

**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, and 181-85-085,106.

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0;

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 41, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0;

Date Adopted: March 23, 2021.

Maren Johnson
Rules Coordinator

OTS-2808.1

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.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-085, filed 7/24/19, effective 8/24/19. Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-85-085, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-85-085, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-12-076, § 180-85-085, filed 6/1/90, effective 7/2/90; WSR 89-01-043 (Order 28-88), § 180-85-085, filed 12/14/88; WSR 88-01-086 (Order 16-87), § 180-85-085, filed 12/21/87.]

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.

[WSR 06-02-051, recodified as § 181-85-106, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-12-076, § 180-85-106, filed 6/1/90, effective 7/2/90.]

OTS-2809.2

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 em-

ployed 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.)

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-003, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-003, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-003, filed 1/2/90, effective 2/2/90.]

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 (~~vocational~~) 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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-011, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-011, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-011, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 97-04-082, § 180-86-011, filed 2/5/97, effective 3/8/97.]

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.

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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.

[Statutory Authority: RCW 28A.410.210. WSR 15-11-069, § 181-86-013, filed 5/19/15, effective 6/19/15; WSR 06-14-010, § 181-86-013, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-013, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-013, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 97-04-082, recodified as § 180-86-013, filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 18A.410.010 [28A.410.010] and 28A.70.005. WSR 92-01-127,

§ 180-75-081, filed 12/19/91, effective 1/19/92. Statutory Authority: RCW 28A.70.005. WSR 90-02-073, § 180-75-081, filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 34.05.220(A) [34.05.220 (1)(a)] and 34.05.250. WSR 89-22-010, § 180-75-081, filed 10/20/89, effective 11/20/89. Statutory Authority: RCW 28A.70.005. WSR 87-09-010 (Order 2-87), § 180-75-081, filed 4/3/87.]

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 educational certificate under (~~regulations~~) rules of the professional educator standards board.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-014, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-014, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 97-04-082, recodified as § 180-86-014, filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 34.05.220(A) [34.05.220 (1)(a)] and 34.05.250. WSR 89-22-010, § 180-75-083, filed 10/20/89, effective 11/20/89. Statutory Authority: RCW 28A.70.005. WSR 87-09-010 (Order 2-87), § 180-75-083, filed 4/3/87.]

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.

[WSR 06-02-051, recodified as § 181-86-035, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-035, filed 1/2/90, effective 2/2/90.]

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.

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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.

[WSR 06-02-051, recodified as § 181-86-065, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-065, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-065, filed 1/2/90, effective 2/2/90.]

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).

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-070, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-070, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-070, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-070, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-075, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-075, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-075, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-075, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-86-080, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 97-05-008, § 180-86-080, filed 2/7/97, effective 3/10/97.]

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.

[WSR 06-02-051, recodified as § 181-86-085, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-085, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-86-090, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-090, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-095, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-095, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-095, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 14-24-012, § 181-86-100, filed 11/20/14, effective 12/21/14; WSR 06-14-010, § 181-86-100, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-100, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-100, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 91-08-056, § 180-86-100, filed 4/2/91, effective 5/3/91. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-100, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-86-105, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-105, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 14-02-073, § 181-86-110, filed 12/30/13, effective 1/30/14. WSR 06-02-051, recodified as § 181-86-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-110, filed 1/2/90, effective 2/2/90.]

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.))~~

[WSR 06-02-051, recodified as § 181-86-116, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-116, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.410.010. WSR 97-05-008, § 180-86-116, filed 2/7/97, effective 3/10/97.]

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.

[WSR 06-02-051, recodified as § 181-86-120, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-120, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-19-010, § 181-86-130, filed 9/8/06, effective 10/9/06. WSR 06-02-051, recodified as § 181-86-130, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-130, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-130, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-86-135, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-135, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 11-14-112, § 181-86-140, filed 7/6/11, effective 8/6/11; WSR 06-14-010, § 181-86-140, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-140, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-140, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-140, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: Chapter 28A.410 RCW. WSR 19-24-101, § 181-86-145, filed 12/4/19, effective 1/4/20. Statutory Authority: [RCW 28.410.220]. WSR 18-01-022, § 181-86-145, filed 12/8/17, effective 1/8/18. Statutory Authority: RCW 28A.410.210. WSR 13-20-029, § 181-86-145, filed 9/23/13, effective 10/24/13; WSR 06-14-010, § 181-86-145, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-145, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-145, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-145, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 13-20-029, § 181-86-150, filed 9/23/13, effective 10/24/13; WSR 11-14-112, § 181-86-150, filed 7/6/11, effective 8/6/11; WSR 06-14-010, § 181-86-150, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-150, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 92-15-037, § 180-86-150, filed 7/9/92, effective 8/9/92. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-150, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-86-170, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-170, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-170, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-175, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-175, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-175, filed 1/2/90, effective 2/2/90.]

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 ((with-in)) 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.

[Statutory Authority: [Chapter 28A.410 RCW]. WSR 18-21-014, § 181-86-180, filed 10/4/18, effective 11/4/18. Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-86-180, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-86-180, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-180, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-180, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-19-010, § 181-86-185, filed 9/8/06, effective 10/9/06. WSR 06-02-051, recodified as § 181-86-185, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.150.290(1). WSR 02-19-050, § 180-86-185, filed 9/11/02, effective 10/12/02. Statutory Authority: RCW 28A.70.005. WSR 90-02-076, § 180-86-185, filed 1/2/90, effective 2/2/90.]

OTS-2810.1

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.)

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-003, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-003, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-003, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-010, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-010, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-010, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-015, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-015, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-015, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-87-025, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-025, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-035, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-035, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-035, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-87-045, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-045, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210, 2013 c 3, and 2013 c 19. WSR 14-21-056, § 181-87-055, filed 10/8/14, effective 11/8/14. WSR 06-02-051, recodified as § 181-87-055, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-055, filed 1/2/90, effective 2/2/90.]

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 ex-

plicit, 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 agreement, executed ~~((pursuant to))~~ under WAC 181-86-160, to not continue or to accept education employment.

~~((5))~~ (e) 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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-070, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-070, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 97-21-075, § 180-87-070, filed 10/17/97, effective 11/17/97. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-070, filed 1/2/90, effective 2/2/90.]

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.

[WSR 06-02-051, recodified as § 181-87-080, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-080, filed 1/2/90, effective 2/2/90.]

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.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-87-095, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-87-095, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-02-075, § 180-87-095, filed 1/2/90, effective 2/2/90.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-87-030 Prospective application of chapter and amendments.

OTS-2811.1

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.

[WSR 06-02-051, recodified as § 181-88-020, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.400.301. WSR 04-23-011, § 180-88-020, filed 11/4/04, effective 12/5/04.]

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.

[WSR 06-02-051, recodified as § 181-88-030, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.400.301. WSR 04-23-011, § 180-88-030, filed 11/4/04, effective 12/5/04.]

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 06-02-051, recodified as § 181-88-060, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.400.301. WSR 04-23-011, § 180-88-060, filed 11/4/04, effective 12/5/04.]