

CODE OF PROFESSIONAL CONDUCT

for

EDUCATION PRACTITIONERS

Teachers
Educational Staff Associates
Administrators

STATE OF WASHINGTON

Chapter 181-87 WAC
Professional Educator Standards Board
Administrative Rules

OFFICE OF PROFESSIONAL PRACTICES

The Office of Professional Practices, a division under the auspices of the Superintendent of Public Instruction, is charged with enforcement, including discipline of educational practitioners for violation of the Professional Code of Conduct. The office receives, investigates, and makes legal findings regarding complaints. A nine member professional advisory committee reviews appeals from proposed disciplinary actions. Educators who violate the code may be reprimanded or their license to practice may be suspended or revoked.

The Office of Professional Practices also reviews charges that an applicant for or the holder of professional certification lacks good moral character or personal fitness. These standards are set forth in WAC 181-86-013 and address commission of criminal acts and other behavior which endanger children. Commission of criminal acts may not be directly related to professional conduct but they do reflect upon the trustworthiness of serving as a professional educator.

Requests for additional information may be addressed to:

Office of Professional Practices
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
OLD CAPITOL BUILDING, PO BOX 47200
OLYMPIA WA 98504-7200

CODE OF PROFESSIONAL CONDUCT CHAPTER 181-87 WAC

WAC 181-87-005 PURPOSE

The sole purpose of this chapter is to set forth policies and procedures related to reprimand, suspension, and revocation actions respecting certification of education practitioners in the state of Washington for acts of unprofessional conduct. It is recognized that grounds for the discharge, nonrenewal of contracts, or other adverse change in contract status affecting the employment contracts of education practitioners are broader than stated herein. The grounds set forth as unprofessional conduct in this chapter shall not limit discharge, nonrenewal of contracts, or other employment action by employers of education practitioners.

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 the provisions of chapter 181-86 WAC.

PROFESSIONAL ACCOUNTABILITY

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 the provisions of chapter 181-86 WAC.

ADMINISTRATIVE PROVISIONS

WAC 181-87-020 APPLICABILITY OF CHAPTER TO PRIVATE CONDUCT

As a general rule, the provisions of this chapter shall not be applicable to the private conduct of an education practitioner except where the education practitioner's role as a private person is not clearly distinguishable from the role as an education practitioner and the fulfillment of professional obligations.

WAC 181-87-025 EXCLUSIVITY OF CHAPTER

No act, for the purpose of this chapter, shall be defined as an act of unprofessional conduct unless it is included in this chapter.

WAC 181-87-030 PROSPECTIVE APPLICATION OF CHAPTER AND AMENDMENTS

The provisions of this chapter shall take effect ninety calendar days after adoption and shall apply prospectively to acts of unprofessional conduct committed after such effective date. Unless provided to the contrary, any revision shall take effect six months after adoption and shall apply prospectively from such effective date.

WAC 181-87-035 EDUCATION PRACTITIONER DEFINITION

As used in this chapter, the term "education practitioner" means any certificate holder licensed under rules of the Professional Educator Standards Board to serve as a certified employee.

WAC 181-87-040 STUDENT-DEFINITION

As used in this chapter, the term "student" means the following:

- (1) Any student who is under the supervision, direction, or control of the education practitioner.
- (2) Any student enrolled in any school or school district served by the education practitioner.
- (3) Any student enrolled in any school or school district while attending a school related activity at which the education practitioner is performing professional duties.
- (4) Any former student who is under eighteen years of age and who has been under the supervision, direction, or control of the education practitioner. Former student, for the purpose of this

section, includes but it not limited to drop outs, graduates, and students who transfer to other districts or schools.

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.

ACTS OF UNPROFESSIONAL CONDUCT

WAC 181-87-050 MISREPRESENTATION OR FALSIFICATION IN THE COURSE OF PROFESSIONAL PRACTICE

Any falsification or deliberate misrepresentation, including omission, of a material fact by an education practitioner concerning any of the following is an act of unprofessional conduct:

- (1) Statement of professional qualifications.
- (2) Application or recommendation for professional employment, promotion, certification, or an endorsement.
- (3) Application or recommendation for college or university admission, scholarship, grant, academic award, or similar benefit.
- (4) Representation of completion of in-service or continuing education credit hours.
- (5) Evaluations or grading of students and/or personnel.
- (6) Financial or program compliance reports submitted to state, federal, or other governmental agencies.
- (7) Information submitted in the course of an official inquiry by the superintendent of public instruction related to the following:
 - (a) Good moral character or personal fitness.
 - (b) Acts of unprofessional conduct.
- (8) Information submitted in the course of an investigation by a law enforcement agency or by child protective services regarding school related criminal activity.
- (9) Assessments leading to certification.
- (10) An education practitioner who aids, encourages, and/or abets another educator in any falsification or deliberate misrepresentation, including omission, of a material fact in

conjunction with the acts listed above commits misrepresentation in the course of professional practice.

WAC 181-87-055 ALCOHOL OR CONTROLLED SUBSTANCE ABUSE

Unprofessional conduct includes:

- (1) Being under the influence 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 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.

WAC 181-87-060 DISREGARD OR ABANDONMENT OF GENERALLY RECOGNIZED PROFESSIONAL STANDARDS

Any performance of professional practice in flagrant disregard or clear abandonment of generally recognized professional standards in the

course of any of the following professional practices is an act of unprofessional conduct:

- (1) Assessment, treatment, instruction, or supervision of students.
- (2) Employment or evaluation of personnel.
- (3) Management of moneys or property.

WAC 181-87-065 ABANDONMENT OF CONTRACT FOR PROFESSIONAL SERVICES

Any permanent abandonment, constituting a substantial violation without good cause, of one of the following written contracts to perform professional services for a private school or a school or an educational service district is an act of unprofessional conduct:

- (1) An employment contract, excluding any extracurricular or other specific activity within such contract or any supplementary contract.
- (2) Professional service contract.

WAC 181-87-070 UNAUTHORIZED PROFESSIONAL PRACTICE

Any act performed without good cause that materially contributes to one of the following unauthorized professional practices is an act of unprofessional practice.

- (1) 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) 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) The practice of education by a certificate holder during any period in which such certificate has been suspended.
- (4) The failure of a certificate holder to abide by the conditions within an agreement, executed pursuant to WAC 181-86-160, to not continue or to accept education employment.

- (5) The failure of a certificate holder to comply with any condition, limitation, or other order or decision entered pursuant to chapter 181-86 WAC.
- (6) Provided, That 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.

WAC 181-87-080 SEXUAL MISCONDUCT WITH STUDENTS

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) Any sexual advance, verbal or physical;
- (2) Sexual intercourse as defined in RCW 9A.44.010;
- (3) Indecent exposure as defined in RCW 9A.88.010;
- (4) 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 the provisions of this section shall not apply if at the time of the sexual conduct the participants are married to each other.

WAC 181-87-085 FURNISHING ALCOHOL OR CONTROLLED SUBSTANCE TO STUDENTS

Unprofessional conduct includes the illegal furnishing of alcohol or a controlled substance, as defined in chapter 69.50 RCW, to any student by an education practitioner.

WAC 181-87-090 IMPROPER REMUNERATIVE CONDUCT

Any deliberate act in the course of professional practice which requires or pressures students to purchase equipment, supplies, or services from the education practitioner in a private remunerative capacity is an act of unprofessional conduct.

WAC 181-87-093 FAILURE TO ASSURE THE TRANSFER OF STUDENT RECORD INFORMATION OR STUDENT RECORDS

The failure of a principal or other certificated chief administrator of a public school building to make a good faith effort to assure compliance

with RCW 28A.225.330 by establishing, distributing, and monitoring compliance with written procedures that are reasonably designed to implement the statute shall constitute an act of unprofessional conduct.

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 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.

GOOD MORAL CHARACTER AND PERSONAL FITNESS

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:

- (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 of a child 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.

(2) 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 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.
- (3) No behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting.
 - (4) 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.

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 of the professional educator standards board.

DISCIPLINARY ACTIONS - APPEAL PROCESS - PUBLIC NOTICE

WAC 181-86 ACTIONS BY THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION FOR ACTS OF UNPROFESSIONAL CONDUCT AND/OR LACK OF GOOD MORAL CHARACTER AND PERSONAL FITNESS

Order of Dismissal: The Office of Superintendent of Public Instruction will take no disciplinary actions; the case is dismissed without prejudice

Order of Reprimand: Orders the certificate holder not to continue or repeat the conduct or lack good moral character or personal fitness. The certificate remains valid unless expires/lapses.

Order of Suspension: Suspends the education practitioner from practicing for a stated period of time. Such order may contain a requirement that the certificate holder fulfill certain conditions precedent to resuming professional practice and certain conditions subsequent to resuming professional practice.

Order of Revocation: An order revoking the certificate(s) of the education practitioner.

Voluntary Surrender: A holder of a certificate who has not received a final order for revocation may voluntarily surrender their certificate to the Office of Superintendent of Public Instruction if the certificate holder believes they might be ineligible to hold a certificate for any reason which is or might constitute grounds for a revocation of the certificate other than a conviction of a felony crime states within WAC 181-86-013(1).

Denial Order: A conclusion of law that the applicant does not qualify for the certificate, including renewal and reinstatement, or endorsement request.

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 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.

WAC 181-86-145 APPEAL PROCEDURE

Any person may appeal any of the above orders by filing written notice with the superintendent of public instruction within thirty calendar days following the date of receipt of such order.

WAC 181-86-185 PUBLIC NOTICE AND REPORT

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 whose certificates have been suspended, surrendered, or revoked.

HOW TO FILE A COMPLAINT

HOW TO FILE A COMPLAINT AGAINST A SCHOOL EMPLOYEE

A written complaint must first be filed with the school district superintendent, educational service district superintendent, or the private school administrator, stating the grounds and factual basis for the complaint.

The Office of Superintendent of Public Instruction has authority to investigate certificated school district employees for acts of unprofessional conduct or lack of good moral character or personal fitness. When an educational service district superintendent, school district superintendent, or the chief administrator of an approved private school possess sufficient reliable information to believe a certificated employee within such educational service district, school district or private school is not of good moral character or personally fit or has committed an act of unprofessional conduct (WAC 181-87), such superintendent or chief administrator, within a reasonable period of time after making such determination, shall file a written complaint with the Office of Superintendent of Public Instruction.

COMPLAINTS ALLEGING PHYSICAL ABUSE OR SEXUAL MISCONDUCT RCW 28A.410.090 (2)

A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

- (1) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

- (2) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and
- (3) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

WAC 181-86-110 DUTY OF ESD SUPERINTENDENT, DISTRICT SUPERINTENDENT AND PRIVATE SCHOOL ADMINISTRATOR TO FILE COMPLAINTS

When an educational service district superintendent, a district superintendent, 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 if an educational service district or school district is considering action to discharge an employee of such district, the educational service district 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.

MANDATORY REPORTING

MANDATORY REPORTING (RCW 26.44.030)

When any professional school personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she SHALL report such incident or cause a report to be made to the proper law enforcement agency or to the Department of Social and Health Services within 48 hours.

DUTY TO REPORT PHYSICAL ABUSE OR SEXUAL MISCONDUCT BY SCHOOL EMPLOYEES (RCW 28A.400.317)

A certificated or classified school employee who has knowledge or reasonable cause to believe that a student has been a victim of physical

abuse or sexual misconduct by another school employee, shall report such abuse or misconduct to the appropriate school administrator. The school administrator shall cause a report to be made to the proper law enforcement agency if he or she has reasonable cause to believe that the misconduct or abuse has occurred as required under RCW 26.44.030. During the process of making a reasonable cause determination, the school administrator shall contact all parties involved in the complaint.



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