

# Title 391 WAC

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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### Chapter 391-08 WAC

#### RULES OF PRACTICE AND PROCEDURE—PUBLIC EMPLOYMENT RELATIONS COMMISSION

#### WAC

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**WAC 391-08-001 Application and scope of chapter 391-08 WAC.** Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.-340); section 15, chapter 356, Laws of 2002 (RCW 41.76.-060); and section 7, chapter 6, Laws of 2010 (RCW 49.39.-060), to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

**WAC 391-08-800 Agency records—Public records officer—Contact information.** (1) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request should contact the public records officer of the agency:

David I. Gedrose  
Public Records Officer, Public Employment Relations  
Commission  
P.O. Box 40919  
360-570-7322  
David.Gedrose@perc.wa.gov

Information is also available at the agency's web site at [www.perc.wa.gov](http://www.perc.wa.gov).

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. 10-20-172, § 391-08-800, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.220 and 34.05.476. 98-14-112, § 391-08-800, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08, 53.18 and 42.17 RCW. 90-06-070, § 391-08-800, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-800, filed 1/27/77.]

**WAC 391-08-830 Agency records—Availability—Organization—Requests.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the agency.

(2) Organization of records. The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take agency records from its offices without the permission of the public records officer or his or her designee. A variety of records is available on the agency web site at [www.perc.wa.gov](http://www.perc.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records:

(a) Any person wishing to inspect or copy public records of the agency should make the request by letter, fax, or e-mail addressed to the public records officer and including the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or make a deposit. Pursuant to WAC 391-08-860 standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. 10-20-172, § 391-08-830, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-840 Processing of public records requests.** (1) Within five business days of receipt of the

request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(3) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(4) Inspection of records.

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(5) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(6) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would

be practical to provide the records in that manner. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(7) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(8) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(9) Later discovered documents. If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. 10-20-172, § 391-08-840, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-850 Processing of public records—Electronic records.** (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to data bases. With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The agency may charge a fee consistent with RCW 43.105.280 for such customized access.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. 10-20-172, § 391-08-850, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-860 Exemptions to public records.**

[Statutory Authority: [RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060.] 10-20-172, § 391-08-860, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-870 Costs for providing public records.**

(1) There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for twenty-five cents per page.

(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records

selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(3) The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies.

(4) The agency may also charge actual costs of mailing, including the cost of the shipping container.

(5) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. 10-20-172, § 391-08-870, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-880 Review of denial of public records.**

(1) Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as agency and the requestor mutually agree to.

(3) If the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under the procedure set forth under WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of such request regardless of any internal administrative appeal.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. 10-20-172, § 391-08-880, filed 10/6/10, effective 11/6/10.]

**Chapter 391-25 WAC**

**REPRESENTATION CASE RULES**

**WAC**

391-25-002	Sequence and numbering of rules—Special provisions.
391-25-030	Petition—Time for filing.
391-25-051	Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510.
391-25-150	Amendment and withdrawal.
391-25-229	Special provision—Symphony musicians.
391-25-299	Special provision—Private sector and other employees.
391-25-399	Special provision—Symphony musicians.
391-25-440	Election for inclusion of unrepresented employees.
391-25-450	Disclaimers.
391-25-531	Special provision—Public employees.

**WAC 391-25-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington

Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. 10-20-172, § 391-25-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-25-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-072, § 391-25-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-032 (Order 83-02), § 391-25-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-030 Petition—Time for filing.** (1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

(a) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, and signed by the parties' representatives;

(iii) The agreement must contain a fixed expiration date not less than ninety days after it was signed; and

(iv) The agreement will only operate as a bar for the first three years after its effective date.

(b) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) A "protected" period is in effect during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative shall be given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.

(d) A certification of issues for interest arbitration issued under WAC 391-55-200 serves as a valid agreement under subsection (1)(a) of this rule.

(2) A "certification bar" exists where a certification has been issued by the agency, so that a petition involving the same bargaining unit or any subdivision of that bargaining unit will only be timely if it is filed:

(a) More than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time.

(4) Neither a certification bar nor a contract bar in an underlying existing bargaining unit will preclude petitions filed under WAC 391-25-440 from being processed at any time subject to the limitations stated in that rule.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. 10-20-172, § 391-25-030, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 01-14-009, § 391-25-030, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. 96-07-105, § 391-25-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-051 Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510.**

(1) This rule consolidates special rules applicable to:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to per-

sons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13-.270.

(b) Family child care providers under RCW 41.56.028, which extends coverage of chapter 41.56 RCW to "child care providers" defined as persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are either licensed by the state under RCW 74.15.-030 or are exempt from licensing under chapter 74.15 RCW.

(c) Adult family home providers under RCW 41.56.029, which extends coverage of chapter 41.56 RCW to "adult family home providers" who are persons defined as a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(d) Language access providers under RCW 41.56.510, which extends coverage of chapter 41.56 RCW to "language access providers" who are persons defined as any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department of social and health services.

(2) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

(3) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.-510.

(4) A party wishing to participate as an intervenor in representation proceedings governed by this rule must file a motion to intervene no later than ten days following receipt of the petition for investigation of a question concerning representation.

(5) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028;

or

(c) Adult family home providers under RCW 41.56.029;

or

(d) Language access providers under RCW 41.56.510.

(6) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028;

or

(c) Adult family home providers under RCW 41.56.029;

or

(d) Language access providers under RCW 41.56.510.

(7) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the

bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(8) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(9) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.-028, 41.56.029, and 41.56.510.

(10) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.-028, 41.56.029, and 41.56.510.

(11) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(12) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.-510.

(13) Any representation election for the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to providers may describe the collective bargaining rights established by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510 and agreements reached by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to providers shall be set forth in English and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The ballot materials supplied to providers shall include a card return-addressed to the commission, by which providers eligible voters can individually request notice and ballot materials in languages other than those received. Upon receipt of such a request card, the agency shall promptly supply notice and ballot materials to the eligible voter in the requested language.

(d) At least twenty-one days shall be provided between the date on which ballot materials are mailed to providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection (3) of this section.

(14) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.-510.

[Statutory Authority: RCW 41.56.060, 41.56.090, and 41.58.050. 10-20-172, § 391-25-051, filed 10/6/10, effective 11/6/10; 08-04-058, § 391-25-051, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080,

41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 74.39A.240 and [74.39A].270. 03-03-064, § 391-25-051, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-150 Amendment and withdrawal.** A petition may be amended or withdrawn by the petitioner at any time prior to the issuance of a notice of election and the mailing of the ballots, or under such conditions as the executive director or the commission may impose.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. 10-20-172, § 391-25-150, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. 90-06-072, § 391-25-150, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-229 Special provision—Symphony musicians.** In addition to the information required by WAC 391-25-220, an employer of symphony musicians who are seeking to be represented for the purposes of collective bargaining must, upon request, provide the executive director with financial information that establishes the agency's jurisdiction over the employer.

[Statutory Authority: RCW 41.58.050 and 49.39.060. 10-20-172, § 391-25-229, filed 10/6/10, effective 11/6/10.]

**WAC 391-25-299 Special provision—Private sector and other employees.** Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW, except for hearings and issues submitted by stipulation of all parties to the proceeding.

[Statutory Authority: RCW 41.58.050 and 49.39.060. 10-20-172, § 391-25-299, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.-080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-25-299, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.-080, 41.56.090, 41.59.110 and chapter 49.08 RCW. 90-06-072, § 391-25-299, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-399 Special provision—Symphony musicians.** WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW.

[Statutory Authority: RCW 41.58.050 and 49.39.060. 10-20-172, § 391-25-399, filed 10/6/10, effective 11/6/10.]

**WAC 391-25-440 Election for inclusion of unrepresented employees.** (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

(2) In order to invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least thirty percent or more of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that the petitioning organization seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the appropriate statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or his or her designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or his or her designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted under WAC 391-25-140 shall affirmatively indicate that the petitioning organization seeks to merge the petitioned-for employees into an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election under this chapter for the petitioned-for employees to ascertain whether they desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Cross-check procedures under WAC 391-25-391 and 391-25-396 are applicable to this section.

(c) In such an election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of voters vote against inclusion in the existing unit, they are considered as indicating a desire to remain unrepresented.

(5)(a) Should another organization seek to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has support from at least thirty percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents under this chapter and the appropriate statute, the resulting unit would be an appropriate unit.

(b) If either (a)(i) or (ii) of this subsection are not established, the request for intervention will be denied, and the petition processed in accordance with this section.

(c) In the event the requirement of both (a)(i) and (ii) of this subsection are met, the election shall be for representation by the petitioner as part of the larger unit proposed by the petitioner, or representation by the intervener as part of the larger unit proposed by the intervener, or no representation.

(6) In the event a petition for representation of the same employees sought to be added to a larger unit by the petitioner under this section is filed pursuant to WAC 391-25-010 or 391-25-012, along with the requisite thirty percent

showing of interest, and the petitioned-for unit is appropriate under the applicable statute, then the self-determination election petition filed under this section shall be dismissed. If either of those requirements is not met, the petition filed pursuant to WAC 391-25-010 or 391-25-012 will be dismissed and the original self-determination election petition processed in accordance with this section.

(7) The existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule.

(8) Petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit.

(a) The issuance of a certification for the existing appropriate bargaining within the previous twelve months will not bar the filing and processing of a petition under this rule.

(b) The alteration of the composition of the existing appropriate bargaining unit as a result of an amended certification issued under this rule does not affect the certification bar of the existing unit; nor does it create a new certification bar as described in WAC 391-25-030(2).

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. 10-20-172, § 391-25-440, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. 08-17-119, § 391-25-440, filed 8/20/08, effective 9/20/08.]

**WAC 391-25-450 Disclaimers.** Prior to the issuance of a notice of election and the mailing of the ballots, an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. The organization filing a disclaimer shall not seek to be certified in the bargaining unit, or subdivision thereof, for a period of at least six months.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. 10-20-172, § 391-25-450, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 01-14-009, § 391-25-450, filed 6/22/01, effective 8/1/01; 98-14-112, § 391-25-450, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-450, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-531 Special provision—Public employees.** Where there are three or more choices on the ballot, representation elections for employees covered by chapter 41.56 RCW shall be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 41.56.060, 41.56.090, and 41.58.050. 10-20-172, § 391-25-531, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.070. 90-06-072, § 391-25-531, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-531, filed 9/30/80, effective 11/1/80.]

## Chapter 391-35 WAC

### UNIT CLARIFICATION CASE RULES

#### WAC

391-35-002 Sequence and numbering of rules—Special provisions.

**WAC 391-35-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. 10-20-172, § 391-35-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-35-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-35-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-033 (Order 83-03), § 391-35-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-002, filed 9/30/80, effective 11/1/80.]

## Chapter 391-45 WAC

### UNFAIR LABOR PRACTICE CASE RULES

#### WAC

391-45-002 Sequence and numbering of rules—Special provisions.  
391-45-310 Examiner decisions.

**WAC 391-45-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule

is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (Private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. 10-20-172, § 391-45-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-45-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-45-002, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-45-002, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-074, § 391-45-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-034 (Order 83-04), § 391-45-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-310 Examiner decisions.** (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or a hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, his or her designee, or a hearing examiner, within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or a hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or a hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or a hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or a hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a preliminary ruling by the executive director or his or her designee or a hearing examiner under WAC 391-45-110; or

(ii) Application of the six-month statute of limitations;

(iii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

## Chapter 391-55 WAC

### IMPASSE RESOLUTION CASE RULES

#### WAC

391-55-002	Sequence and numbering of rules—Special provisions.
391-55-0715	Special provision—Public employees.
391-55-072	Special provision—Educational employees.
391-55-110	Dispute resolution panel—Membership.
391-55-200	Interest arbitration—Certification of issues.
391-55-201	Special provision—Certification of issues—Public employees.
391-55-202	Special provision—Certification of issues—Educational employees.
391-55-302	Special provision—Educational employees.

**WAC 391-55-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chap-

ter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

Special provisions relating to bargaining units eligible for interest arbitration are set forth beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter. Special provisions relating to fact finding are set forth beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. 10-20-172, § 391-55-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-55-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-002, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-002, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-055 (Order 88-08), § 391-55-002, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-0715 Special provision—Public employees.** In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:

(1) Representatives from all bargaining units affected by the state board of education required action plan are provided an opportunity to participate in a single mediation with the employer; and

(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. 10-20-172, § 391-55-0715, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-072 Special provision—Educational employees.** In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:

(1) Representatives from all bargaining units affected by the action plan are provided an opportunity to participate in a single mediation with the employer; and

(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. 10-20-172, § 391-55-072, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-110 Dispute resolution panel—Membership.** The commission shall establish and maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the professional staff of the commission:

(a) A master's degree in labor relations, personnel management or industrial relations or closely allied field, or a law degree; and

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas; and

(c) Additional qualifying experience shall substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall furnish letters of recommendation supporting their acceptability as an impartial from:

(a) At least one management representative; and

(b) At least one union representative; and

(c) At least one impartial arbitrator, mediator or labor relations administrative agency official.

(d) All letters of recommendation submitted under subsections (a) through (c) of this section shall be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter of recommendation.

(3) Applicants who desire to be referred for interest arbitration proceedings shall demonstrate their experience as an impartial in at least five grievance arbitration, fact finding or interest arbitration cases, by submitting copies of arbitration awards which can be provided, upon request, to parties selecting an interest arbitrator.

(4) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications and affiliations. All information submitted shall be subject to administrative verification.

(5) Applications of persons appearing to be qualified for membership on the panel shall be forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and shall notify the applicant of the determination made.

(6) Whenever it appears to the commission that an applicant or member of the dispute resolution panel has failed or refused to comply with applicable statutes, rules and ethical standards, the application shall be rejected or the member shall be removed from the dispute resolution panel. A member shall also be removed from the panel if he or she has:

(a) Ceased accepting appointments as an impartial in the resolution of labor disputes; or

(b) Failed to keep the agency informed of their current address and telephone number.

(7) Persons referred from the dispute resolution panel shall be impartial. No active member of the dispute resolution panel may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel who intends to engage in advocacy work shall notify the executive director and shall be placed on inactive status while their advocacy work continues.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to chapter 39.29 RCW. Only persons listed on the panel shall be compensated by the agency under a personal service contract.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. 10-20-172, § 391-55-110, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-55-110, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-035 (Order 83-05), § 391-55-110, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-200 Interest arbitration—Certification of issues.** (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the

executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-201 Special provision—Certification of issues—Public employees.** (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-0715 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-072.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. 10-20-172, § 391-55-201, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-202 Special provision—Certification of issues—Educational employees.** (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-072 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-0715.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. 10-20-172, § 391-55-202, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-302 Special provision—Educational employees.** WAC 391-55-310 through 391-55-355 are not applicable to negotiations between educational employees and employers conducted under RCW 28A.657.050.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. 10-20-172, § 391-55-302, filed 10/6/10, effective 11/6/10.]

**Chapter 391-65 WAC**  
**GRIEVANCE ARBITRATION RULES**

**WAC**

391-65-002      Sequence and numbering of rules—Special provisions.

**WAC 391-65-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. 10-20-172, § 391-65-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.-090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-65-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-65-002, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.-090, 41.59.110 and 28B.52.080. 83-24-036 (Order 83-06), § 391-65-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-002, filed 9/30/80, effective 11/1/80.]