

Washington Administrative Code (WAC) Revision

What is happening?

OSPI is updating its administrative code for filing complaints regarding federal Elementary and Secondary Education Act (ESEA) programs.

Why?

ESEA was amended by the Every Student Succeeds Act (ESSA) requiring an update to the WAC for two reasons:

1. Federal terms and references need to be updated to match ESEA as amended by ESSA.
2. A 45-day timeline for OSPI to investigate and resolve complaints regarding services provided for private school children (a.k.a., equitable services). The process provided under current WAC is 60 days.

What is the timeline for rule adoption?

Emergency Rules were filed May 11, 2017, so that they are in place as districts and participating private schools conduct consultation for service delivery in the 2017–18 school year. Consultation typically occurs in the spring and summer. OSPI wants rules in place that conform to the updated law.

Regular rule adoption was filed simultaneously so permanent rules are in place by September 2017.

I have feedback, should I send it to?

Send feedback to Paula Moore, Director, Title I, Part A/LAP/CPR at paula.moore@k12.wa.us, with a cc to Estela Garcia at estela.garcia@k12.wa.us.

392-168-105

Authority.

The authority for this chapter is RCW [28A.300.070](#) which authorizes the superintendent of public instruction to receive and administer federal funds on behalf of school districts of the state of Washington in compliance with applicable rules and regulations.

[Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-168-105, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-105, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-105, filed 4/18/88.]

392-168-110

Purpose.

The purpose of this chapter is to provide complaint procedures in compliance with 20 U.S.C. 7844 and 7883, and with 34 C.F.R. 299.10-2099.12.

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-110, filed 9/12/05, effective 10/13/05. Statutory Authority: Chapter [28A.155](#) RCW. WSR 93-19-065 (Order 93-15), § 392-168-110, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-110, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-110, filed 4/18/88.]

392-168-115

Applicability.

This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

- (1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;
 - (2) Title I, Part B, (~~Subpart 1: Reading First~~) State Assessment Grants;
 - ~~((3) Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program;)~~
 - ~~((4))~~ (3) Title I, Part C: Education of Migratory Children;
 - ~~((5))~~ (4) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;
 - ~~((6) Title I, Part F: Comprehensive School Reform;)~~
 - ~~((7))~~ (5) Title II, Part A: ~~Teacher and Principal Training and Recruiting Fund~~ Supporting Effective Instruction;
 - ~~((8) Title II, Part D: Enhancing Education Through Technology;~~
 - ~~Title III — Language Instruction for Limited English Proficient and Immigrant Students)~~
 - ~~((9))~~ (6) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement Act;
-

~~((10) Title IV—21st Century Schools;))~~
~~((11)) (7) Title IV, Part A (~~Subpart 1: Safe and Drug Free Schools and Communities~~)~~
Student Support and Academic Enrichment Grants;
~~((12)) (8) Title IV, Part B: 21st Century Community Learning Centers;~~
(9) Title IV, Part C: Expanding Opportunity Through Quality Charter Schools
~~((Title V—Promoting Informed Parental Choice and Innovative Programs))~~
~~((13)) (10) Title V, Part A: (~~Innovative Programs~~) Funding Transferability for State and Local Educational Agencies;~~
~~((Title VI—Flexibility and Accountability))~~
~~((14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments;))~~
~~((15)) (11) Title V((+)), Part B, Subpart 1: Small, Rural School Achievement Program;~~
~~((16)) (12) Title V((+)), Part B, Subpart 2: Rural and Low-Income Schools;~~
~~((17)) (13) Title ((X))VIII—General Provisions;~~
~~((18) Title IX, Part E (Section 9532): Unsafe School Choice Option.))~~
[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-115, filed 9/12/05, effective 10/13/05. Statutory Authority: Chapter [28A.155](#) RCW. WSR 93-19-065 (Order 93-15), § 392-168-115, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-115, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-115, filed 4/18/88.]

392-168-125

Definition—Complaint.

As used in this chapter, the term "complaint" means an allegation, by the complainant, that the state, a local school district, an educational service district, or other subgrantee receiving federal funds has violated a federal statute or regulation or a related state regulation that applies to a federal program covered under this chapter.

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-125, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW [28A.02.100](#). WSR 90-23-062 (Order 43), § 392-168-125, filed 11/20/90, effective 12/21/90; WSR 90-11-029 (Order 90-09), § 392-168-125, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-125, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-125, filed 4/18/88.]

392-168-130

Definition—Other subgrantee.

As used in this chapter, the term "other subgrantee" means the government, nonprofit, or other legal entity to which the state as grantee awards a subgrant, and which is accountable to

the state for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

[Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-130, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-130, filed 4/18/88.]

392-168-132

Informing citizens about complaint procedures.

The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;

(2) Conducting ~~((insert))~~ training sessions on the complaint process for local school districts, educational service districts, or other subgrantees, which may include webinars and screencasts. ~~((through educational service districts; and~~

~~(3) Including information about the system in statewide conferences.))~~

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-132, filed 9/12/05, effective 10/13/05. Statutory Authority: Chapter [28A.155](#) RCW. WSR 93-19-065 (Order 93-15), § 392-168-132, filed 9/13/93, effective 10/14/93.]

392-168-135

Right to register a complaint.

Any individual or organization may file a signed, written complaint.

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-135, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW [28A.02.100](#). WSR 90-11-029 (Order 90-09), § 392-168-135, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-135, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-135, filed 4/18/88.]

392-168-140

Contents of complaint.

A written complaint filed under this chapter shall include:

(1) A statement that the state, a local school district, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to a federal program covered under this chapter;

- (2) The specific requirement alleged to have been violated;
- (3) The facts on which the complaint is based;
- (4) The name and address of the complainant;
- (5) The expected resolution of the alleged violation; and
- (6) In the case of a complaint alleging a violation by an entity other than the state and filed directly with the superintendent of public instruction, the name and address of the allegedly offending entity.

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-140, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW [28A.02.100](#). WSR 90-11-029 (Order 90-09), § 392-168-140, filed 5/9/90, effective 6/9/90. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-140, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-140, filed 4/18/88.]

392-168-145

Procedure for filing a complaint.

The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC [392-168-180](#).

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

(4) Receipt of complaints concerning violations of 20 U.S.C. § 7881 (participation by private school children) shall activate a time limit not to exceed forty-five calendar days.

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-145, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-145, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-145, filed 4/18/88.]

392-168-150

Complaint directed to a school district, an educational service district, or other subgrantee and designation of responsible employee.

The chief officer of each local school district, an educational service district, or other subgrantee shall designate at least one employee to monitor and coordinate the entity's

compliance with this chapter. Such employee shall also be charged with the responsibility for investigating any complaint(s) communicated to the entity pursuant to WAC [392-168-145](#). [Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-150, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-150, filed 4/18/88.]

392-168-155

Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.

Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by ~~((No Child Left Behind Act))~~ the Every Student Succeeds Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant and public agency that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. ~~((OSP4))~~ The superintendent may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

~~(10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.~~

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-155, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-155, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-155, filed 4/18/88.]

392-168-175

Complaints against the superintendent of public instruction—Designation of responsible employee(s).

(1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC [392-168-140](#).

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly. Complaints concerning violations of 20 U.S.C. § 7881 (participation by private school children) shall be coordinated by the staff assigned as the ombudsman for equitable services as provided in 20 U.S.C. §§ 6320 and 7881.

[Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-175, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-175, filed 4/18/88.]

392-168-180

Complaints against the superintendent of public instruction—Investigation of and response to complaints.

(1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no

later than sixty calendar days after the receipt of such complaint. For complaints concerning violations of 20 U.S.C. § 7881 (participation by private school children), investigating staff shall provide the written report to the superintendent no later than thirty-five calendar days after receipt of the complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

[Statutory Authority: RCW [28A.300.070](#). WSR 05-19-033, § 392-168-180, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-180, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-180, filed 4/18/88.]

392-168-185

Waiver of timelines.

(1) Timelines established in this chapter may be waived by mutual consent in writing of both complainant and local school district or other subgrantee. Such waiver of timelines shall be communicated within ten days to the appropriate division, superintendent of public instruction, by the entity named in the complaint.

(2) An extension of time limits applicable to actions by the superintendent of public instruction shall be waived by mutual consent of the complainant and the superintendent of public instruction: Provided, That if exceptional circumstances exist with respect to a particular complaint, the superintendent of public instruction may unilaterally extend the timelines for cause upon written notice to the parties.

[Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-185, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-185, filed 4/18/88.]

392-168-190

Appeal to the secretary of education in complaints against the superintendent of public instruction.

(1) In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, department of education.

(2) (a) For complaints concerning violations of 20 U.S.C. § 7881 (participation by private school children), the superintendent's response may be appealed to the secretary not later than 30 days after the superintendent responds to the complaint.

(b) If the superintendent fails to resolve a complaint concerning violations of 20 U.S.C. § 7881 (participation by private school children) within the 45-day limit, the complainant may appeal directly to the secretary no later than 30 days after the expiration of the 45-day limit.

[Statutory Authority: RCW [34.05.220](#) [(1)](a). WSR 89-23-001 (Order 15), § 392-168-190, filed 11/2/89, effective 12/3/89. Statutory Authority: RCW [28A.02.100](#). WSR 88-09-042 (Order 88-13), § 392-168-190, filed 4/18/88.]