

AMENDATORY SECTION (Amending WSR 05-19-142, filed 9/21/05, effective 10/22/05)

**WAC 292-100-007 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive director, ~~((the))~~ investigators, administrative officer, and assistant attorneys general who bring cases before the board~~(, and the training and information specialist))~~.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

(4) ~~(( "Lobbying," for the purposes of RCW 42.52.380, does not include written communication by the board to members of the state legislature or to any other government official on matters pertaining directly to the Ethics in Public Service Act.))~~ "Investigation" means the fact finding conducted prior to a dismissal or reasonable cause determination.

(5) "Party" includes the board staff and the respondent. ~~((The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.~~

~~(6) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.~~

~~(7))~~

(6) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

~~((8))~~ (7) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW ~~((by a complainant))~~.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-100-020 Complaint procedures—Status of complainant and others.**

(1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person ~~((shall))~~ will have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose ~~((; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter))~~.

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member will be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) This section does not affect the right to request a review of a board staff decision to dismiss a complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

~~((3) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.))~~

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-100-030 Complaint procedures ~~((for filing complaints))~~.**

(1) A complaint filed with the board shall be in writing on a form provided by the board~~((7))~~ or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant or by the complainant's counsel, unless anonymous.

(2) A complaint shall include:

(a) The complainant's name~~((; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified))~~, unless anonymous;

(b) A statement of the nature of the alleged violation(s) and the name of person(s) responsible ~~((and the complaint should also include))~~ as well as the date, time, and place of each alleged violation; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it, has occurred.

(3) A complaint which is incomplete, ~~((or))~~ does not contain enough information to allege a violation of chapter 42.52 RCW, or is not within the jurisdiction of the board, will not be accepted for filing.

~~((4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.))~~

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-100-041 Investigation of complaints.** (1) ~~((If board staff determines that a complaint should not be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045, the board staff shall conduct a preliminary investigation.~~

~~((2))~~ During the course of ~~((the preliminary))~~ an investigation, the board staff will give the respondent(s) a copy of the complaint or a summary ~~((thereof))~~ of the complaint, and an opportunity to ~~((present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW,))~~ respond to the allegations. In accordance with RCW 42.52.410, the complainant's name and identifying information ~~((shall))~~ may be ~~((deleted))~~ redacted from the complaint.

~~((3) It is the intent of the board that))~~ (2) During the course of the investigation board staff (who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it) will provide the employing agency with a copy of the complaint or a summary of the complaint, unless board staff determines it would impede the investigation. (During the course of the investigation, the board staff shall provide the employing agency with a copy of the complaint or a summary thereof. If a complainant has requested confidentiality under chapter 42.17 RCW)) In accordance with RCW 42.52.410, the complainant's name and identifying information (shall be deleted) may be redacted from the complaint.

~~((4) The board staff shall reduce the results of a preliminary review or investigation to writing.))~~

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-100-042 Board staff referral of allegations.** (1) If the complaint is outside the jurisdiction of the board, the board or its staff may also refer such allegations to an appropriate agency with jurisdiction.

(2) The board staff may refer a complaint (or a summary thereof) to the employing agency for investigation and recommendation of resolution. In accordance with RCW 42.52.410, the complainant's name and identifying information may be redacted from the complaint.

(a) The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation, allowing at least thirty days. (If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.)) The agency receiving the referral may request additional time, if needed.

(b) During the course of the agency's investigation, the agency (shall) will contact the respondent and provide the respondent with a copy of the complaint. The agency will provide the respondent with an opportunity to (present such information as the respondent may desire.

~~(2))~~ respond to the allegations.

(3) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the board staff may refer the complaint to the appropriate law enforcement authority (and if). Once referred, the board staff will suspend their investigation until the law enforcement authority responds as to whether criminal charges will be filed. If the law enforcement authority elects to file criminal charges, no further action will be taken while the criminal case is pending. If the law enforcement authority elects not to file criminal charges, board staff (shall) will complete their investigation (and follow the procedures set forth in these rules)).

AMENDATORY SECTION (Amending WSR 07-02-001, filed 12/20/06, effective 1/20/07)

**WAC 292-100-045 Dismissal of complaints.** (1) ~~((If after a preliminary review or investigation))~~ The executive director may dismiss the complaint if the board or the board staff determines that:

(a) Any alleged violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) The complaint presents a violation of chapter 42.52 RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter ~~((, the executive director may dismiss the complaint by issuing an order of dismissal)).~~

(2) If the executive director dismisses the complaint, the ~~((preliminary review or))~~ investigation report and a written notice of the executive director's order of dismissal ~~((shall))~~ will be provided to the complainant, respondent, and the board and ~~((shall))~~ will include a statement of the complainant's right to ~~((appeal to))~~ request review of the dismissal by the board. ~~((See RCW 42.52.425.))~~

(3) If the board dismisses the complaint, written notice ~~((shall))~~ will be provided to the complainant ~~((, respondent, and the board. (See RCW 42.52.425.))~~) and the respondent.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-100-046 Complainant's request for review of executive director's dismissal order.** (1) ~~((Upon the written request of the complainant, the executive director's order of dismissal will be reviewed by the board.~~

~~((2))~~) A written request for review by a complainant must be received at the board's administrative office no later than twenty days after the date the order of dismissal is mailed to the complainant.

~~((3))~~) (2) A request for review ~~((shall))~~ must state the grounds ~~((therefor))~~ for the request for review.

~~((4))~~) (3) When a request for review is received, the board staff ~~((shall))~~ will prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

(a) The complaint;

(b) The ~~((preliminary review or))~~ investigation report ~~((, as applicable))~~;

(c) The order of dismissal;

(d) The complainant's request for review;

(e) The executive director's response to the request for review;

and

(f) Any additional material requested by the chair or the chair's designee.

~~((5))~~) (4) At the next available opportunity, the board ~~((shall))~~ will review the record and deliberate in closed session,

without oral argument, and act on the request (~~at the next meeting at which it may be practicable~~) by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or
- (c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

~~((6))~~ (5) In reviewing the executive director's order of dismissal, the board (~~shall~~) will base its review on whether the executive director had a rational basis for the decision. The board will only (~~shall~~) reverse a decision to the extent that a rational basis is lacking.

~~((7))~~ (6) The board's decision (~~shall be reduced to~~) will be in writing and provided to the complainant and the respondent.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-100-047 Board member's request for review of executive director's dismissal order.** (1) (~~Upon the written request of a board member, the executive director's order of dismissal will be reviewed by the board.~~

~~(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the board at the next regular meeting.~~

~~(3) A request for review by a board member must be received by the executive director no later than twenty days after the date the order of dismissal is provided to the board.~~

~~(4))~~ A written request for review by a board member must be received by the executive director no later than twenty days after the date the order of dismissal is provided to the board.

(2) When a request for review is received, the board staff (~~shall~~) will prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

- (a) The complaint;
- (b) The (~~preliminary review or~~) investigation report(~~, as applicable~~);
- (c) The order of dismissal;
- (d) Any additional material requested by the chair, the chair's designee or the board member who requested the review.

~~((5) The board shall review the record, consider the request in executive session, and act on the request at the next meeting at which it may be practicable)~~ (3) At the next available opportunity, the board will review the record and deliberate in closed session, without oral argument, and act on the request by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or
- (c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

~~((6))~~ (4) In reviewing the executive director's order of dismissal, the board will base its review on whether the executive director had a rational basis for the decision. The board will only reverse a decision to the extent that a rational basis is lacking.

(5) The board's decision (~~(shall be reduced to)~~) will be in writing and provided to the complainant and the respondent.

AMENDATORY SECTION (Amending WSR 07-02-001, filed 12/20/06, effective 1/20/07)

**WAC 292-100-050 Determination on reasonable cause.** (1) Following (~~the preliminary~~) an investigation, if the complaint is not dismissed, the board staff (~~(shall)~~) will prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to (~~whether~~) the potential penalty (~~(should be greater than \$500)~~).

(2) Upon receipt of the board staff's investigation report and recommendation, the board (~~(shall)~~) will determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred and (~~whether any~~) the potential penalty (~~(should be greater than \$500)~~).

(3) The board's reasonable cause determination (~~(shall)~~) will be done in closed session.

(4) If after determining reasonable cause, the board (~~(further)~~) determines that the penalty and costs should be greater than (~~(\$500)~~) five hundred dollars, the respondent (~~(shall)~~) will be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters (~~(. If the respondent is not given that option, the board may not impose penalty and costs greater than \$500)~~) in accordance with RCW 42.52.500.

(5) The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(~~(+5)~~) (6) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board (~~(shall)~~) will either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Reject or concur with the report and recommendation and dismiss the complaint; or

(c) Concur with the report and recommendation and (~~(either initiate a hearing if the recommended penalty is a monetary fine or)~~) proceed under this section; or

(d) Concur with the report and recommendation and refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency (~~(shall)~~) will report implementation to the board and the board (~~(shall)~~) will then dismiss the complaint (~~(; or~~

(e) ~~Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or~~

(d) ~~Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section).~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 292-100-010      Initiation of complaint.
- WAC 292-100-040      Acceptance and preliminary review of complaints.