates in

principal programs demonstrate the most recently published NELP - Building Level Standards, and candidates in superintendent programs demonstrate the most recently published NELP - District Level Standards, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Teacher candidates must take a board approved basic skills assessment prior to program ~~((admission and take an endorsement assessment prior to beginning student teaching. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs))~~. A provider of a teacher preparation program must assure that all candidates entering the program have successfully met the basic skills requirement under chapter 181-01 WAC at the time of admission. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher candidates must take a content knowledge assessment prior to beginning student teaching. The provider must collect and hold evidence of candidates meeting this requirement. Teacher candidates apply content knowledge as reflected in board approved endorsement ~~((standards))~~ competencies. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs.

(d) ~~((Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in WAC 181-78A-300.~~

~~((e)))~~ Providers ensure that educator candidates complete a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030.

(e) Under RCW 28A.410.040, a teacher candidate whose only baccalaureate degree is in early childhood education, elementary education, or special education must have completed thirty quarter credits, or the equivalent in semester credits or continuing education credit hours, in one academic field in an endorsement area under WAC 181-82A-202.

(f) Candidates for an initial certificate in a career and technical education residency teacher preparation program must complete a minimum of forty-five quarter credits, or the equivalent in semester credits or continuing education credit hours, in the specific career and technical education area for which certification is sought.

(3) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the ~~((national))~~ professional standards adopted by the board for the role for which candidates are being prepared.

(a) Candidates demonstrate knowledge and competence relative to the ~~((national))~~ standards related to the role, which were adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate most recently published InTASC Standards, candidates in principal programs demonstrate most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate most recently published NELP - District Level Standards, and candidates in career and technical education educator preparation programs demonstrate and document

the career and technical education standards approved by the professional educator standards board.

(b) Faculty and mentors provide regular and ongoing feedback to candidates regarding field based performance that is actionable and leads to improvement in candidates' practice.

(c) Providers demonstrate through structured observation, discussion, surveys, and/or artifacts that program completers effectively apply the professional knowledge, skills, and dispositions that the preparation program was designed to achieve.

(d) Providers ensure that teacher candidates achieve passing scores on the teacher performance assessment, also known as the pedagogy assessment, approved by the board. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. The teacher performance assessment is not required for teacher candidates in career and technical education business and industry route programs. Candidates who participated in the teacher performance assessment field trials or took the pedagogy assessment prior to January 1, 2014, may be recommended for certification by the preparation program without a passing score.

~~(e) ((Providers ensure that all educator candidates demonstrate knowledge of the paraeducator standards of practice, as published by the paraeducator board.~~

~~(f))~~ Providers of career and technical educator preparation programs provide candidates all necessary guidance to document, demonstrate, and submit for approval the required hours of occupational experience.

~~((g) Providers))~~ (f) In order to ensure that teacher and principal candidates can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support((The guidance provided to candidates must include the social-emotional learning standards, benchmarks, and)), teacher and principal preparation program providers must incorporate the social emotional standards and benchmarks, and must provide guidance to candidates on related competencies described in RCW 28A.410.270.

(4) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(a) Providers offer all candidates meaningful, reflective opportunities to interact with racially and culturally diverse colleagues, faculty, P-12 practitioners, and P-12 students and families.

(b) Providers prepare candidates to adapt their practices based on students' prior experiences, cultural knowledge, and frames of reference to make learning encounters more relevant and effective.

(c) Providers ensure course work explicitly focuses on cultural responsiveness and integrates components of culturally responsive education within and throughout all courses.

(d) Faculty explicitly model equity pedagogy in course work and practica in ways that enable candidates to integrate their own cultural and linguistic backgrounds into classroom activities.

(5) Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and govern-

ment of American Indian peoples as prescribed in RCW 28B.10.710.

(a) There shall be a one quarter or semester course, or the equivalent in continuing education credit hours, in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-233 Teacher, principal, career and technical education program ((directors)) administrator, superintendent, and program administrator—Specific program approval domain standard—Novice practitioners. Novice practitioners. Providers prepare candidates who are role ready.

(1) Providers prepare candidates who are ready to engage effectively in their role and context upon completion of educator preparation programs.

(a) The provider demonstrates that program completers perceive their preparation as relevant to the responsibilities they confront on the job, and that the preparation was effective.

(b) Providers demonstrate that completers effectively apply the professional knowledge, skills, dispositions, and technical proficiency that the preparation experiences were designed to achieve.

(c) Faculty and supervisors contextualize educators' practice within contemporary socio-political context and within the administrative regulations in schools and districts.

(d) Inform and orient candidates to Washington state processes of certification, licensure, endorsements and ongoing professional learning opportunities and requirements as they apply to the role for which the candidate is being certified.

(2) Providers prepare candidates to develop reflective, collaborative, and professional growth-centered practices through regular evaluation of the effects of their practice through feedback and reflection.

(a) Prepare educator((s)) candidates to understand and demonstrate achievement and improvement in their practice.

(b) Providers prepare candidates to seek new learning to remain current in subject area(s), educational theories, practices, research, and ethical practice.

(c) Ensure that all (~~teacher education~~) candidates who complete the program exit the program with a professional growth plan according to the guidance provided by the professional educator standards board.

(3) Providers prepare candidates for their role in directing, supervising, and evaluating paraeducators.

(a) Prepare teacher candidates to direct paraeducators working with students in the classroom.

(b) Prepare administrator candidates to supervise and evaluate paraeducators in schools.

(c) Providers ensure that all educator candidates demonstrate knowledge of the paraeducator standards of practice, as published by the paraeducator board.

(4) Providers require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(a) Providers ensure educator candidates examine Washington's evaluation requirements specific to their role, including criteria, four-tiered performance rating system, student growth goals, and the preferred instructional frameworks used to describe the evaluation criteria.

(b) Providers ensure educator candidates demonstrate knowledge and skill in self-assessment, goal setting, and reflective practice.

(c) Providers of (~~principal and superintendent~~) administrator programs ensure candidates examine and practice classroom observation skills that recognize and limit bias and promote rater agreement on the four-tiered system.

(d) Providers of (~~principal and superintendent~~) administrator programs ensure candidates demonstrate knowledge and skill using student growth data and multiple measures of performance for use in evaluations.

(e) Providers of (~~principal and superintendent~~) administrator programs ensure candidates demonstrate knowledge and skill conducting evaluation conferences and developing teacher and principal support plans resulting from evaluations.

(f) Providers of (~~principal and superintendent~~) administrator programs ensure candidates demonstrate knowledge and skill in the use of an online tool to manage the collection of observation notes, teacher and principal submitted materials, and other information related to the conduct of the evaluation.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-234 Teacher, principal, career and technical education program (~~director~~) administrator, superintendent, and program administrator—Specific program approval domain standard—State and local workforce needs. State and local workforce needs. Providers contribute positively to state and local educator workforce needs.

(1) Providers partner with local schools, districts, and communities to assess and respond to educator workforce, student learning, and educator professional learning needs.

(a) Establish and develop partnerships (e.g., schools, districts, community colleges, workforce boards, etc.) to understand educator workforce surplus and shortages.

(b) Maintain and use partnerships to gather anecdotes, contacts, and data that identify and describe local workforce needs.

(2) Providers use preparation program and workforce data in cooperation with professional educator advisory boards to assess and respond to local and state workforce needs.

(a) Providers use local and state workforce data to identify and monitor state and local educator and workforce shortages across local districts, industries, and content areas relevant for the roles for which the program recommends certification.

(b) Analyze enrollment, preparation process, and program outcomes data to understand programs' process and performance relative to the local and state educator and industry workforce needs relevant for the roles for which the program recommends certification.

(c) Present to professional educator advisory boards workforce data and program analyses to develop program goals and strategies that can be enacted to meaningfully address state and local workforce needs.

(d) Share among faculty, staff, and professional educator advisory boards program's current practice and effectiveness addressing state and local workforce needs.

(3) Providers of teacher educator preparation programs prepare and recommend increasing numbers of candidates in endorsement and areas identified by the board as workforce priorities.

~~(a) (Share among faculty, staff, and professional educator advisory boards program's current practice and effectiveness addressing state and local workforce needs.~~

~~(b))~~ Recruit and prepare candidates for content areas in response to local and state workforce needs.

~~((c))~~ (b) Meet the content area needs identified by workforce data of the state and the region.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-235 Teacher, principal, career and technical education (~~program director~~) administrator, superintendent, and program administrator—Specific program approval domain standard—Data systems. Data systems. Providers maintain data systems that are sufficient to evaluate program performance, direct program decision making, inform state-level priorities, and report to the board.

(1) Providers develop and maintain effective data systems that are sufficient for program growth, evaluation, and mandated reporting.

(a) Maintain a data infrastructure that enables storage, tracking, and reporting functions to meet annual data submission requirements and assess program design and outcomes in alignment with state standards.

(b) Collect, store, and report data according to the data manual and report guidance published by the professional educator standards board.

(c) Systematically and comprehensively gather data and evidence on recruitment, retention, candidate learning, and program operations.

(d) Include in data and assessment systems processes and safeguards that ensure fair and unbiased assessment of candidates.

(2) Providers utilize secure data practices for storing, monitoring, reporting, and using data for program improvement.

(a) Develop, publish, and maintain program-specific standards for data security, access, and governance.

(b) The professional educator advisory board annually reviews and analyzes data for the purposes of determining whether candidates have a positive impact on student learning and report to the program provider recommendations for programmatic change.

(c) Program leaders aggregate program and candidate data over time and incorporate perspectives of faculty, data administrators, professional educator advisory boards, candidates, and district and school P-12 partners to inform program decision making.

(d) Program providers consider and respond in writing to recommendations for program change from the members of the professional education advisory board.

(3) Providers produce and utilize data reports in accordance with data manual and reporting guidance published by the board.

(a) Faculty, administrators, and professional educator advisory board members collaborate for program review and improvement.

(b) Data administrators submit annual data according to data manual, schedule, and reporting guidance published by the board.

(c) Gather and submit additional program and candidate data as requested by the board as needed to complete all aspects of the program review process.

AMENDATORY SECTION (Amending WSR 20-20-091, filed 10/5/20, effective 11/5/20)

WAC 181-78A-236 Teacher, principal, career and technical education ((program director)) administrator, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice. Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(1) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement ((per)) under WAC 181-78A-125 ((and 181-78A-300)).

(a) The program provider and school partners cooperatively design, implement, and evaluate field experiences and clinical practices conforming to board standards and requirements for the role.

(b) Clinical practice for teacher candidates in programs approved to offer traditional routes to teacher certification

must consist of no less than four hundred fifty hours in a classroom setting, with a qualifying mentor teacher. Clinical practice for teacher candidates in programs approved to offer alternative routes to certification must consist of no less than five hundred forty hours in a classroom setting with a qualifying mentor.

(c) Principal candidates complete an internship for a full school year, consisting of at least five hundred forty hours, half of which must be during school hours when students and/or staff are present. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232 ((and meets, at minimum, the standards-based benchmarks approved and published by the board)).

(d) Superintendent candidates must complete an internship of at least three hundred sixty hours. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(e) Candidates in career and technical education teacher preparation programs as described in WAC 181-77-031 must complete a student teaching experience of at least four hundred fifty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(f) Candidates in career and technical education administrator and business and industry route programs must complete a practicum of at least sixty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(g) Providers articulate in writing clear entry and exit criteria as well as a process for mitigating concerns during clinical practice for candidates, school leader(s), and the mentor.

(2) Providers ensure that candidates integrate knowledge and skills developed through field and industry experiences with the content of programs' course work.

(a) Providers offer field experiences in which teacher and principal candidates plan, practice, discuss, and reflect upon methods of instruction and differentiation, and all educator candidates demonstrate that they have the appropriate, specific relevant skills pursuant to WAC 181-78A-220((;)) and 181-78A-232((-and 181-78A-300)) to be effective in the role.

(b) Integrate assignments, assessments, and actionable feedback throughout candidates' field experiences.

(c) Provide faculty supervision, including on-site visits, on an ongoing basis.

(d) Identify and recruit mentors for candidates who are educational leaders collaboratively with the partner school(s) or district(s).

(e) Ensure that candidates' mentors are fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(f) Mentors and school leaders are provided with a set of internship expectations and receive, or provide evidence of having received, training and experience mentoring adult learners and culturally responsive teaching and learning.

(g) Effectiveness of mentor preparation and communication are reviewed annually by program faculty.

(3) Providers offer field experiences (~~(and related assessment requirements)~~) in accordance with chapter 181-78A WAC (~~(181-78A-300)~~) and the board approved candidate assessment requirements.

(a) Ensure that educator candidates are placed in settings where they can be evaluated and given actionable feedback.

(b) Ensure that educator candidates are fingerprinted and have completed required character clearance prior to placement in field experience settings.

~~((e) Ensure that teacher candidates have completed knowledge and skills assessments requirements in accordance with this section and WAC 181-78A-300(2) prior to beginning student teaching.))~~

(4) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status or local population density.

(a) Field experiences provide opportunities to work in communities or with student populations with backgrounds dissimilar to the background of the candidate.

(b) Course assignments and discussions offer candidates opportunities to reflect upon interactions with diverse populations and communities in order to integrate professional growth in cultural responsiveness as a habit of practice.

(c) Candidates have opportunities to design, implement and receive feedback on cultural responsiveness in lessons, assignments, and activities.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-237 Teacher, principal, career and technical education (~~(program director)) administrator, superintendent, and program administrator—Specific program approval domain standard—Program resources and governance.~~ Program resources and governance. Providers ensure that programs have adequate resources, facilities, and governance structures to enable effective administration and fiscal sustainability.

(1) Providers ensure that programs utilize a separate administrative unit responsible for the composition and organization of the preparation program.

(a) An officially designated administrator is responsible for the composition and organization of the preparation program.

(b) Budgetary allocations are sufficient for the program to assure that candidates meet standards and requirements of the board.

(2) Providers ensure the program has adequate personnel to promote teaching and learning.

(a) Workload policies allow program personnel to effectively perform their assigned responsibilities within the program.

(b) Specific program personnel are assigned the responsibility of advising applicants for certification and endorsements and for maintaining certification records.

(c) The program has adequate field supervisors and other support personnel.

(3) Providers ensure the program has adequate facilities and resources to promote teaching and learning.

(a) The program has the necessary classrooms, lab space, office space, and/or other facilities.

(b) The program has technology, library, curricular, and electronic information resources.

(c) The facilities support faculty and candidate use of technology.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-78A-210 Joint professional education advisory board.

WAC 181-78A-300 Educator preparation program provider requirements.

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," and "interstate compact," as defined in WAC 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended.

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

(8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from an accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject

areas of the endorsements listed in chapter 181-82 WAC. ~~Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202).~~

(9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse; commercial sexual abuse of a minor, as defined in RCW 9.68A.100; sexual exploitation of a minor as defined in RCW 9.68A.040; information on the impact of abuse on the behavior and learning abilities of students; discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse; and methods for teaching students about abuse of all types and their prevention. Additionally, content areas identified by the legislature in RCW 28A.410.035 shall be required in the issues of abuse course, including knowledge and skill standards pertaining to recognition, initial screening and response to emotional or behavioral distress in students including, but not limited to, indicators of possible substance abuse, violence and youth suicide.

(10) "Approved master's degree" for the purpose of this chapter, means a master's or ~~(doctorate)~~ higher degree from an accredited college or university.

(11) "Credit hour(s)" means credit (normally 100 level or above) awarded by an accredited institution of higher education.

(12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(14) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements ~~(Provided, That)~~. Teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(15) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(16) "Approved private school" means any organization of institution providing educational services to children

including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

(17) "College" or "university" means any accredited institution as defined in WAC 250-61-050.

AMENDATORY SECTION (Amending WSR 20-22-006, filed 10/21/20, effective 11/21/20)

WAC 181-80-010 Basic requirements. (1) Alternative routes to teacher certification programs are partnerships between professional educator standards board-approved preparation program providers, Washington school districts, and other partners as appropriate. These partnerships are focused on district-specific teacher shortage areas. Approved alternative routes partnerships are eligible to apply for the alternative routes block grant and to facilitate alternative route conditional scholarship program as described in RCW 28A.660.050.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts operating an approved alternative route to teacher certification program must meet the following requirements:

(a) **Partnership requirements.** Alternative routes providers shall establish an alternative routes partnership memorandum of agreement (MOA) between the approved teacher preparation program provider and each partnering district or consortia of districts. Each MOA shall require:

(i) An identification, indication of commitment, and description of the role of approved teacher preparation program provider and partnering district or consortia of districts, including specific duties of each partner;

(ii) The role of each partner in candidate recruitment, screening, selection, and oversight;

(iii) The role of each partner in field placement and student teaching and a description of when each begins within the program;

(iv) The role of each partner in mentor selection, training, and support;

(v) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route candidates will advance its school improvement plans.

(b) **Programmatic requirements.** Programs shall uphold the following requirements in addition to requirements and standards listed in chapter 181-78A WAC.

(i) Ensure candidates meet assessment requirements for basic skills, content knowledge, and performance-based assessment per RCW 28A.410.220, 28A.410.280, and chapter 181-78A WAC ~~((181-78A-300))~~.

(ii) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate.

(iii) Clinical practice for teacher candidates should consist of no less than five hundred forty hours in classroom settings.

(iv) Mentorship requirements must be met in accordance with ~~chapter 181-78A WAC ((181-78A-220 and 181-78A-300))~~ and each candidate must be assigned a mentor. The candidate must receive mentoring for the duration of the residency.

(v) **Teacher development plan:** Ensure the design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's standards for residency certification. The plan must also include:

(A) Identification of one or more tools to be used to assess a candidate's performance once the candidate is about halfway through their residency;

(B) Recognition for relevant prior learning that demonstrates meeting residency certification competencies; and

(C) A description of the criteria that would result in early exit from the program with residency certification.

(vi) **Shortage areas.** Alternative route programs shall enroll candidates in a subject or geographic endorsement shortage area, as defined by the professional educator standards board.

WSR 21-08-024
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 29, 2021, 1:53 p.m., effective April 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules include modifications to the following credentials: Deaf education endorsement; career and technical education American sign language interpreter specialty area; orientation and mobility educational staff associate certificate/specialty endorsement; teacher of the visually impaired; classified provider of Braille instruction; certified provider of Braille instruction.

These changes reflect recommendations from stakeholder workgroups.

The proposed changes increase access by adding options for obtaining or renewing credentials, or by reducing barriers.

The workgroups looked at related roles as a whole to ensure a coherent system. Previously, each role had been considered separately, in separate years.

The recommendations clarify and streamline the system, while maintaining high standards.

Educators who currently hold these credentials will not find changes in what they need to do to renew other than that additional options may be available.

Citation of Rules Affected by this Order: New WAC 181-77-050; and amending WAC 181-77-041, 181-79A-140, 181-79A-145, 181-79A-223, 181-79A-224, 181-79A-231, 181-79A-257, 181-82-110, 181-82-130, 181-82A-202, 181-82A-204, and 181-82A-208.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-04-103 on March 18, 2021 [February 1, 2021].

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 12, Repealed 0.

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

Date Adopted: March 23, 2021.

Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates seeking career and technical education certification on the basis of business and industry work experience shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) **Initial.**

(a) Candidates for the initial certificate shall provide documentation of occupational experience in the specialty area for which certification is sought. ~~((Individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per RCW 43.20A.720, or whose primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.))~~

(i) Six thousand hours is required.

(ii) Two thousand hours must be within the past ten years. Candidates may use up to four thousand hours of teaching experience in the specialty area they are experienced in and the remaining two thousand hours must be from non-teaching occupational experience. For STEM, candidate may use all six thousand hours of teaching experience in science, technology, engineering and/or math in lieu of occupational experience. For biomedical and biotechnology, candidates may use all six thousand hours of teaching experience in biology in lieu of occupational experience.

(iii) If all or part of the two thousand hours is more than ten years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

~~((iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the~~

~~national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, the American sign language performance interview, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.))~~

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029.

(c) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete ten quarter hours of credit or one hundred continuing education credit hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least one of the following:

(i) Fifteen quarter hours or one hundred fifty continuing education credit hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate; or

(ii) Hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full-time equivalency (FTE) of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued:

(i) Ten quarter hours or one hundred continuing education credit hours of career and technical education educator training, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

(ii) Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

(iii) Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

(iv) An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

~~((c) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410.271.))~~

NEW SECTION

WAC 181-77-050 Requirements for candidates seeking certification in the area of American sign language (ASL) interpreter. (1) Candidates seeking certification in the area of American sign language (ASL) interpreter who are deaf or hard of hearing under RCW 43.20A.720, or whose primary method of communication is American sign language, are considered to have met the occupational experience requirements for the American sign language (ASL) interpreter area under WAC 181-77-003(7).

(2) In addition to meeting the requirements for CTE certification under WAC 181-77-031 or 181-77-041, candidates seeking certification in the area of American sign language (ASL) interpreter shall meet the ASL related assessment requirements as published by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-140 Types of certificates. The following types of certificates shall be issued:

(1) **Teacher.** The teacher certificate authorizes service as a classroom teacher.

(2) **Career and technical education.** The career and technical education certificate authorizes service in career and technical education programs in accordance with chapter 181-77 WAC.

(3) **First people's language/culture.** The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service in accordance with WAC 181-78A-700.

(4) **Administrator.**

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) **Educational staff associate.** The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, school social workers, ~~((and))~~ school behavior analysts, and school orientation and mobility specialists. Nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(6) **Limited certificates.** The following limited certificates are issued to individuals in accordance with WAC 181-79A-231:

(a) Conditional certificate.

(b) Emergency substitute certificate.

(c) Intern substitute teacher certificate.

(d) Transitional certificate.

(7) **Substitute certificate.** The substitute certificate is issued to individuals in accordance with WAC 181-79A-232.

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-145 Levels and validity of certificates. Two levels of certification may be issued.

(1) **Initial and continuing certificates:** Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates. Initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing school counselor and school psychologist certificates after August 31, 2005, will be issued only to previous Washington certificate holders, under WAC 181-79A-123.

(a) **Initial certificate.**

(i) ~~The ((initial teacher certificate is valid for four years; the))~~ initial administrator certificates are valid for seven years; and the initial educational staff associate certificates are valid for five years. Initial teacher certificates shall be subject to renewal under WAC 181-79A-250(1) and 181-79A-123. Initial administrator certificates shall not be subject to renewal. Beginning September 1, 2020, initial educational staff associate certificates in the roles of school nurse, school occupational therapist, school physical therapist, school speech language pathologist or audiologist, school social worker, ~~((and))~~ school behavior analyst, and school orientation and mobility specialist are subject to renewal.

(ii) Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial principal and program administrator certificate holders, and initial school counselor and school psychologist certificate holders shall be issued a residency certificate if their initial certificate has expired or they do not meet the requirements for a continuing certificate.

(b) **Continuing certificate.** The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(2).

(2) **Residency and professional certificates:** Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) **Residency certificate.** The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors and school psychologists no later than September 1, 2005.

(b) ~~((Until September 1, 2017, the first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the principal, program administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250.~~

~~((Beginning September 1, 2017,))~~ The first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two years of successful service in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students, at which time their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must meet residency renewal requirements or earn a second-tier certificate for the role under WAC 181-79A-250.

~~((c))~~ (c) A first issue residency teacher certificate remains undated until the teacher has two years of successful experience under WAC 181-79A-206, at which time the residency certificate is dated for five years as verified by the certification office of the office of superintendent of public instruction. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-251.

~~((e))~~ (d) **Professional certificate.** The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors and school psychologists beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal under chapter 181-79A WAC. A professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards under WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. A professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification under WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) **First peoples' language, culture, and oral tribal traditions certificates:** The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal under WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist, school speech-language pathologist or audiologist, school social worker, ~~(and)~~ school behavior analyst, and school orientation and mobility specialist. Candidates for school nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist, school social worker, ~~((and))~~ school behavior analyst, and school orientation and mobility specialist certification shall apply directly to the professional certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except state-approved educator preparation program.

(1) **Degree.** ~~((It shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified))~~ Candidates who hold a master's degree or higher are not required to obtain a role-specific master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that ~~((he or she has))~~ they have completed all course work requirements relevant to the ~~((required))~~ role-specific master's degree ~~((and has satisfactorily completed a comprehensive examination required in such~~

master's degree program. If any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role)).

(2) **Professional transitions to public schools.** Candidates for the initial certificate for the roles under this section must complete the professional transitions to public schools coursework under WAC 181-79A-224.

(3) **Experience.** Candidates for the continuing certificate for the roles under this section must complete two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, state tribal compact school, state authorized charter school, or state agency that provides educational services for students.

(4) School nurse.

(a) **Initial.**

(i) The candidate shall hold a valid department of health license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

~~((iii))~~ The candidate shall complete the professional transitions to public schools course work under WAC 181-79A-224.)

(b) **Continuing.**

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed one hundred fifty continuing education credit hours related to education, nursing, or other health sciences since the first issuance of the initial certificate.

~~((ii))~~ The candidate shall have completed two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students.

~~((iii))~~ The candidate shall hold a valid department of health license as a registered nurse (RN) in Washington state.

~~((iv))~~ (iii) The candidate shall have completed suicide prevention training under RCW 28A.410.226, as described in WAC 181-85-075.

~~((5))~~ (5) **School occupational therapist.**

(a) **Initial.**

(i) The candidate shall hold a valid department of health license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate ~~((degree))~~ degree or higher ~~((degree))~~ from an American Occupational Therapy Association approved program in occupational therapy.

~~((iii))~~ The candidate shall complete the professional transitions to public schools course work under WAC 181-79A-224.)

(b) **Continuing.**

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed one hundred fifty continuing education credit hours related to occupational therapy, other health sciences, or education since the first issuance of the initial certificate.

~~((ii))~~ The candidate shall have completed two years full-time equivalency (FTE) in the role in Washington with a

~~school district, state-approved private school, or state agency that provides educational services for students.~~

~~((iii)) The candidate shall hold a valid department of health license as an occupational therapist in Washington state.~~

~~((4))~~ **(6) School physical therapist.**

(a) Initial.

(i) The candidate shall hold a valid department of health license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate ~~((degree))~~ degree or higher from an American Physical Therapy Association accredited program in physical therapy.

~~((iii) The candidate shall complete the professional transitions to public schools course work under WAC 181-79A-224.)~~

(b) Continuing. ~~((i))~~ The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed one hundred fifty continuing education credit hours related to physical therapy, other health sciences, or education since the first issuance of the initial certificate.

~~((ii) The candidate shall have completed two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students.~~

~~(5))~~ **(7) School speech-language pathologist or audiologist.**

(a) Initial. ~~((i))~~ The candidate shall have completed all course work (except special project or thesis) for a master's degree or higher from a college or university program accredited by the American Speech and Hearing Association (ASHA) ~~((with a major in speech pathology or audiology. Such program shall include satisfactory completion of a written comprehensive examination. If any candidate has not completed a written comprehensive examination)). If the degree program requires a written comprehensive exam relevant to the role, the candidate must successfully complete it. If the degree program does not require a written comprehensive exam relevant to the role, the candidate may present verification from ASHA of a passing score on ((the National Teacher's Examination)) a national exam in speech pathology or audiology ((as a condition for certification.~~

~~((ii) The candidate shall complete the professional transitions to public schools course work under WAC 181-79A-224)), or a passing score on an exam approved by the professional educator standards board.~~

(b) Continuing.

(i) The candidate shall hold a master's degree ~~((in speech pathology or audiology))~~ or higher.

(ii) ~~((The candidate shall have completed two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students.~~

~~((iii))~~ The candidate shall have completed the requirements for the initial certificate as a speech language pathologist or audiologist and have completed one hundred fifty continuing education credit hours related to speech language pathology, audiology, other health sciences, or education since the first issuance of the initial certificate.

~~((6))~~ **(8) School social worker.**

(a) Initial. ~~((i))~~ The candidate shall hold a masters ~~((of))~~ degree or higher in social work or ~~((master of))~~ social welfare from an accredited institution of higher learning.

~~((ii) The candidate shall complete the professional transitions to public schools course work under WAC 181-79A-224.)~~

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school social worker and have completed one hundred fifty continuing education credit hours related to the role of the school social worker or education since the first issuance of the initial certificate.

(ii) ~~((The candidate shall have completed two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students.~~

~~((iii))~~ The candidate shall have completed suicide prevention training under RCW 28A.410.226, as described in WAC 181-85-075.

~~((7))~~ **(9) Behavior analyst.**

(a) Initial.

(i) Candidates must hold a valid board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), or other national certificate as approved by the professional educator standards board.

(ii) Candidates must hold a master's degree or higher in any area.

(iii) Candidates must have achieved a passing score on the board certified behavior analyst (BCBA) exam from the behavior analyst certification board (BACB), or other assessment as approved by the professional educator standards board.

~~((iv) The candidate shall complete the professional transitions to public schools course work under WAC 181-79A-224.)~~

(b) Continuing.

(i) Candidates must hold a valid board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), or other national certificate as approved by the professional educator standards board.

(ii) The candidate shall have completed the requirements for the initial certificate as a behavior analyst and have completed one hundred fifty continuing education credit hours related to the role of the school behavior analyst or education since the first issuance of the initial certificate.

~~((iii) The candidate shall have completed two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students.)~~

(10) Orientation and mobility specialist.

(a) Initial.

(i) Candidates must hold a valid certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), valid national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB), or other valid national certificate as approved by the professional educator standards board.

(ii) Candidates must hold a baccalaureate degree or higher in any area.

(b) Continuing.

(i) Candidates must hold a valid certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), valid national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB), or other valid national certificate as approved by the professional educator standards board.

(ii) The candidate shall have completed the requirements for the initial certificate as an orientation and mobility specialist and have completed one hundred fifty continuing education credit hours related to the role or to education since the first issuance of the initial certificate.

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-224 Professional transitions to public schools course work requirement. (1) Professional transitions to public schools course work requirement. The candidate shall successfully complete a minimum of fifteen continuing education credit hours or one semester hour of course work approved by the professional educator standards board which will consist of the following outcomes. The candidates will:

(a) Demonstrate an understanding of school and special education laws and policies (national, state, and local) and their application to decision-making processes in the educational setting;

(b) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(c) Demonstrate knowledge of appropriate resources in the school setting;

(d) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(e) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(f) Use professional standards to inform professional growth planning;

(g) Demonstrate an understanding of the use of human, community, and technological resources.

(2) An individual who meets all other requirements of the certificate but who has not completed the professional transitions to public schools requirement, shall be issued a temporary permit valid for one year under WAC 181-79A-128, unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work prior to the expiration of the one year temporary permit.

(3) The professional educator standards board will review professional transitions to public schools course work

for approval and reapproval/disapproval per the posted schedule. All providers of this course work must maintain current approval status to offer the course.

~~((4) Out of state candidates under WAC 181-79A-257 are considered to have met the requirement for the professional transitions to public schools course work provided they meet one or more of the following:~~

~~(a) Have completed a state approved program as an educational staff associate in the role; or~~

~~(b) Hold or have held a certificate in the role, comparable to a residency or initial certificate, issued by another state and have practiced at the P-12 school level in the role outside the state of Washington for at least three years; or~~

~~(c) Hold an appropriate degree from an accredited college or university and have practiced three years as an educational staff associate in that role in a state where such certificate was not required.))~~

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-231 Limited certificates. All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) Conditional certificate.

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) Roles.

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

(A) Special education teachers;

(B) Nonimmigrant exchange teachers;

(C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

(A) School counselor;

(B) School nurse;

(C) School psychologist;

(D) School social worker;

(E) School speech language pathologist or audiologist;

(F) School behavior analyst;

(G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) Request requirements.

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private

school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within twenty working days from the commencement of the assignment; and

(H) A written plan of support will be developed within twenty working days from the commencement of the assignment.

(d) Minimum requirements.

(i) Individuals must complete fifty continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete fifty continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being

enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a state of Washington license for a registered nurse. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service district, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board

certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the coursework for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**

(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the fifty continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is

enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual whose continuing certificate has lapsed or expired.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates.

(c) **Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to WAC 181-85-040.

(ii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary continuing certificate renewal requirements under WAC 181-85-130.

(d) **Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for continuing certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) **Emergency substitute certificate.**

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) **Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) Request requirements.

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) Intern substitute certificate.

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) Request requirements.

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

AMENDATORY SECTION (Amending WSR 18-21-011, filed 10/4/18, effective 11/4/18)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1)

and (2) shall be eligible for Washington certificates as follows:

(1) **Residency or initial certificates.** The residency or initial certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the (~~residency~~) certificate including testing requirements as described in RCW 28A.410.220, and who meets one of the following:

(a) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter, and has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) (~~Provided, That~~) If a candidate for teacher, administrator, or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency or initial certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from an accredited college or university.

(ii) Holds or has held a certificate in the role, comparable to a residency or initial certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years.

(c) Holds an appropriate degree from an accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP); and applies for a residency educational staff associated school psychologist certificate.

(2) **Professional certificate.** After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards(~~or~~

~~(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program).~~

(3) (~~As per~~) Under RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issu-

ance of the appropriate certificate in accordance with this section.

(4) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

(5) Out-of-state candidates for educational staff associate certificates under WAC 181-79A-223 are considered to have met the requirement for the professional transitions to public schools course work provided they meet one or more of the following:

(a) Have completed a state-approved program as an educational staff associate in the role; or

(b) Hold or have held a certificate in the role, comparable to a residency or initial certificate, issued by another state and have practiced at the P-12 school level in the role outside the state of Washington for at least three years; or

(c) Hold an appropriate degree from an accredited college or university and have practiced three years as an educational staff associate in that role in a state where such certificate was not required.

AMENDATORY SECTION (Amending WSR 20-16-144, filed 8/4/20, effective 9/4/20)

WAC 181-82-110 School district response and support for nonmatched endorsements to course assignment of teachers. (1) Individuals with initial, residency, endorsed continuing, professional, or emergency teacher certificates who are employed with a school district under RCW 28A.405.210 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any ~~((such))~~ teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

(2) Special education preendorsement waiver:

(a) A teacher who has completed two hundred forty continuing education credit hours under WAC 181-85-030 of course work applicable to a special education, early childhood special education, teacher of the visually impaired, or deaf education endorsement shall be eligible for a preendorsement waiver from the special education office ~~((per))~~ under chapter 392-172A WAC ~~((which will allow that person to be employed as a special education teacher))~~. Individuals with a preendorsement waiver are considered to have met the requirements for "substantial professional training" for the appropriate endorsement under WAC 392-172A-02090.

(b) All remaining requirements for the special education, early childhood special education, teacher of the visually impaired, or deaf education endorsement shall be completed within five years.

(3) ~~((Such))~~ Teachers ~~((shall))~~ are not ~~((be))~~ subject to nonrenewal or probation based on evaluation~~((s))~~ of their

teaching effectiveness in the out-of-endorsement assignments under this section.

AMENDATORY SECTION (Amending WSR 17-17-135, filed 8/22/17, effective 9/22/17)

WAC 181-82-130 Assignment of persons providing instruction of Braille to students. (1) No certificated school district employee shall be assigned to provide instruction of Braille to students who has not demonstrated competency with the standards for Unified English Braille code by:

(a) Successful completion of the National ~~((Literary Braille Competency Test))~~ Certification in Unified English Braille (NCUEB) assessment from the National Blindness Professional Certification Board (NBPCB); or

(b) Successful completion of Library of Congress certification in Braille transcription; or

(c) Successful completion of the Braille competency test developed at Washington State School for the Blind; or

~~((e))~~ (d) Successful completion of any other test approved for use by the professional educator standards board.

(2) No classified school district employee working under the supervision of a certificated school district employee, which certificated employee meets the requirement of subsection (1) of this section, may produce Braille material or provide instruction in the Braille code unless the employee has demonstrated competency with the standards for Unified English Braille code as provided under subsection (1) of this section.

(3)(a) Each school district is responsible for monitoring the appropriate assignment of personnel under subsections (1) and (2) of this section.

(b) Any person under subsections (1) and (2) of this section shall have one year from the date of hire to successfully pass the testing requirement under subsection (1) of this section.

(c) The Washington Ogden Resource Center shall forward to the professional educator standards board the names of individuals who have passed the testing requirement under subsection (1) of this section and the date of passage. The center also shall forward to the professional educator standards board the names of individuals who have not passed the testing requirement within one year and the name of the employing school district of the individual.

(4) The professional educator standards board shall establish a test review committee which shall be responsible for developing criteria to evaluate a test under subsection (1) ~~((e))~~ of this section. No test shall be considered for approval by the professional educator standards board under subsection (1) ~~((e))~~ (d) of this section unless it has been evaluated by the test review committee and a recommendation for approval or disapproval has been submitted to the board. At a minimum, the membership of the committee shall include persons representing:

(a) National Federation of the Blind of Washington;

(b) Washington council of the blind;

(c) Association of education and rehabilitation of the blind and visually impaired of Washington;

- (d) Washington instructional resource center for the visually impaired;
- (e) Washington state school for the blind; and
- (f) Office of the superintendent of public instruction.

(5) A person who has met the requirement of subsection (1) of this section shall maintain their facility with the current Unified English Braille code by(~~(~~

~~(a) Passing a recertification exam of completing learning modules every five years, or completing ten hours of Braille specific clock hours. Provided the option of clock hours is available only until January 2017)) meeting the requirements for recertification or renewal of one of the approved exams or certificates, if the exam or certificate offers a recertification or renewal option.~~

~~((b))~~ (6) Individuals who seek through subsection (5) ~~((a))~~ of this section to remain eligible to work with visually impaired students are responsible for documenting completion of ~~((continuing education))~~ recertification or renewal for one of the approved exams or certificates, if the exam or certificate offers a recertification or renewal option. Such individuals are strongly encouraged to provide a copy of their documentation to their employing school district. The documentation shall not be collected by the professional educator standards board. However, the documentation could be audited for purposes of compliance with basic education appropriation requirements under WAC 180-16-195.

AMENDATORY SECTION (Amending WSR 16-19-018, filed 9/9/16, effective 10/10/16)

WAC 181-82A-202 Certificate endorsements.

Teacher certificates shall be endorsed as follows:

(1) **All levels:**

- (a) Bilingual education.
- (b) Computer science.
- (c) Deaf education.

(d) Deaf education with American sign language (ASL) proficiency.

~~(e)~~ (e) Designated arts: Dance.

~~((f))~~ (f) Designated arts: Theatre arts.

~~((g))~~ (g) Designated arts: Music: Choral, instrumental or general.

~~((h))~~ (h) Designated arts, visual arts.

~~((i))~~ (i) Designated world languages.

~~((j))~~ (j) English language learner.

~~((k))~~ (k) Health/fitness.

~~((l))~~ (l) Library media.

~~((m))~~ (m) Reading.

~~((n))~~ (n) Special education.

(o) Teacher of the visually impaired. Upon adoption of a content knowledge assessment by the professional educator standards board, teacher of the visually impaired will be available as an endorsement. Until adoption, teacher of the visually impaired will be available as a specialty endorsement.

(2) **Early childhood:**

- (a) Early childhood education.
- (b) Early childhood special education.

(3) **Elementary education.**

(4) **Middle level:**

- (a) Middle level—Humanities.
- (b) Middle level—Mathematics.
- (c) Middle level—Science.

(5) **Secondary level:**

(a) Designated science: Biology.

(b) Designated science: Chemistry.

(c) Designated science: Earth and space science.

(d) Designated science: Physics.

(e) Designated career and technical education: Agriculture education, business and marketing education, family and consumer sciences education, and technology education.

(f) English language arts.

(g) History.

(h) Mathematics.

(i) Science.

(j) Social studies.

(k) Traffic safety.

AMENDATORY SECTION (Amending WSR 17-11-123, filed 5/23/17, effective 6/23/17)

WAC 181-82A-204 Endorsement requirements. (1) Completing an endorsement with a residency certificate.

Candidates completing endorsements required to obtain a residency certificate(~~(r)~~) shall complete ~~((college/university))~~ teacher preparation programs approved by the professional educator standards board ~~((pursuant to))~~ under chapter 181-78A WAC, which include methodology ~~((see WAC 181-78A-264(5))~~ and field experience/internship ~~((see WAC 181-78A-264(6))~~ and pursuant to), field experience, and endorsement program approval requirements in this chapter.

(2) **Adding additional endorsements.** In order to add an additional endorsement, the candidate shall meet one or more of the following:

(a) Have completed a state-approved endorsement program which includes methodology ~~((see WAC 181-78A-264(5)))~~ and addresses all endorsement-specific competencies adopted and published by the professional educator standards board. The requirement for field experience shall be at the discretion of the ~~((college/university. Provided, that))~~ program provider. In cases where ~~((programs))~~ providers require ~~((a))~~ field ~~((experience/internship, the colleges/universities))~~ experience the provider should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule. The candidate shall also meet the content knowledge assessment requirement under chapter 181-02 WAC; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the ~~((subject))~~ content knowledge test approved by the professional educator standards board for the certificate endorsement being sought per the list of test only endorsements adopted and published by the professional educator standards board.

(3) **Out-of-state.** Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

~~(4) ((Course work used to meet endorsement requirements must be completed through an accredited college/university as defined in WAC 181-78A-010.~~

~~(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.~~

~~(6)) **Deaf education.** Obtaining the deaf education endorsement requires one or more of the following:~~

~~(a) Completion of a state-approved program in deaf education, and meeting the content knowledge assessment requirement under chapter 181-02 WAC; or~~

~~(b) Completion of a program in deaf education approved by the council on education of the deaf, and meeting the content knowledge assessment requirement under chapter 181-02 WAC; or~~

~~(c) Baccalaureate degree or higher in deaf education from a program approved by the council on education of the deaf under RCW 28A.410.225, and the content knowledge assessment requirement under chapter 181-02 WAC.~~

~~(5) **Deaf education with American sign language (ASL) proficiency endorsement.** Obtaining the deaf education with ASL proficiency endorsement requires meeting the criteria in subsection (4) of this section, and in addition, meeting the ASL proficiency requirements for the endorsement as published by the professional educator standards board.~~

~~(6) **Program specific requirements.** Nothing within this chapter precludes a ((college or university)) **program provider** from adopting additional requirements as conditions for recommendation((;)) **for an endorsement** by such ((college or university,)) **provider** to the superintendent of public instruction ((for a particular subject area endorsement)).~~

AMENDATORY SECTION (Amending WSR 13-05-071, filed 2/19/13, effective 3/22/13)

WAC 181-82A-208 Specialty endorsements. The following specialty endorsements may be added to an existing endorsed teaching certificate:

~~(1) ((Deaf education (per RCW 28A.410.225).~~

~~(a) This specialty endorsement is required for teachers who will be working almost exclusively with students who are deaf or hard of hearing.~~

~~(b) Program requirements are waived and this specialty endorsement granted if a candidate possesses a baccalaureate or master's degree in deaf education from a teacher training program approved by the council on education of the deaf.~~

~~(2)) Environmental and sustainability education.~~

~~((3)) (2) Teacher of the visually impaired. Upon adoption of a content knowledge assessment by the professional educator standards board, teacher of the visually impaired will be available as an endorsement. Until adoption, teacher of the visually impaired will be available as a specialty endorsement.~~

~~((4) Orientation and mobility teacher. Program requirements are waived and this specialty endorsement granted if a teacher possesses an orientation and mobility specialist certificate from the academy for certification of vision rehabilitation and education professionals.~~

~~(5)) (3) Gifted education.~~

~~((6)) (4) Elementary mathematics specialist.~~

(5) Other specialty endorsements as approved by the professional educator standards board.

WSR 21-08-038

PERMANENT RULES

BATES TECHNICAL COLLEGE

[Filed April 1, 2021, 9:33 a.m., effective May 2, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 495A-108 WAC, Practice and procedure, is being amended to align with current policies and practices for Bates Technical College.

Citation of Rules Affected by this Order: Amending chapter 495A-108 WAC.

Statutory Authority for Adoption: RCW 28B.50.140; and chapter 34.05 RCW.

Adopted under notice filed as WSR 21-03-085 on January 19, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

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

Date Adopted: April 1, 2021.

Dr. Jean Hernandez
Special Assistant
to the President

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-010 Adoption of model rules of procedure. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250 are adopted for use at ((this college)) Bates Technical College District 28. Those rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules previously adopted by this college, the model rules prevail.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-020 Appointment of presiding officers. The president or (~~(president's)~~) designee shall (~~(designate)~~) appoint a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or (~~(his or her)~~) designee, or any combination of the above. Where more than one individual is (~~(designated)~~) appointed to be the presiding officer, the president or (~~(president's)~~) designee shall designate one person to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-030 Method of recording. Proceedings (~~(shall)~~) will be recorded by a method determined by the presiding officer, among those available under the model rules of procedure.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-040 Application for adjudicative proceeding. An application for adjudicative proceeding shall be in writing. Application forms are available at the following address: Office of the President, Bates Technical College, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

Written application for an adjudicative proceeding should be submitted to the above address within twenty days of the date of the agency action (~~(giving)~~) that gave rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-050 Brief adjudicative procedures. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are adopted by reference. In addition to those proceedings specified elsewhere in college regulations, brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations;
- (2) Challenges to contents of education records; or
- (3) (~~(Student conduct proceedings;~~
- (4) ~~Parking violations;~~
- (5)) Outstanding debts owed by students or employees(~~;~~
- (6) ~~Loss of eligibility for participation in college sponsored athletic events).~~

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-060 Discovery. Discovery in adjudicative proceedings may be permitted at the discretion of the

presiding officer. In permitting discovery, the presiding officer shall refer to the civil rules of procedure. The presiding officer may control the frequency and nature of discovery permitted(~~(;)~~) and order discovery conferences to discuss discovery issues.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-070 Procedure for closing parts of the hearings. Any party may apply for a protective order to close part of a hearing. The party making the request shall state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed(~~(;)~~) and state the reasons in writing within twenty days of receiving the request.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-108-080 Recording devices. No cameras or recording devices are allowed in those parts of the proceedings that the presiding officer has determined shall be closed under WAC 495A-108-070, except for the method of official recording selected by the college.

WSR 21-08-039

PERMANENT RULES

BATES TECHNICAL COLLEGE

[Filed April 1, 2021, 9:35 a.m., effective May 2, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Purpose: Repealing chapter 495A-310 WAC, Grievance procedures—Handicapped.

Citation of Rules Affected by this Order: Repealing chapter 495A-310 WAC, Grievance procedures—Handicapped.

Adopted under notice filed as WSR 21-03-086 on January 19, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 4.

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

Date Adopted: April 1, 2021.

Dr. Jean Hernandez
Special Assistant
to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 495A-310-010 Preamble.
- WAC 495A-310-020 Informal procedure.
- WAC 495A-310-030 Formal procedure.
- WAC 495A-310-040 Other remedies.

WSR 21-08-047

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed April 2, 2021, 11:21 a.m., effective May 3, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules are being added to chapter 390-16 WAC to implement the requirements and processes of chapter 152, Laws of 2020 (SSB 6152) for certifying certain campaign activity is not financed by or involving a foreign national.

Citation of Rules Affected by this Order: New WAC 390-16-330 and 390-16-335.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.240, 42.17A.250, 42.17A.255, 42.17A.260, 42.17A.265, and 42.17A.305.

Adopted under notice filed as WSR 20-20-133 on October 7, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 390-16-330(1): Changes were made to provide that financing in any part by a foreign national did not include: (1) Anything received of a de minimis amount; (2) anything within the personal funds of an individual; and (3) membership dues paid to the general treasury of a membership organization where the general treasury has sufficient funds to finance the political activity apart from any portion of the total dues paid by foreign nationals.

WAC 390-16-330(2): Changes were made to provide that involvement by a foreign national included the foreign parent organization of a domestic subsidiary where the parent organization had made an endorsement or collaborated with the subsidiary on the same campaign.

WAC 390-16-335: Changes were made to the certification process to allow a contributor to provide: (1) A single certification that would apply to future contributions within the same election cycle if the future contributions were regularly scheduled and funded from the same source; (2) an exemption of the certification requirement for a registered political committee contributing to another political committee; and (3) an exemption of the certification for in-kind contributions with a value of fifty dollars or less.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 25, 2021.

Sean Flynn
General Counsel

NEW SECTION

WAC 390-16-330 Prohibited financing and involvement by foreign nationals. (1) Prohibited financing by foreign nationals.

(a) For purposes of RCW 42.17A.417, and throughout chapter 42.17A RCW, a contribution, expenditure, political advertising, or electioneering communication is "financed in any part by a foreign national" if the funding source includes anything of value greater than a de minimis amount provided by a foreign national for less than full consideration. Such value may include, but is not limited to, a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or goods and services.

(b) A contribution, expenditure, political advertising, or electioneering communication is not "financed in any part by a foreign national" if the person making the contribution or expenditure, or sponsoring the advertisement or communication, is an individual citizen or legal permanent resident using their own personal funds.

(c) A contribution, expenditure, political advertising, or electioneering communication is not "financed in any part by a foreign national" if:

(i) The funding source is the general treasury of a membership organization, such as a trade association or labor union, not otherwise qualifying as a political committee, which includes funding from regular and predetermined membership dues;

(ii) Any additional funding of the general treasury is not from a foreign national, as provided in (a) of this subsection; and

(iii) The organization can demonstrate through a reasonable accounting method that the general treasury has sufficient funds to finance the contribution, expenditure, advertisement, or communication, apart from the aggregate amount of any membership dues received from foreign national members of the organization.

(d) Any funding from a foreign national, as provided in (a) of this subsection, and except as excluded under (b) or (c) of this subsection, must be segregated, using a reasonable accounting method, from the funding source used to finance a contribution, expenditure, advertisement, or communication. Funding from a foreign national may not be used to sup-

plant, replace, or replenish the funding source for the contribution, expenditure, advertisement, or communication.

(2) Prohibited decision-making involvement by foreign nationals.

(a) For purposes of RCW 42.17A.417, and throughout chapter 42.17A RCW, a foreign national is "involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way" if the foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process regarding the financing any such contribution, expenditure, advertisement, or communication.

(b) In addition to the criteria under (a) of this subsection, a foreign national is involved in the decision-making regarding a contribution, expenditure, political advertising, or electioneering communication made by an entity that is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained, or controlled by a foreign national, if the foreign national has:

- (i) Made an endorsement or recommendation to support or oppose the same candidate or ballot proposition; or
- (ii) Directly or indirectly collaborated or consulted with the entity on matters relating to the support of or opposition to the same candidate or ballot proposition.

NEW SECTION

WAC 390-16-335 Certification for contributions from entities—Prohibited activity by foreign nationals.

(1) The certification required for a candidate or political committee to accept each contribution from a partnership, association, corporation, organization, or other combination of persons must be received in writing, either:

- (a) By the date the report including the contribution is due, or within ten business days, whichever is later; or
- (b) Within thirty days from the date the contribution is received, so long as the candidate or committee separates uncertified contributions using reasonable accounting methods, to prevent commingling with other contributions, until the certification is received.

(2) Any uncertified contribution must be refunded or returned by the applicable deadline in subsection (1) of this section. The failure to timely refund or return an uncertified contribution constitutes a violation of chapter 42.17A RCW.

(3) A single certification may apply to future contributions within the same election cycle if the certification provides, in addition to the requirements under subsection (5) of this section, a statement that:

- (a) Future contributions included in the certification will be part of a regularly scheduled transaction cycle, and funded from the same source as the original contribution; and
- (b) The entity will provide a separate certification for any additional contribution that does not meet the criteria of (a) of this subsection.

(4) A candidate or political committee is not required to obtain a certification for:

- (a) A contribution from a political committee if the contributing committee is:

(i) Currently registered with the commission at the time the contribution is received, and reporting its contributions received; and

(ii) Entirely funded through contributions received; or

(b) Any in-kind contribution from an entity, that in the aggregate within the same reporting period, does not exceed fifty dollars.

(5) Candidate or political committees may make certifications available to entities for electronic or other written submission. Certifications may include the suggested format below, or a different format that includes the following information:

- (a) The name of the entity making the contribution and the authorized agent;
- (b) A statement that the entity is not a foreign national, as defined in RCW 42.17A.005(24);
- (c) A statement that the contribution is not financed in any part by a foreign national;
- (d) A statement that foreign nationals were not involved in making decisions regarding the contribution in any way;
- (e) The amount of the contribution and the date it was made; and
- (f) The date the certification was submitted.

<p>Certification that Contribution Is Not From a Foreign National</p> <p>I certify that the entity _____ (name of entity) making this contribution is not organized under the laws of, and does not have its principal place of business in, a foreign country. This contribution is not financed in any part by a foreign national, and foreign nationals were not involved in making decisions regarding the contribution in any way.</p> <p>Amount of Contribution: Date of Contribution: Name of Authorized Agent: Date Submitted:</p>
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WSR 21-08-058

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 5, 2021, 9:42 a.m., effective May 6, 2021]

Effective Date of Rule: Thirty-one days after filing.
Purpose: The agency is amending this rule to:

- Remove the list of noncovered services and clarify that requests will be evaluated for medical necessity;
- Remove barriers and unnecessary administrative processes for the client and provider; and
- Streamline the authorization process.

Citation of Rules Affected by this Order: Amending WAC 182-531-1675.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-01-012 on December 3, 2020.
 Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-531-1675 (1)(c)		
Proposed	<u>Surgical services covered. Surgical services to treat gender dysphoria are a covered service with prior authorization for clients who have a diagnosis of gender dysphoria made by a provider who meets the qualifications outlined in chapter 182-502 WAC.</u>	Removed "with prior authorization" to distinguish between eligible client criteria and provider documentation requirements.
Adopted	<u>Surgical services covered. Surgical services to treat gender dysphoria are a covered service for clients who have a diagnosis of gender dysphoria made by a provider who meets the qualifications outlined in chapter 182-502 WAC.</u>	
WAC 182-531-1675 (2)(j)		
Proposed	Not proposed	Added subsection (j) to clarify that the agency pays for corrective or reparative surgeries for people with intersex traits.
Adopted	<u>Corrective surgeries for intersex traits. The agency covers corrective or reparative surgeries for people with intersex traits who received surgeries that were performed without the person's consent.</u>	
WAC 182-531-1675 (2)(a)		
Proposed	<u>Prior authorization requirements for surgical services. The agency requires prior authorization for all surgical services to treat gender dysphoria, including modifications to, or complications from, a previous surgery, except as provided in subsection (3) of this section.</u>	Added "As a condition of payment" to distinguish between eligible client criteria and provider documentation requirements.
Adopted	<u>Prior authorization requirements for surgical services. As a condition of payment, the agency requires prior authorization for all surgical services to treat gender dysphoria, including modifications to, or complications from, a previous surgery, except as provided in subsection (3) of this section.</u>	
WAC 182-531-1675 (2)(b)		
Proposed	<u>The following documentation must be submitted with the prior authorization request:</u>	Revised language to distinguish between eligible client criteria and provider documentation requirements.
Adopted	<u>The provider must include the following documentation with the prior authorization request:</u>	
WAC 182-531-1675 (2)(b)(iii)(B)		
Proposed	<u>Establish that the client's condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning due to a strong desire to be rid of one's birth sex characteristics because of a marked incongruence with one's experiences or expressed gender, or both; and</u>	Removed this subsection to streamline psychosocial evaluation documentation requirements.
Adopted	This language has been removed.	

Proposed/Adopted	WAC Subsection	Reason
WAC 182-531-1675 (2)(b)(iii)(C)(I)		
Proposed	<p><u>The client has:</u></p> <ul style="list-style-type: none"> • <u>Lived in the desired gender full time, in all aspects of life, for a minimum of one year immediately preceding the request; or</u> 	Revised this section to include nonbinary people and provide an exception to the twelve-month full time requirement for certain procedures.
Adopted	<p><u>The client has:</u></p> <ul style="list-style-type: none"> • <u>Lived for twelve continuous months in a gender role that is congruent with their gender identity, except for top surgery, hysterectomy, or orchiectomy; or</u> 	
WAC 182-531-1675 (2)(b)(iii)(C)(I)		
Proposed	<p><u>The client has:</u></p> <ul style="list-style-type: none"> • <u>Been unable to live in the desired gender in all aspects of life full time due to personal safety concerns. Documentation must include an explanation of the client's safety concerns and the duration of the client's life experience in their desired gender.</u> 	Revised this section to include nonbinary people and remove the requirement to document and explain safety concerns.
Adopted	<p><u>The client has:</u></p> <ul style="list-style-type: none"> • <u>Been unable to live in their gender identity due to personal safety concerns.</u> 	
WAC 182-531-1675 (2)(b)(iii)(C)(II)		
Proposed	<p><u>(II) The client has been evaluated for the presence of coexisting behavioral health conditions;</u> <u>(III) Any coexisting behavioral health condition is adequately managed;</u></p>	Revised and combined original subsections (II) and (III) into new subsection (II) to simplify this component of the psychosocial evaluation.
Adopted	<p><u>(II) The client has been evaluated for any coexisting behavioral health conditions and if any are present, the conditions are adequately managed.</u></p>	
WAC 182-531-1675 (2)(b)(iii)(C)(IV)		
Proposed	<p><u>(IV) The client has been evaluated for the ability to comply with postoperative requirements and has the capacity to maintain lifelong changes; and</u> <u>(V) Surgery is the next reasonable step in the client's care.</u></p>	Removed these subsections to simplify the psychosocial evaluation requirements.
Adopted	These sections have been removed.	
WAC 182-531-1675 (2)(b)(iv)(A)		
Proposed	<p><u>Taken hormones for a minimum of twelve continuous months immediately preceding the request for surgery, except for mastectomy or reduction mammoplasty; or</u></p>	Revised this section to include nonbinary people. Added an exception when hormones are not clinically indicated and clarified procedures that do not require hormone therapy.
Adopted	<p><u>Had twelve continuous months of hormone therapy immediately preceding the request for surgery, as appropriate to the client's gender goals, unless hormones are not clinically indicated for the individual, with the exception of mastectomy or reduction mammoplasty, which do not require hormone therapy; or</u></p>	

Proposed/Adopted	WAC Subsection	Reason
WAC 182-531-1675 (2)(b)(v)		
Proposed	<u>Surgical. Documentation from the surgeon of the client's: (A) Medical history and physical examination(s) performed within the twelve months preceding surgery; (B) Medical necessity for surgery and surgical plan; (C) Post-operative plan for care; and (D) For hysterectomies, a completed agency hysterectomy consent form must be submitted.</u>	Removed proposed subsection (c) to simplify requirements for providers.
Adopted	<u>Surgical. Documentation from the surgeon of the client's: (A) Medical history and physical examination(s) performed within the twelve months preceding surgery; (B) Medical necessity for surgery and surgical plan; and (C) For hysterectomies, a completed agency hysterectomy consent form must be submitted.</u>	
WAC 182-531-1675 (3)(a)		
Proposed	<u>Approved EPA procedures. The agency allows a provider to use the EPA process for clients age eighteen and older for the following medically necessary procedures:</u>	Lowered the minimum EPA age to be less restrictive for providers.
Adopted	<u>Approved EPA procedures. The agency allows a provider to use the EPA process for clients age seventeen and older for the following medically necessary procedures:</u>	
WAC 182-531-1675 (3)(b)(i)		
Proposed	<u>One comprehensive psychosocial evaluation performed by a licensed behavioral health provider within the twelve months preceding surgery that meets the requirements identified in subsection (2) of this section.</u>	Revised to be consistent with other sections of the rule that provide for psychosocial evaluations to occur within eighteen months of surgery.
Adopted	<u>One comprehensive psychosocial evaluation performed by a licensed behavioral health provider within the eighteen months preceding surgery that meets the requirements identified in subsection (2) of this section.</u>	
WAC 182-531-1675 (3)(b)(iii)		
Proposed	<u>Documentation of medical necessity for surgery from the surgeon detailing the client's: (A) Medical history and physical examinations performed within the twelve months preceding surgery; (B) Surgical plan; and (C) Post-operative plan for care.</u>	Revised to make some of the documentation requirements less stringent.
Adopted	<u>Documentation from the surgeon of the client's: (A) Medical history and physical examinations performed within the twelve months preceding surgery; and (B) Medical necessity for surgery and surgical plan.</u>	

Proposed/Adopted	WAC Subsection	Reason
WAC 182-531-1675 (c)		
Proposed	<u>Documentation exception. When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required for that procedure is the provider's statement that the service is medically necessary to prepare for bottom surgery.</u>	Revised to give more options for the medical necessity letter; it can be prepared by the surgeon or provider who is doing the hair removal.
Adopted	<u>Documentation exception. When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required is either a: (i) Letter of medical necessity from the treating surgeon that includes the size and location of the area to be treated, and expected date of planned genital surgery, or; (ii) Letter of medical necessity from the provider who will perform the hair removal that includes the surgical consult for bottom surgery and addresses the need for hair removal prior to gender affirming surgery.</u>	

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 5, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-084, filed 7/31/15, effective 8/31/15)

WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria ((~~treatment program~~)). (1) Overview of ((~~the gender dysphoria~~)) treatment program.

(a) Medicaid agency coverage. The medicaid agency covers the ((following services, consistent with the program rules described in Title 182 WAC, to treat gender dysphoria:

(i)) services listed in (b) of this subsection to treat gender dysphoria (also referred to as gender incongruence) under WAC 182-501-0050 and 182-531-0100. These services include life-changing procedures that may not be reversible.

(b) Medical services covered. Medical services ((including, but)) covered by the agency include, but are not limited to:

((~~(A)~~)) (i) Presurgical and postsurgical hormone therapy; ((~~(B) Prepuberty~~)) (ii) Puberty suppression therapy; ((~~(ii) Mental~~)) (iii) Behavioral health services; and ((~~(iii)~~)) (iv) Surgical and ancillary services including, but not limited to:

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospitalization;

(F) Physician services; and

(G) Hospitalizations and physician services required to treat postoperative complications of procedures performed under ((~~component four~~).

(b) ~~The agency's gender dysphoria treatment program has four components. Prior authorization is required for services provided in component four only. Any medicaid provider can refer a client to component one. These components are not intended to be sequential and may run concurrently to meet the client's medical needs. The components are as follows:~~

(i) ~~Component one—Initial assessment and diagnosis of gender dysphoria;~~

(ii) ~~Component two—Mental health and medical treatment;~~

(iii) ~~Component three—Presurgical requirements for prior authorization for component four; and~~

(iv) ~~Component four—Gender reassignment surgery.~~

(e) All services under this program must be delivered by providers who meet the qualifications in subsection (2) of this section.

(d) ~~The agency evaluates requests for clients under age twenty-one according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter 182-534 WAC. Under the EPSDT program, a service may be covered if it is medically necessary, safe, effective, and not experimental.~~

(e) The agency covers transportation services under the provisions of chapter 182-546 WAC.

(f) Any out-of-state care, including a presurgical consultation, must be approved as an out-of-state service under WAC 182-501-0182.

(2) ~~Qualified health care providers for gender dysphoria treatment.~~

(a) Providers must meet the qualifications outlined in chapter 182-502 WAC.

(b) Each provider must be recognized as an agency-designated center of excellence (COE). COE is defined in WAC 182-531-0050. To be a COE, all providers must complete an agency form attesting that they:

(i) Possess knowledge about current community, advocacy, and public policy issues relevant to transgender people and their families (knowledge about sexuality, sexual health concerns, and the assessment and treatment of sexual disorders is preferred);

(ii) Endorse the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Version 7* as developed by the World Professional Association for Transgender Health (WPATH); and

(iii) Agree to provide services consistent with this section. The agency's forms are available online at <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(c) Diagnosis in component one must be made or confirmed by a COE provider who is a board-certified physician, a psychologist, a board-certified psychiatrist, or a licensed advanced registered nurse practitioner (ARNP).

(d) Mental health professionals who provide component two mental health treatment described in subsection (4)(d) of this section, or who perform the psychosocial evaluation described in subsection (5)(a)(iii) of this section must:

(i) Meet the requirements described in WAC 182-531-1400;

(ii) Sign the agency's form (HCA 18-493) attesting that they:

(A) Are competent in using the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) and the *International Classification of Diseases* for diagnostic purposes;

(B) Are able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(C) Have completed supervised training in psychotherapy or counseling;

(D) Are knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(E) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria; and

(iii) Be a board-certified psychiatrist, a psychologist, or a licensed:

(A) Psychiatric ARNP;

(B) Psychiatric mental health nurse practitioner;

(C) Mental health counselor;

(D) Independent clinical social worker;

(E) Advanced social worker; or

(F) Marriage and family therapist.

(e) Any surgeon who performs gender reassignment surgery must:

(i) Be a board-certified or board-qualified:

(A) Urologist;

(B) Gynecologist;

(C) Plastic surgeon;

(D) Cosmetic surgeon; or

(E) General surgeon;

(ii) Have a valid medical license in the state where the surgery is performed; and

(iii) Sign the agency's form (HCA 18-492) attesting to specialized abilities in genital reconstructive techniques and produce documentation showing that they have received supervised training with a more experienced surgeon.

(f) Any medical provider managing hormone therapy, androgen suppression, or puberty suppression for clients diagnosed with gender dysphoria must:

(i) Be either of the following:

(A) A licensed, board-certified, or board-qualified:

(I) Endocrinologist;

(II) Family practitioner;

(III) Internist;

(IV) Obstetrician/gynecologist;

(V) Pediatrician;

(VI) Naturopath; or

(B) A licensed ARNP or a licensed physician's assistant; and

(ii) Sign the agency's form (HCA 18-494) attesting to specialized abilities managing hormone therapy in treating gender dysphoria. The specialized abilities may be proved by producing documentation showing supervised training with a more experienced physician, and attesting attendance at relevant professional meetings, workshops, or seminars.

(3) ~~Component one – Initial assessment and diagnosis of gender dysphoria.~~ The purpose of component one is to assess and diagnose the client, and refer the client to other qualified providers as needed for additional medically necessary services. A health professional who meets the qualifications in subsection (2)(c) of this section must assess the client and:

(a) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5);

(b) Determine the gender dysphoria is not the result of another mental or physical health condition, and refer the client to other specialists if other health conditions are indicated;

(c) Develop an individualized treatment plan for the client;

(d) Refer the client to qualified providers for the component two services described in subsection (4) of this section; and

(e) Assist and support the client in navigating component two and component three requirements, and provide services consistent with WPATH guidelines and WAC 182-531-1675.

(4) ~~Component two – Mental health and medical treatment.~~

(a) Clients enrolled with an agency managed care organization (MCO) plan are subject to the respective plan's policies and procedures for coverage of these services.

(b) Mental health and medical treatment are covered after a health professional who meets the qualifications in subsection (2)(e) of this section has diagnosed, or confirmed the diagnosis of, gender dysphoria as defined by the DSM-5 criteria.

(c) Medical treatment in component two covers androgen suppression, puberty suppression, continuous hormone therapy, and laboratory testing to monitor the safety of hormone therapy. Some of these prescriptions may be subject to prior authorization as required by pharmacy policy in chapter 182-530 WAC. Medical treatment must be prescribed by a COE provider who meets the requirements in subsection (2)(a), (b), and (f) of this section.

(d) The agency covers mental health treatment for the client and the client's spouse, parent, guardian, child, or person with whom the client has a child in common if the treatment is:

- (i) Medically necessary;
- (ii) Provided according to the provisions of WAC 182-531-1400; and
- (iii) Provided by a health professional who meets the requirements in subsection (2)(a), (b), and (d) of this section.

(5) Component three—Presurgical requirements.

(a) To proceed to component four gender reassignment surgery, the client must:

- (i) Be age eighteen or older, unless allowed under EPSDT as described in subsection (1)(d) of this section;
- (ii) Be competent to give consent for treatment and have this competency documented in clinical records; and
- (iii) Undergo a comprehensive psychosocial evaluation that must do all of the following:

(A) Be conducted by two mental health professionals for genital surgery and one mental health professional for chest surgery. These mental health professionals must meet the qualifications described in subsection (2)(d) of this section.

(B) Confirm the diagnosis of gender dysphoria, document that professionals performing the evaluation believe the client is a good candidate for gender reassignment surgery, and document that surgery is the next reasonable step in the client's care.

(C) Evaluate the client for the presence of coexisting behavioral health conditions (substance abuse problems, or mental health illnesses), which could prevent the client from participating in gender dysphoria treatment including, but not limited to, gender reassignment surgery and postsurgical care.

(D) Document that any coexisting behavioral health condition is adequately managed.

(b) The surgeon who will perform the gender reassignment surgery and who meets the qualifications outlined in subsection (2)(a), (b), and (c) of this section, must complete a presurgical consultation. When the presurgical consultation is completed, the surgeon must forward the report of the consultation to the other treatment team members.

(c) The client must have received continuous hormone therapy as required by the treatment plan to meet treatment

objectives. For exceptions, see subsection (6)(b) of this section.

(d) The client must have lived in a gender role congruent with the client's gender identity immediately preceding surgery as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (6)(b) of this section.

(e) The client's medical record must document that the client met the requirements in (a) through (d) of this subsection.

(f) A member of the treatment team must write a referral letter and submit it to the agency along with the prior authorization request for surgery. The contents of the referral letter or its attachments must include:

- (i) Results of the client's psychosocial evaluation, as described in (a)(iii) of this subsection;
- (ii) Documentation that any coexisting behavioral health condition is adequately managed;
- (iii) A description of the relationship between the mental health professionals and the client, including the duration of the professional relationship, and the type of evaluation and therapy or counseling to date;

(iv) A brief description of the clinical justification supporting the client's request for surgery;

(v) An assessment and attestation that the provider believes the client is able to comply with the postoperative requirements, has the capacity to maintain lifelong changes, and will comply with regular follow up;

(vi) A statement about the client's adherence to the medical and mental health treatment plan;

(vii) A description of the outcome of the client's hormone therapy;

(viii) A copy of the client's signed informed consent according to the requirements under WAC 182-531-1550, or written acknowledgment of the permanent impact on male and female reproductive capacity if WAC 182-531-1550 is not applicable;

(ix) A statement that all the members of the treatment team will be available to coordinate or provide postoperative care as needed;

(x) A description of the surgical plan. See subsection (6)(d) and (e) of this section, covered and noncovered procedures. The description must:

(A) List all planned surgical procedures, including any listed in subsection (6)(e) of this section, with clinical justification; and

(B) Provide a timeline of surgical stages if clinically indicated; and

(xi) Signatures from the following treatment team members:

(A) The two mental health professionals for genital surgery and one mental health professional for chest surgery who completed the responsibilities described in subsection (4)(d) of this section and (a)(iii) of this subsection;

(B) The medical provider who has managed the care;

(C) Any surgeon performing the procedures; and

(D) The client.

(6) Component four—Gender reassignment surgery.

(a) The agency requires prior authorization for component four. Subsection (5) of this section lists the documenta-

tion that is required to be submitted with the authorization requests. Surgeries are not required to be completed at the same time. Surgeries may be performed in progressive stages.

(b) If the client fails to complete all of the requirements in subsection (5) of this section, the agency will not authorize gender reassignment surgery unless the clinical decision-making process is provided in the referral letter and attachments described in subsection (5)(f) of this section.

(c) A client preparing for gender reassignment surgery must be cared for by a treatment team consisting of:

(i) One of the mental health professionals described in subsection (2)(d) of this section, if mental health services are part of the treatment plan;

(ii) The medical provider who managed the medical care in component two and component three; and

(iii) Any surgeon performing the procedures.

(d) The agency covers the following procedures in component four with prior authorization:

(i) Abdominoplasty;

(ii) Blepharoplasty;

(iii) Breast reconstruction (male to female);

(iv) Bilateral mastectomy with or without chest reconstruction;

(v) Cliteroplasty;

(vi) Colovaginoplasty;

(vii) Colpectomy;

(viii) Genital surgery;

(ix) Genital electrolysis as required as part of the genital surgery;

(x) Hysterectomy;

(xi) Labiaplasty;

(xii) Laryngoplasty;

(xiii) Metoidioplasty;

(xiv) Orectomy;

(xv) Penectomy;

(xvi) Phalloplasty;

(xvii) Placement of testicular prosthesis;

(xviii) Rhinoplasty;

(xix) Salpingo-oophorectomy;

(xx) Scrotoplasty;

(xxi) Urethroplasty;

(xxii) Vaginectomy; and

(xxiii) Vaginoplasty.

(e) For the purposes of this section, the agency will review on a case-by-case basis and may pay for the following nonecovered services under exception to rule:

(i) Cosmetic procedures and services:

(A) Brow lift;

(B) Calf implants;

(C) Cheek/malar implants;

(D) Chin/nose implants;

(E) Collagen injections;

(F) Drugs for hair loss or growth;

(G) Facial or trunk electrolysis, except for the limited electrolysis described in (d)(ix) of this subsection;

(H) Facial feminization;

(I) Face lift;

(J) Forehead lift;

(K) Hair transplantation;

(L) Jaw shortening;

(M) Lip reduction;

(N) Liposuction;

(O) Mastopexy;

(P) Neck tightening;

(Q) Pectoral implants;

(R) Reduction thyroid chondroplasty;

(S) Removal of redundant skin;

(T) Suction-assisted lipoplasty of the waist; and

(U) Trachea shave;

(ii) Voice modification surgery; and

(iii) Voice therapy.

(f) The agency evaluates a request for any nonecovered service listed in (e) of this subsection as an exception to rule under the provisions of WAC 182-501-0160. The justification included in the surgical plan for any of the procedures listed in (e) of this subsection may be recognized by the agency as meeting the documentation requirements of WAC 182-501-0160.) this section.

(c) **Surgical services covered.** Surgical services to treat gender dysphoria are a covered service for clients who have a diagnosis of gender dysphoria made by a provider who meets the qualifications outlined in chapter 182-502 WAC.

(d) **Medical necessity.** Under this program, the agency authorizes and pays for only medically necessary services. Medical necessity is defined in WAC 182-500-0070 and is determined under WAC 182-501-0165 and limitation extensions in accordance with WAC 182-501-0169.

(e) **Provider requirements.** Providers should be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria, including experience utilizing standards of care that include the World Professional Association for Transgender Health (WPATH) Standards of Care.

(f) **Clients age twenty and younger.** The agency evaluates requests for clients age twenty and younger according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter 182-543 WAC. Under the EPSDT program, the agency pays for a service if it is medically necessary, safe, effective, and not experimental.

(g) **Transportation services.** The agency covers transportation services under the provisions of chapter 182-546 WAC.

(h) **Out-of-state care.** Any out-of-state care, including a presurgical consultation, must be prior authorized as an out-of-state service under WAC 182-501-0182.

(i) **Reversal procedures.** The agency does not cover procedures and surgeries related to reversal of gender affirming surgery.

(j) **Corrective surgeries for intersex traits.** The agency covers corrective or reparative surgeries for people with intersex traits who received surgeries that were performed without the person's consent.

(2) **Prior authorization.**

(a) **Prior authorization requirements for surgical services.** As a condition of payment, the agency requires prior authorization for all surgical services to treat gender dysphoria, including modifications to, or complications from, a previous surgery, except as provided in subsection (3) of this section.

(b) **Required documentation.** The provider must include the following documentation with the prior authorization request:

(i) **Two psychosocial evaluations required.** Documentation of two separate psychosocial evaluations performed within eighteen months preceding surgery by two separate qualified mental health professionals as defined in WAC 182-531-1400. These providers must be licensed health care professionals who are eligible under chapter 182-502 WAC, as follows:

(A) Psychiatrist;

(B) Psychologist;

(C) Psychiatric advanced registered nurse practitioner (ARNP);

(D) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC);

(E) Mental health counselor (LMHC);

(F) Independent clinical social worker (LICSW);

(G) Advanced social worker (LASW); or

(H) Marriage and family therapist (LMFT).

(ii) **One psychosocial evaluation for top surgery.** For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation.

(iii) **Evaluation requirements.** Each comprehensive psychosocial evaluation must:

(A) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders*;

(B) Document that:

(I) The client has:

• Lived for twelve continuous months in a gender role that is congruent with their gender identity, except for top surgery, hysterectomy, or orchiectomy; or

• Been unable to live in their gender identity due to personal safety concerns.

(II) The client has been evaluated for any coexisting behavioral health conditions and if any are present, the conditions are adequately managed.

(iv) **Hormone therapy.** Documentation from the primary care provider or the provider prescribing hormone therapy that the client has:

(A) Had twelve continuous months of hormone therapy immediately preceding the request for surgery, as appropriate to the client's gender goals, unless hormones are not clinically indicated for the individual, with the exception of mastectomy or reduction mammoplasty, which do not require hormone therapy; or

(B) A medical contraindication to hormone therapy; and

(C) A medical necessity for surgery and that the client is adherent with current gender dysphoria treatment.

(v) **Surgical.** Documentation from the surgeon of the client's:

(A) Medical history and physical examination(s) performed within the twelve months preceding surgery;

(B) Medical necessity for surgery and surgical plan; and

(C) For hysterectomies, a completed agency hysterectomy consent form must be submitted.

(c) **Other requirements.** If the client fails to complete all of the requirements in subsection (2)(b) of this section, the agency will not authorize gender affirming surgery unless:

(i) The clinical decision-making process is provided in the referral letter and attachments described in subsection (2)(b) of this section; and

(ii) The agency has determined that the request is medically necessary in accordance with WAC 182-501-0165 based on review of all submitted information.

(d) **Behavioral health provider requirements.** Behavioral health providers who perform the psychosocial evaluation described in subsection (2)(b)(i) of this section must:

(i) Meet the provisions of WAC 182-531-1400;

(ii) Be competent in using the *Diagnostic Statistical Manual of Mental Disorders*, and the *International Classification of Diseases* for diagnostic purposes;

(iii) Be able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(iv) Be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(v) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria.

(e) **Clients age seventeen and younger.** Clients age seventeen and younger must meet the requirements for prior authorization identified in subsection (2)(a) through (d) of this section, except that:

(i) One of the comprehensive psychosocial evaluations required in subsection (2)(b)(i) of this section must be performed by a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

(ii) For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation from a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

(3) **Expedited prior authorization (EPA).**

(a) **Approved EPA procedures.** The agency allows a provider to use the EPA process for clients age seventeen and older for the following medically necessary procedures:

(i) Bilateral mastectomy or reduction mammoplasty with or without chest reconstruction; and

(ii) Genital or donor skin graft site hair removal when medically necessary to prepare for genital reassignment.

(b) **Clinical criteria and documentation.** To use the EPA process for procedures identified in (a) of this subsection, the following clinical criteria and documentation must be kept in the client's record and made available to the agency upon request:

(i) One comprehensive psychosocial evaluation performed by a licensed behavioral health provider within the eighteen months preceding surgery that meets the requirements identified in subsection (2) of this section;

(ii) Documentation from the primary care provider or the provider prescribing hormone therapy of the medical necessity for surgery and confirmation that the client is adherent with current gender dysphoria treatment; and

- (iii) Documentation from the surgeon of the client's:
 (A) Medical history and physical examinations performed within the twelve months preceding surgery; and
 (B) Medical necessity for surgery and surgical plan.
 (c) **Documentation exception.** When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required is either a:
 (i) Letter of medical necessity from the treating surgeon that includes the size and location of the area to be treated, and expected date of planned genital surgery; or
 (ii) Letter of medical necessity from the provider who will perform the hair removal that includes the surgical consult for bottom surgery and addresses the need for hair removal prior to gender affirming surgery.
 (d) **Prior authorization required for other surgeries.** All other surgeries to treat gender dysphoria, including modifications to, or complications from a previous surgery require prior authorization to determine medical necessity.
 (e) **Recoupment.** The agency may recoup any payment made to a provider for procedures listed in this subsection if the provider does not follow the EPA process outlined in WAC 182-501-0163 or if the provider does not maintain the documentation required by this subsection.

WSR 21-08-085**PERMANENT RULES****HEALTH CARE AUTHORITY**

[Filed April 7, 2021, 9:31 a.m., effective May 8, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-512-0800 to add an additional category of income excluded when determining eligibility for Washington apple health SSI-related medical programs; specifically, unearned income withheld for income tax purposes from a benefit that is beyond the person's control.

Citation of Rules Affected by this Order: Amending WAC 182-512-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-05-024 on February 8, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 7, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0800 SSI-related medical—General income exclusions. The agency excludes, or does not consider, the following when determining a person's eligibility for Washington apple health ((WAH)) SSI-related medical programs:

(1) The first twenty dollars per month of unearned income. If there is less than twenty dollars of unearned income in a month, the remainder is excluded from earned income in that month.

(a) The twenty-dollar limit is the same, whether applying it for a couple or for a single person.

(b) The disregard does not apply to income paid totally or partially by the federal government or a nongovernmental agency on the basis of an eligible person's needs.

(c) The twenty dollars disregard is applied after all exclusions have been taken from income.

(2) Income that is not reasonably anticipated or is received infrequently or irregularly, whether for a single person or each person in a couple when it is:

(a) Earned and does not exceed a total of thirty dollars per calendar quarter; or

(b) Unearned and does not exceed a total of sixty dollars per calendar quarter;

(c) An increase in a person's burial funds that were established on or after November 1, 1982, if the increase is the result of:

(i) Interest earned on excluded burial funds; or

(ii) Appreciation in the value of an excluded burial arrangement that was left to accumulate and become part of separately identified burial funds.

(3) Essential expenses necessary for a person to receive compensation (e.g., necessary legal fees in order to get a settlement).

(4) Receipts, which are not considered income, when they are for:

(a) Replacement or repair of an exempt resource;

(b) Prepayment or repayment of medical care paid by a health insurance policy or medical service program; or

(c) Payments made under a credit life or credit disability policy.

(5) The fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the person to receive payment of the income.

(6) Funds representing shared household costs.

(7) Crime victim's compensation.

(8) The value of a common transportation ticket, given as a gift, that is used for transportation and not converted to cash.

(9) Gifts that are not for food, clothing or shelter, and gifts of home produce used for personal consumption.

(10) In-kind payments. The agency does not consider in-kind income received from someone other than a person legally responsible for the person unless it is earned. Therefore, the following in-kind payments are not counted when determining eligibility for ((WAH)) apple health SSI-related medical programs:

(a) In-kind payments for services paid by a person's employer if:

(i) The service is not provided in the course of an employer's trade or business; or

(ii) The service is in the form of food that is on the employer's business premises and for the employer's convenience; or

(iii) The service is in the form of shelter that is on the employer's business premises, for the employer's convenience, and required to be accepted by the employee as a condition of employment.

(b) In-kind payments made to people in the following categories:

(i) Agricultural employees;

(ii) Domestic employees;

(iii) Members of the uniformed services; and

(iv) Persons who work from home to produce specific products for the employer from materials supplied by the employer.

(11) Unearned income withheld, before receipt by the person, for mandatory income tax purposes.

WSR 21-08-090

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 7, 2021, 10:04 a.m., effective May 8, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is revising this section to clarify that clients who have comprehensive, private medical insurance (not casualty) are not reviewed or placed into the patient review and coordination program.

Citation of Rules Affected by this Order: Amending WAC 182-501-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-06-064 on February 26, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 7, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-08-075, filed 4/3/18, effective 5/4/18)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service and managed care clients.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a)(2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section only:

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for a fee-for-service or managed care client in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for nonemergency services.

"At-risk" - A term used to describe one or more of the following:

(a) A client with a medical history of:

(i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or

(ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.

(b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:

(i) Indications of forging or altering prescriptions;

(ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;

(iii) Noncompliance with medical or drug and alcohol treatment;

(iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;

(v) Arrests for diverting controlled substance prescriptions;

(vi) Positive urine drug screen for illicit street drugs or nonprescribed controlled substances;

(vii) Negative urine drug screen for prescribed controlled substances; or

(viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to clients with multiple health, behavioral, and social needs to improve

care coordination, client education, and client self-management skills.

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. ((447.53)) 438.114.

"Just cause" - A legitimate reason to justify the action taken, including but not limited to, protecting the health and safety of the client.

"Managed care client" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

"Prescriber of controlled substances" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

- (a) A physician under chapter 18.71 RCW;
- (b) A physician assistant under chapter 18.71A RCW;
- (c) An osteopathic physician under chapter 18.57 RCW;
- (d) An osteopathic physician assistant under chapter 18.57A RCW; and
- (e) An advanced registered nurse practitioner under chapter 18.79 RCW.

"Primary care provider" or "PCP" - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or MCO selects a client for PRC review when either or both of the following occur:

- (a) A usage review report indicates the client has not used health care services appropriately; or

- (b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **Clients not selected for PRC review.** Clients who have comprehensive, private medical insurance (not casualty) are not reviewed or placed into the PRC program.

(5) **When a fee-for-service client is selected for PRC review,** the prior authorization process as defined in WAC 182-500-0085 may be required:

- (a) Prior to or during a PRC review; or
- (b) When the client is currently in the PRC program.

((5)) (6) **Review for placement in the PRC program.**

When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

((6)) (7) **Usage guidelines for PRC placement.**

Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be placed in the PRC program when either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of ninety consecutive calendar days in the previous twelve months. The client:

- (i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;
- (ii) Had prescriptions filled by four or more different pharmacies;
- (iii) Received ten or more prescriptions;
- (iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;
- (v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had ten or more office visits;

(b) Any one of the following occurred within a period of ninety consecutive calendar days in the previous twelve months. The client:

- (i) Made two or more emergency department visits;
- (ii) Exhibits "at-risk" usage patterns;
- (iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or
- (iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the ninety-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous twelve months:

- (i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or
- (ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.

~~((7))~~ **(8) PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case the agency or MCO will take one or more of the following actions:

(i) Refer the client for education on appropriate use of health care services;

(ii) Refer the client to other support services or agencies; or

(iii) Place the client into the PRC program for an initial placement period of no less than twenty-four months. For clients younger than eighteen years of age, the MCO must get agency approval prior to placing the client into the PRC program.

~~((8))~~ **(9) Initial placement in the PRC program.** When a client is initially placed in the PRC program:

(a) The agency or MCO places the client for no less than twenty-four months with one or more of the following types of health care providers:

(i) Primary care provider (PCP);

(ii) Pharmacy for all prescriptions;

(iii) Prescriber of controlled substances;

(iv) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. A client may receive covered emergency services from any hospital; or

(v) Another qualified provider type, as determined by agency or MCO program staff on a case-by-case basis.

(b) The managed care client will remain in the same MCO for no less than twelve months unless:

(i) The client moves to a residence outside the MCO's service area and the MCO is not available in the new location; or

(ii) The client's assigned PCP no longer participates with the MCO and is available in another MCO, and the client wishes to remain with the current provider;

(iii) The client is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The client is an American Indian/Alaska native.

(c) A managed care client placed in the PRC program must remain in the PRC program for no less than twenty-four months regardless of whether the client changes MCOs or becomes a fee-for-service client.

~~((9))~~ **(10) Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

(a) Informs the client of the reason for the PRC program placement;

(b) Directs the client to respond to the agency or MCO within ten calendar days of the date of the written notice;

(c) Directs the client to take the following actions:

(i) Select providers, subject to agency or MCO approval;

(ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from the agency or MCO program staff.

(d) Informs the client of administrative hearing or appeal rights (see subsection ~~((14))~~ **(15)** of this section).

(e) Informs the client that if a response is not received within ten calendar days of the date of the written notice, the client will be assigned a provider(s) by the agency or MCO.

~~((10))~~ **(11) Selection and role of assigned provider.** A client will have a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.

(ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.

(A) The PCP:

(I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;

(II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange;

(III) Makes referrals to substance abuse treatment for clients who are using the emergency department for substance abuse issues; and

(IV) Makes referrals to mental health treatment for clients who are using the emergency department for mental health treatment issues.

(B) The assigned PCP must be one of the following:

(I) A physician;

(II) An advanced registered nurse practitioner (ARNP);

or

(III) A licensed physician assistant (PA), practicing with a supervising physician.

(ii) Prescriber of controlled substances prescribes all controlled substances for the client;

(iv) Pharmacy fills all prescriptions for the client; and

(v) Hospital provides all hospital nonemergency services.

(c) A client placed in the PRC program must remain with the assigned providers for twelve months after the assignments are made, unless:

(i) The client moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;

(iii) The provider refuses to continue to serve the client;

(iv) The client did not select the provider. The client may request to change an assigned provider once within thirty calendar days of the assignment;

(v) The client's assigned PCP no longer participates with the MCO. In this case, the client may select a new provider from the list of available providers in the MCO or follow the assigned provider to the new MCO; or

(vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.

(d) When an assigned prescribing provider no longer contracts with the agency or the MCO:

(i) All prescriptions from the provider are invalid thirty calendar days following the date the contract ends;

(ii) All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 182-530 WAC or appropriate MCO rules; and

(iii) The client must choose or be assigned another provider according to the requirements in this section.

~~((11))~~ **(12) PRC placement.**

(a) The initial PRC placement is no less than twenty-four consecutive months.

(b) The second PRC placement is no less than an additional thirty-six consecutive months.

(c) Each subsequent PRC placement is no less than seventy-two consecutive months.

~~((12))~~ **(13) Agency or MCO review of a PRC placement period.** The agency or MCO reviews a client's use of health care services prior to the end of each PRC placement period described in subsection ~~((11))~~ **(12)** of this section using the guidelines in subsection ~~((6))~~ **(7)** of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection ~~((6))~~ **(7)** of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

(v) Of administrative hearing or appeal rights (see subsection ~~((14))~~ **(15)** of this section); and

(vi) Of the rules that support the decision.

(c) The agency may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a ~~((chemical dependency))~~ **substance use disorder (SUD)** service provider certified by the agency under chapter ~~((388-805))~~ **182-538D** WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection ~~((6))~~ **(7)** of this section for six consecutive months after the date the treatment ends.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client will remain placed in the PRC program regardless of change in eligibility program type or change in address.

~~((13))~~ **(14) Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a nonpharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection ~~((10))~~ **(11)** of this section. See WAC 182-502-0160.

~~((14))~~ **(15) Right to administrative hearing or appeal.**

(a) A fee-for-service client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. A client must request an administrative hearing from the agency within ninety days of the written notice of placement or continued placement to exercise this right.

(b) A managed care client who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under WAC 182-538-110.

(i) An appeal must be filed with the MCO within sixty calendar days of the written notice of the MCO's decision.

(ii) A client must exhaust the right to appeal through the MCO prior to requesting an administrative hearing.

(iii) A client who disagrees with the resolution of the appeal by the MCO may request an administrative hearing.

(iv) A client may exercise the right to an administrative hearing by filing a request within one hundred twenty calendar days from the written notice of resolution of the appeal by the MCO.

(c) A client enrolled in an MCO cannot change MCOs until the MCO appeal and any administrative hearing process has been completed and a final order entered.

(d) The agency conducts an administrative hearing according to chapter 182-526 WAC.

(e) A client who requests an administrative hearing or appeal within ten calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

(f) A client who requests an administrative hearing or appeal more than ten calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program until a final administrative order is entered that orders the client's removal from the program.

(g) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a

final administrative order is entered that orders the client's removal from the program.

(h) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and prior to the date the initial order is issued based on a showing of just cause.