

**WASHINGTON STATE  
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD  
MEETING NO. 124  
JANUARY 31, 2008**

**PRIVATE VOCATIONAL SCHOOL ACT:  
ADOPTION OF WAC 490-105 AMENDMENTS**

**Background**

The passage of Senate Bill 5402 revised RCW 28C.10 authorizing the Workforce Training and Education Coordinating Board (Workforce Board) to increase accountability for schools and consumer protections for students. To implement SB 5402, Workforce Board staff drafted amendments to WAC 490-105, the private vocational school administrative rules. The state's rule making process includes a stakeholder comment period during which interested parties can submit comments to the agency. Workforce Board staff conducted two public hearings on the proposed amendments, one in SeaTac on October 23, 2007, and the second in Olympia on January 8, 2008. Staff considered testimony received during the public hearings, written comments from licensed schools and former students, and input by Board members in developing the proposed amendments.

**Proposal**

Workforce Board staff propose that the Board adopt the proposed WAC amendments.

**Board Action Requested:** Adoption of the recommended motion.

**RECOMMENDED MOTION**

**WHEREAS**, The Legislature passed and the Governor signed into law Senate Bill 5402 that required changes in WAC 490-105; and

**WHEREAS**, WAC changes need to be adopted by the Board;

**NOW, THEREFORE, BE IT RESOLVED**, That the Workforce Training and Education Coordinating Board adopts the attached amendments to WAC 490-105.

**WASHINGTON STATE  
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD  
MEETING NO. 124  
JANUARY 31, 2008**

**ISSUES NOT ADDRESSED IN PROPOSED AMENDMENTS  
WITH STAFF RECOMMENDATIONS**

The following questions were raised at the November 8, 2007 Board meeting. They are not included in the currently proposed amendments to WAC 490-105 for the reasons outlined below.

**How much notice should students receive when a school decides to close?**

Current RCW and/or WAC Language

WAC 490-105-210(3) states that schools must give written notice to the Workforce Board and to all enrolled students at least three business days prior to a planned closure. The notice must explain the procedures students' are to follow to secure refunds or continue their education.

Discussion

There was discussion at the November Board meeting about whether three days was sufficient time for students affected by a school closure to learn about their options and make alternate arrangements.

Staff Recommendation

Staff proposes calling a special meeting of the Private Vocational School Advisory Committee to get their input on this issue. Questions we need to answer are:

- a. How much notice is appropriate?
- b. What consequences should follow noncompliance?

Based on input from the Advisory Committee and other interested parties, staff would bring a proposal back to the Board for action at its May 14, 2008 meeting.

**How can we be confident about a school's financial condition without doing a thorough, on-site, audit of its financial records?**

Current WAC Language

The current proposed WAC revisions the Board is being asked to adopt today require all large, accredited schools to submit either audited or reviewed financial statements annually, whichever is required by their accrediting bodies. This will help.

## Discussion

In addition to requiring audited financial statements from the schools that pose the most risk to students, staff has also established a monitoring schedule which will ensure schools with \$250,000 or more gross tuition revenue per year are monitored once every two years and schools with less than \$250,000 gross tuition revenue per year are monitored once every five years. New schools will be monitored within six months of receiving their initial license. Monitoring visits will involve a review of the school's financial records including documentation of revenue and expenses.

## Staff Recommendation

Staff suggests we postpone further discussion on this issue until we have a chance to see whether the actions we've taken to date provide us with information we need to make an informed determination about a school's financial viability.

## **Is the Board liable if it decides to expand the definition of continuing education to exempt more schools?**

## Current WAC Language

The current WAC exempts only certain continuing education programs from licensure.

## Discussion

Staff initially suggested expanding the definition to include more continuing education programs. The rationale for the suggestion was that even though SB 5402 granted the Workforce Board an additional .5 FTE to manage the private vocational school licensing activity, the increased oversight of private vocational schools required under SB 5402, coupled with a steady increase in the number of private vocational schools operating in the state, is expected to generate more work than can be accommodated with such a small increase in FTE.

Many states exempt continuing professional education courses because they are generally of short duration and are offered to working professionals, a population that is thought to need less consumer protection than students attending preparatory programs. RCW28C.10 currently exempts schools that offer continuing education courses for accountants, insurance brokers, and registered nurses. The initial proposal would have expanded the exemption to include schools that teach continuing education courses for all occupations.

## Staff Recommendation

Staff has withdrawn the proposal to expand the definition of continuing education until more research can be done on the possible benefits vs. drawbacks of such a change.

**WASHINGTON STATE  
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD  
MEETING NO. 124  
JANUARY 31, 2008**

**SUMMARY OF PROPOSED AMENDMENTS TO WAC 490-105**

**Financial Viability**

RCW 28C.10.050, as amended by SB 5402, requires the agency to “(1) Assess whether a private vocational school is eligible to obtain and maintain a license in this state. (2) The requirements adopted by the agency shall, at a minimum, require a private vocational school to: (a) Disclose to the agency information about its ownership and financial position and to demonstrate to the agency that the school is financially viable and responsible ...”

**Proposed WAC Amendment**

WAC 490-105-040(2)(a)—The school must submit information reflecting its financial condition at the close of its most recent fiscal year to demonstrate that it has sufficient financial resources to fulfill its commitments to students.

- (i) Each non-accredited school must submit a financial statement in a format supplied by the agency.
- (ii) Each accredited school must submit an audited **or reviewed** financial statement, whichever is required by its accrediting body.

WAC 490-105-040(4)—A school must demonstrate to the agency that it is financially viable under the requirements established by this section.

(a) The agency considers a school to be financially viable only if it:

- (i) Is able to provide the services described in its official publications and statements;
- (ii) Is able to provide the administrative resources necessary to comply with the requirements of this subsection;
- (iii) Is able to meet all of its financial obligations, including, but not limited to refunds that it is required to make;
- (iv) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1;
- (v) Had, for its latest fiscal year, a positive net worth. For the purposes of this subsection, a positive net worth occurs when the school’s assets exceed its liabilities;
- (vi) Has not had operating losses over both of its two latest fiscal years. In applying this standard, the agency may consider the effect of unusual events;
- (vii) Has not had, for its latest fiscal year, an operating deficit exceeding ten percent of the institution's net worth. For purposes of this subsection, an operating deficit occurs when operating expenses exceed revenues from current business activities.

(b) A school that is not financially viable may be considered “at-risk” and be required to follow the procedures cited in WAC 490-105-175.

## **Instructor Qualifications**

RCW28C.10.050, as amended by SB 5402, requires all schools to “comply with the requirements related to qualifications of administrators and instructors.”

## **Proposed WAC Amendment**

WAC 490-105-040(7)(b)—The school must establish and enforce written policies for the qualification, supervision, **continuing education**, and periodic evaluation of administrators, faculty, and staff.

(d) Faculty must be qualified to provide instruction in their areas of specialization as demonstrated by possession of the following:

- (i) Sufficient broad and comprehensive training;
- (ii) Industry recognized certification when available; and
- (iii) Two years of relevant education or work experience or relevant, current teaching experience that particularly qualifies them to provide instruction in their areas of specialization; or
- (iv) Current evidence of being qualified to teach that has been issued by a regulatory agency of this or another state.

(e) In addition to the requirements in (d) of this subsection, faculty who teach a course related to an occupation for which the student must subsequently be licensed or certificated must hold or be qualified to hold such a license or certificate.

## **Schools at Risk of Closure**

RCW28C.10.050, as amended by SB 5402, adds language that allows the agency to “determine that a licensed private vocational school or a particular program of a private vocational school is at risk of closure or termination if: (a) there is a pattern or history of substantiated student complaints filed with the agency pursuant to RCW28C.10.120; or (b) the private vocational school fails to meet minimum licensing requirements and has a pattern or history of failing to meet the minimum requirements.”

## **Proposed WAC Amendment**

WAC 490-105-030(5) - “At-risk” means the school demonstrates a pattern or history of one or more of the following conditions that the agency determines raise doubts for the continued successful and profitable operation of the organization:

- (a) Failure to meet the standards of financial responsibility;
- (b) Misrepresentation;
- (c) A decrease in enrollment from the previous reporting period of fifty percent or more or twenty-five students, whichever is greater;
- (d) Frequent substantiated complaints filed with the agency;

(e) Staff turnover from the previous year of fifty percent or more or three staff, whichever is greater; and

(f) Conditions listed in (c) and (e) of this subsection, caused by unusual circumstances, shall be evaluated by the agency and exceptions may be granted.

WAC 490-105-175—What steps will the agency take if a school is determined to be “at-risk?”

(1) The agency may determine a school is “at-risk” if it demonstrates a pattern or history of one or more of the conditions described in the definition of “at-risk.”

**(2) A school determined to be at-risk may petition the agency to reconsider that designation if the school believes it is unreasonable, unfair, or not in keeping with the intent and purpose of the Act. The agency will consider the school’s petition and may rescind the “at-risk” designation.**

### **Proposed WAC Amendment**

WAC 490-105-030(5)—“At-risk” means the school demonstrates a pattern or history of one or more of the following conditions that the agency determines raise doubts for the continued successful and profitable operation of the organization:

- (a) Failure to meet the standards of financial responsibility;
- (b) Misrepresentation;
- (c) A decrease in enrollment from the previous reporting period of fifty percent or more or twenty-five students, whichever is greater;
- (d) Frequent substantiated complaints filed with the agency;
- (e) Staff turnover from the previous year of fifty percent or more or three staff, whichever is greater; and

(3) The school’s owner and/or director will be required to meet with agency staff to discuss the conditions that lead to the designation.

(4) A school determined to be “at-risk” will be placed on probation and will be required to provide:

(a) A school improvement plan acceptable to the agency within 30 days after meeting with agency staff;

(b) A line of credit if appropriate; and

(c) Monthly progress reports for up to 12 months that include at a minimum:

- (i) Steps taken to correct identified deficiencies; and
- (ii) Current student directory information.

(5) During the probation period the school must demonstrate improvement or the agency will take action to suspend or revoke its license.

(6) The agency may publish on its web site, a list of schools whose licenses have been either suspended or revoked.

### **New Protections for ESL Students**

RCW28C.10.050, as amended by SB 5402, requires schools to “assess the basic skills and relevant aptitudes of each potential student, including “but not limited to administering a United States Department of Education-approved English as a second language exam before enrolling students for whom English is a second language unless the students provide proof of graduation from a United States high school or proof of completion of a GED in English or results of another academic assessment determined appropriate by the agency.”

### **Proposed WAC Amendment**

WAC 490-105-040(2)—The school must measure all applicants’ ability to benefit against current prerequisites for employment in the job objective established for the program, e.g., prior work and health history, English language proficiency, driving and arrest records, and evaluations of any applicable physiological factors such as vision acuity, color perception, lifting and weight bearing capabilities, and manual dexterity.

(3) Schools may consider that applicants have adequate academic abilities if they have earned a high school diploma or General Educational Development (GED) certificate.

(4) Schools may consider that applicants have adequate English language proficiency if they have received:

- (i) a high school diploma from a high school where English is the official language;  
or
- (ii) a General Educational Development (GED) certificate in English; or
- (iii) a passing score on the Test of English as a Foreign Language, or the International English Language Testing System, or a similar language proficiency exam, or
- (iv) a satisfactory evaluation of their foreign coursework by a reputable company that specializes in such evaluations.

(5) The school must test all other applicants.