

November 30, 2009

TO: Craig McLaughlin, Executive Director  
State Board of Health

Mary Selecky, Secretary  
Department of Health

FROM: Ned Therien, Health Policy Analyst  
State Board of Health

SUBJECT: CONCISE EXPLANATORY STATEMENT FOR  
CHAPTER 246-366 WAC, PRIMARY AND SECONDARY SCHOOLS, AND  
CHAPTER 246-366A WAC, ENVIRONMENTAL HEALTH AND SAFETY  
STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS

1. *Identify the agency's reasons for adopting this rule.*

This rule revision began in response to repeated complaints from the public to the State Board of Health (Board) about unhealthy physical conditions in some of Washington's schools. The reasons for adopting these rules are to update and add to existing Board rules to better protect children from illness, injury, and exposure to hazards in public and private schools. Parents expect their children's schools to have safe and healthy environments. Since education is compulsory under Washington State laws, this responsibility lies primarily with the State. The proposed rules address gaps in existing Board rules and between those of other agencies, such as the Building Code Council and the Department of Labor and Industries, to better protect the health and safety of students and other people using and visiting school facilities.

The Board adopted the rules on August 12, 2009.

2. *Are the adopted rules different from the text of the proposed rules published in the Washington State Register as WSR 09-14-136? Yes*

*If yes, explain how the rules were changed.*

The Board filed an original rule proposal on July 23, 2008 as WSR 08-15-174; a continuance as WSR 09-04-049; and a supplemental rule proposal on July 1, 2009 as WSR 09-14-136. The supplemental rule proposal considered by the Board on August 12,

2009 contained two alternatives. The Board adopted a blend of the two alternatives. The Board amended proposed rule text of Alternative B to fit with the process for implementing the rules proposed under Alternative A. The amendments clarify that the existing rules, Chapter 246-366 WAC, would remain in effect until they are superseded by new rules under Chapter 246-366A WAC. The amendments make editorial changes reflecting that implementation of new or amended rules applicable to school facilities are currently restricted by Section 222(1) of ESHB 1244, the biennial budget bill passed during the 2009 legislative session, and might be restricted in the future by possible actions of the Legislature regarding funding to public schools. The amended language clarifies process regarding implementation without making substantive changes to the requirements of the proposed rule language in Alternative B. Table 1 lists amendments adopted by the Board on August 12, 2009 to proposed rule language filed as Alternative B under WSR 09-14-136.

The process adopted by the Board for establishing the effective date of the rule is to file a rule making order by December 27, 2009 with a stated effective date of July 1, 2010. This rule making order could be amended, as necessary, before the effective date is reached to reflect current restrictions and possible additional actions by the Legislature. The adopted rule requires the Board to provide notice of implementation to interested parties electronically when the new rules become effective.

3. *By category or subject matter, summarize all comments received since filing the CR-102 regarding the proposed rule, staff recommendations, and either how the final rules reflect agency consideration of those comments or why the agency cannot use those comments.*

Original rule proposal published in 2008 as WSR 08-15-174.

The Board received testimony from July 2008 through September 10, 2008 on the original rule proposal filed July 23, 2008. The Board evaluated these comments in conjunction with recommendations from staff. The comments lead to the Board adopting some changes to the proposal at its October 8, 2008 meeting. Table 2 summarizes the testimony on the original proposal, staff evaluation, and any changes made by the Board in response.

Additional comments on original rule proposal published as WSR 08-15-174.

The Board received additional public comments about the original rule proposal after September 10, 2008 through June 2009. Although these comments are not required to be part of the official rule making file, they are summarized in Table 3.

Supplemental rule proposal published in 2009 as WSR 09-14-136.

The Board received testimony from July 2008 through August 12, 2009 on the supplemental rule proposal filed July 1, 2009. The Board evaluated these comments in conjunction with recommendations from staff before adopting an amended rule proposal on August 12. Table 4 summarizes the testimony on the supplemental proposal, staff evaluation, and any amendments made by the Board in response to the comments.

4. *Describe any remaining public opposition to the rule.*

Parents, teachers, and the Washington Education Association have stated that the proposed rules do not go far enough to protect children, teachers, and other school workers, while school officials insist the rules are too costly and do not provide a corresponding benefit. Schools have identified lack of funding to be their main hindrance to implementing these rules. Members of the legislature mirror this array of concerns, with some legislators commenting that the health and safety of children is paramount and others questioning the Board and Department of Health because of the cost associated with the proposed rules and the impact it will have on fragile school budgets, especially at this time of economic uncertainty. Private schools have concerns because they have been hit hard by the current downturn in the economy and even if the Legislature funds public school implementation of the rules, private schools will receive none of those funds. Local health jurisdictions have concerns that they too need funding for implementation, particularly start-up costs for training staff.

Any questions regarding this rule adoption should be directed to Ned Therien at 360-236-4103 or ned.therien@doh.wa.gov.

Attachments:

Table 1, Amendments to Supplemental Proposal filed as WSR 09-14-136

Table 2, Testimony on Original Proposal through September 10, 2008

Table 3, Comments on Original Proposal after September 10, 2008 through June 10, 2009

Table 4, Testimony on Supplemental Proposal filed as WSR 09-14-136

CR-103 form

Final (OTS) copy of rule

Rule Implementation Plan

Final Cost of Rulemaking

cc: Keith Higman, Chair of State Board of Health  
Karen VanDusen, State Board of Health  
John Austin, State Board of Health  
Gregg Grunenfelder, Department of Health

**Table 1. Amendments to WSR 09-14-136  
Chapter 246-366 WAC and Chapter 246-366A WAC  
Adopted by State Board of Health August 12, 2009**

Amendment	Published Language, Alternative B	Language Adopted by Board	Comments
<b>Revise 366-005</b>	"The purpose of this chapter is to maintain minimum environmental health and safety standards for school facilities until the legislature permits full or partial implementation of chapter 246-366A WAC. To the extent funded or otherwise approved by the legislature, chapter 246-366A WAC is intended to replace or supersede this chapter or corresponding portions thereof as identified by the Washington state board of health."	"The purpose of this chapter is to maintain minimum environmental health and safety standards for school facilities until legislative action allows for full or partial implementation of chapter 246-366A WAC. To the extent the legislature funds or otherwise allows for its implementation, chapter 246-366A WAC is intended to replace or supersede this chapter."	Editorial changes to remove unnecessary language and improve accuracy. Rule could be implemented without Legislature's explicit approval if it funds implementation or removes restrictions.
<b>Revise 366A-001(2)</b>	"Implementation of this chapter is subject to the state legislature providing funding to public schools in accordance with section 222 of the 2009-11 biennial operating budget, chapter 564, laws of 2009, or other form of legislative action. Unless and until the legislature approves full or partial implementation of this chapter, chapter 246-366 WAC shall take precedent and this chapter shall not be implemented or enforced in any manner."	"Implementation of this chapter is subject to the state legislature providing funding to public schools in accordance with section 222 of the 2009-11 biennial operating budget, chapter 564, laws of 2009, and may be subject to future legislative requirements. Unless and until legislative action allows for full or partial implementation of this chapter, chapter 246-366 WAC shall take precedent and this chapter shall not be implemented or enforced in any manner."	Editorial changes to improve accuracy. Rule could be implemented without Legislature's explicit approval if it funds implementation or removes restrictions.
<b>In 366A-003(1) strike "by the legislature"</b>	"Implementation of this chapter, in whole or in part, requires one or more of the following actions by the legislature..."	"Implementation of this chapter, in whole or in part, requires one or more of the following actions..."	Editorial changes to remove unnecessary language and improve accuracy. All the actions listed are specifically within Legislature's purview; Governor's signature also required.

Amendment	Published Language, Alternative B	Language Adopted by Board	Comments
<p><b>Strike 366A-003(2) and replace with new language</b></p>		<p>“The state board of health shall amend as necessary any order adopting this chapter, filed in accordance with RCW 34.05.060, and any effective dates listed therein to ensure no portion of this rule is implemented at a time and in a manner prohibited by the legislature.”</p>	<p>Editorial changes provide for use of rule making order (CR-103 form) as procedural technique to implement new rule. instead of contingent implementation dates and interpretive statements</p>
<p><b>Strike 366A-003(3) and replace with revised notification provisions of former 366A-003(2)</b></p>	<p>“Within thirty-one days after the effective date of any law or legislative resolution that funds or otherwise approves full or partial implementation of this chapter, the state board of health shall provide notice of implementation by submitting an interpretive statement for publication in the <i>Washington State Register</i> in accordance with RCW 34.05.230...” See immediately above.</p>	<p>“Before implementing this rule, in whole or in part, the state board of health, in addition to filing an amended rule making order for publication in the <i>Washington State Register</i>, shall provide notice of implementation.”</p>	<p>Use of rule making order rather than contingent implementation dates and interpretive statements makes old language about implementation dates both inconsistent and unnecessary. This editorial change retains notification provisions, but notice would not be an interpretive statement.</p>
<p><b>Renumber 366A-003(2)(a) and revise</b></p>	<p>“The interpretive statement shall identify the legislative action being interpreted, the section or sections of chapter 246-366A WAC being implemented, the implementation date or dates for each section or sections, the corresponding section or sections of chapter 246-366 WAC that will be superseded, and a brief explanation of significant differences between the requirements of this chapter and the corresponding sections of chapter 246-366 WAC.”</p>	<p>“The notice shall identify the action taken by the legislature that allows for implementation, the section or sections of chapter 246-366A WAC being implemented as a result of that action, the effective date or dates for each section or sections, the corresponding section or sections of chapter 246-366 WAC that will be superseded or repealed, and a brief explanation of significant differences between the requirements of this chapter that are being implemented and the corresponding requirements of chapter 246-366 WAC.”</p>	<p>The editorial change still provides for notification, but does not rely on interpretive statements. Use of the rule making order for implementation changes terminology from “implementation” date to “effective” date. Editorial changes anticipate future rule making to repeal 246-366 WAC and more accurately reflect Board’s limited discretion when responding to legislative actions.</p>

Amendment	Published Language, Alternative B	Language Adopted by Board	Comments
<b>Renumber 366A-003(2)(b) and replace “interpretive statement” with “notice”</b>	“The state board of health shall maintain a roster of interested persons and shall send an electronic copy of the interpretive statement to each person on the roster as well as to the following agencies and organizations...”	“The state board of health shall maintain a roster of interested persons and shall send an electronic copy of the notice to each person on the roster as well as to the following agencies and organizations...”	See immediately above
<b>Renumber 366A-003(2)(c) and revise</b>	“The office of superintendent of public instruction shall forward the notice of implementation electronically to school districts, school principals and private schools.”	“The office of superintendent of public instruction shall forward, to the extent possible, the notice of implementation electronically to school districts and approved private schools.”	Editorial change reflects comment from the Office of Superintendent of Public Instruction that its contact lists are incomplete for current principals and private schools.
<b>Revise 366A-003(4)</b>	“The state board of health shall maintain a web page showing the sections of this chapter that have been or are scheduled to be implemented, the implementation dates, and the corresponding sections of chapter 246-366 WAC that have been or will be replaced or superseded.”	“The state board of health shall maintain a web page showing the sections of this chapter that have been or are scheduled to be implemented, their effective dates, and the corresponding sections of chapter 246-366 WAC that have been or will be superseded or repealed.”	Editorial change of terminology from “implementation” dates to “effective” dates. Also, editorial change that anticipates future rule making to repeal 246-266 WAC.
<b>Revise 366A-005(1)</b>	“To the extent funded or implemented through legislative action, this chapter...”	“To the extent implemented in accordance with legislative action, this chapter...”	Editorial change.
<b>Revise 366A-005(8)</b>	“If the local permitting jurisdiction received a complete building permit application for school construction prior to the implementation date of any construction-related requirements of this chapter, the construction-related requirements of chapter 246-366 WAC in effect at the time of application apply.”	“If the local permitting jurisdiction received a complete building permit application for school construction prior to the effective date of any construction-related requirements of this chapter, the construction-related requirements of chapter 246-366 WAC and this chapter in effect at the time of application apply.”	Editorial change of terminology from “implementation” dates to “effective” dates. Also, editorial change to reflect possibility of phase-in where portions of 366 and 366A would both apply.

Amendment	Published Language, Alternative B	Language Adopted by Board	Comments
	<p>Replace “implementation date” with “effective date” in 366A-020(2)(a)(i), 366A-030(6), 366A-090(3), 366A-090(4)(c), 366A-095(2)(a), 366A-095(2)(b), 366A-0130(3)(a), 366A-0130(3)(b)(i), 366A-0130(3)(b)(ii), 366A-0130(4)(a)(i), 366A-0130(4)(a)(ii), 366A-0130(4)(a)(iii), 366A-0135(3)(a), 366A-0135(3)(b), 366A-0135(3)(c)</p>		<p>Editorial changes. See comments immediately above.</p>
<p>Revise 366A-170(2)(d)</p>	<p>“...The report must be submitted by March 1<sup>st</sup> of each year, beginning in 2013...”</p>	<p>“...The report must be submitted by March 1<sup>st</sup> of each year, beginning the third year after the effective date of this section...”</p>	<p>Editorial change. The effective date of each section is now uncertain because of legislative action.</p>

**Table 2. Summary of Testimony on Original  
State Board of Health School Rule Proposal for Chapter 246-366A WAC  
Filed as WSR 08-15-174  
Received by September 10, 2008**

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>General</b> Reference enforcement provisions of RCW 43.20.050(5) in rule text.</p>	Parents	This section of law is frequently misinterpreted. For example, some have argued that all state employees have enforcement authority and can therefore enter and inspect school facilities. A misdemeanor must be witnessed by law enforcement and prosecuting attorney must be willing to pursue case. The Board may not levy fines on its own.	No change
<p><b>General</b> Add specific enforcement provisions.</p>	Teacher	The Board's Environmental Health (EH) Committee extensively discussed enforcement policy for this rule regarding earlier drafts. It recommends local health agencies function in a consultative role.	No change
<p><b>General</b> Make language more inclusive of non-students.</p>	Parents	Language is specific to facilities in most instances, and would benefit all building occupants. This is consistent with statutory authority. Language is specific to students and student exposures in others where likely to create a higher working conditions standard for school employees (for example, daylight and exposure to air contaminants from office equipment). Language related to staff and other occupants is limited. There are many examples of state regulations affecting conditions in workplaces. Examples include smoking ban and radiation protection.	No change
<p><b>General</b> Make rules specific to students.</p>	Puget Sound School Coalition (1.A.)	See immediately above	No change
<p><b>General</b> Refine fiscal analysis</p>	Puget Sound School Coalition (1.E.)	Fiscal analysis is draft document until filed with code reviser with CR-103 and does not require Board approval.	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>General</b> Instead of adopting rule proposal, upgrade guidance in K-12 Manual and provide more training.</p>	<p>School risk pool managers</p>	<p>Not clear whether this was intended to replace rule or just become focus of work if rule is delayed in response to request by legislators. Option will be considered if and when a decision is made to delay adoption.</p>	<p>No change</p>
<p><b>General</b> DOH must provide local health jurisdictions with an inspection form and update the K-12 Health and Safety Guide before the rule becomes effective.</p>	<p>Whatcom County Health Department</p>	<p>Proposed section 015 requires the Department of Health (DOH) to update the guide every four years. It is anticipated work would begin once rule is adopted. There would be time for this work between adoption and implementation. DOH could work on a model inspection form at the same time.</p>	<p>No change</p>
<p><b>General</b> DOH must provide training to local health personnel before the rule becomes effective, including NPSI training for playground inspections.</p>	<p>Whatcom County Health Department</p>	<p>Subsection 020(3)(a) requires DOH to make training available to local health and school personnel. However, NPSI playground inspection training is proprietary.</p>	<p>No change</p>
<p><b>General</b> New requirements in this rule should have incremental implementation.</p>	<p>Pullman School District</p>	<p>Phase in of provisions was extensively discussed at stakeholder workgroup meetings in spring 2008 and between staff and members of SBOH EH Committee. The phase in of provisions has been built into the proposals.</p>	<p>No change</p>
<p><b>General</b> Do not adopt standards where Legislature considered and declined to adopt legislation.</p>	<p>Puget Sound School Coalition (I.D.)</p>	<p>This legal argument applies in limited circumstances and requires laying a legal foundation. Would not seem to apply to circumstances cited. Given the number of bills introduced and considered to one degree or another by the Legislature, this kind of extremely broad interpretation would completely hobble all regulatory agencies.</p>	<p>No change</p>
<p><b>General</b> Children should be protected from possible health risks by high standards not outdated minimums. Adopt the new rules.</p>	<p>Parent</p>	<p>This is a goal of the Board.</p>	<p>No change</p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>General</b> Schools need funding to be able to implement rule and fix problems. Economic impact would be too great to adopt new rules at this time.</p>	Public and private schools	The Board has considered testimony about school funding issues. It has established a policy to advocate for school funding for health and safety. A dual standard for public and private schools is not recommended; however, State funding of private entities would not be expected.	No change
<p><b>General</b> Local health agencies need funding to implement these rules.</p>	Local health agencies	The Board has established a policy to advocate for state funding to public health agencies for school health and safety programs. Local health agencies could charge fees to schools for some associated activities, but not for such things as training.	No change
<p><b>General</b> Supportive of improvements to schools to better assure safety of students. Concern about cost to private schools and their families unless new requirements are funded by the State. Delay implementation.</p>	Private and religious-affiliated schools	The Board has considered testimony about private school funding issues. EH Committee members recommend that students in private schools receive the same protections as students in public schools. State funding of private entities would not be expected.	No change
<p><b>General</b> School maintenance has been deferred too long. Bad conditions in schools have affected the health of students and teachers. Adopt updated rules.</p>	Parents, teachers, WEA	The Board has heard considerable such testimony over the past decade. A goal set by the Board is to close some gaps in protections from environmental health and safety hazards in schools.	No change
<p><b>General</b> The new rules are improved over existing rules.</p>	Local health agencies	This is a goal set by the Board.	No change
<p><b>General</b> Do not adopt rules without consideration of legislative budget process for funding improvements to public schools.</p>	Legislators and school officials	At its October 2008 meeting, the Board postponed further action on the rule until June 2009, based on legislator requests. The Board and DOH are restricted from implementing new or amended provisions during the 2009-2011 biennium by Section 222(1) of ESHB 1244, the state operating budget, unless the Legislature provides funding.	Board postponed decision on rule until after 2009 legislative session and then directed supplemental proposal, which was filed July 1, 2009.

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>005</b> Ensure HVAC sections are not seen as contradicting or superseding the state building code.</p>	<p>Building Code Council</p>	<p>Some proposed provisions are intended to be more stringent than the building code. Others reference building codes only so local health officers can reference them when assessing operation and maintenance. Consulted with Building Code Commission staff on applicability language.</p>	<p>Added a subsection to 005: <u>“These rules are not intended to replace requirements of the building code council under title 51 WAC, but may be more stringent to protect health and safety.”</u></p>
<p><b>005(1)</b> Remove preschool students from these rules to avoid conflict with authority of Department of Early Learning and clarify exemption for private residences.</p>	<p>Spokane Regional Health District</p>	<p>The intention is that all students in K-12 school facilities receive appropriate protections. Since some K-12 school facilities have preschool students using the facilities, those portions of the facilities should be covered under these rules. Question about private residence does not ask for rule change. Any facility that is a private residence would be exempt.</p>	<p>No change</p>
<p><b>005(5)(b) and (c)</b> Amend to not require alterations of existing portions of a school to meet new requirements in this proposal.</p>	<p>Puget Sound School Coalition (1. C. first and second paragraphs)</p>	<p>Major concern here, based on conversations with PSSC, seems to be upgrading of existing science labs when it may not be reasonable or even possible to meet new standards for labs and shops. These subsections are intended to limit applicability of new construction requirements for alterations only to the areas being altered as specified in an application for a building permit. This limited applicability is intended to be consistent with how new building code requirements are applied to alterations. If modifications to a lab do not change the ventilation system, the ventilation requirements of section 160 would not apply.</p>	<p>No change</p>
<p><b>010</b> Include definition of Washington State Building Code</p>	<p>Building Code Council</p>	<p>Addition recommended for 005 would accomplish this in a general fashion.</p>	<p>No change</p>
<p><b>010</b> Define health room</p>	<p>Teacher</p>	<p>Health room is a well-understood term of art used by school officials, school designers and school nurses according to contacts at OSPI and literature review.</p>	<p>No change</p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<b>010</b> Define “mold.”	Parent	The Board does not intend the word “mold” to mean anything different from the definition in a standard dictionary.	No change
<b>010(1)</b> Definition of “air contaminants of public health importance” is too vague.	Puget Sound School Coalition (2.A.)	This comment calls for a fundamental policy shift and has been rejected numerous times. Rule takes a source control approach. This would require no action unless standards exceeded. For many contaminants standards do not exist (or they exist only for ambient or industrial circumstances), for others standards are not specific to children, and for others standards are highly controversial and are likely to be more stringent in the near future. This would necessitate ongoing air monitoring for numerous contaminants.	No change
<b>010(14)</b> Clarify definition of faucets to include those that discharge hot and cold separately.	Spokane Regional Health District	Proposed language appears to only address faucets that have mixing valves for hot and cold water.	Amended 010(14) to read: “Faucet...can discharge <u>hot water, cold water, or both.</u> ”
<b>010(20)</b> Exempt elementary schools from regulation of labs and narrow definition of laboratories.	Puget Sound School Coalition (2.B.)	Proposal is meant to apply only to facilities with added risk, but as written could be interpreted to mean that all labs and shops such as those described in the second sentence are presumed by their nature to pose a higher risk. It is possible to imagine such facilities could exist at an elementary school. However, there is no presumption that elementary science classrooms must be included if no exposure to hazardous materials or air contaminants of public health significance is likely.	Amended second sentence in 010(21), renumbered from 010(20), to read: “ <u>Such laboratories may include, but are not limited to, chemistry, physics, material science, and biology laboratories and art studios (for example: darkrooms, ceramic studios, and print making studios).</u> ”

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>010(31)</b> Remove “school-owned or leased” from definition of school facility and change “building <u>and</u> grounds” to “building <u>or</u> grounds.”</p>	<p>Spokane Regional Health District</p>	<p>The definition of school facility was heavily discussed by stakeholder group in spring 2008 regarding owned or leased. However, this is new information about instances where the operator of the school is given use of the facility. It has been the intention that school playgrounds that are off-site of the school building would be regulated.</p>	<p>Amended 010(32), renumbered from 010(31), to read: “‘School facility’ means <u>buildings or grounds owned or leased by the school or donated to the school for the primary purpose of student use including...</u>”</p>
<p><b>020</b> Reference underlying statutory authority, RCW 43.20.050, in rule text.</p>	<p>Parents</p>	<p>Statutory authority is listed as a footnote to all WAC sections in official print and electronic publications.</p>	<p>No change</p>
<p><b>020</b> Require indefinite retention of records.</p>	<p>Parent</p>	<p>Chapter 40.14 RCW requires public agencies to generally retain official records for six years.</p>	<p>No change</p>
<p><b>020</b> Specify that imminent health hazards requiring immediate action and notification of the health officer include norovirus outbreaks affecting 10% or more of a school population.</p>	<p>Whatcom County Health Department</p>	<p>Imminent health hazard is defined in proposed 010(19) to include a significant threat to health or safety. The types of threats are not specified in the proposed rule. The local health officer has additional authority beyond this rule to make such a determination.</p>	<p>No change</p>
<p><b>020(1)(f)</b> Define scope of annual report.</p>	<p>Puget Sound School Coalition (2.D.)</p>	<p>The scope of the annual report is contained in the proposed rule. Intent is to encourage active school board involvement in health and safety issues.</p>	<p>No change</p>
<p><b>020(2)</b> Mandate health officer training.</p>	<p>Puget Sound School Coalition (2.C.)</p>	<p>This suggestion has been rejected several times. Board does not mandate training on health jurisdictions.</p>	<p>No change</p>
<p><b>020(2)</b> Local health agency flexibility for inspection programs is appreciated.</p>	<p>Spokane Regional Health Dist.</p>	<p>SBOH EH Committee extensively discussed this issue.</p>	<p>No change</p>
<p><b>020(2)(a)</b> Make inspections every two years rather than annual.</p>	<p>Puget Sound School Coalition (2.E.)</p>	<p>This suggestion from the revision team was communicated to the EH Committee and Board previously and they did not direct staff to make a change.</p>	<p>No change</p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>020(2)(a)(iii)</b> Develop a rating system based on degree of risk.</p>	Parent	Rule calls on inspectors to consult with school officials on findings and then develop a plan of correction based on the relative risk. It does not require immediate remedy of all issues regardless of relative risk. Consider revising language to clarify intent.	Amended 020(2)(iii) to read: “Consult...follow-up actions <u>and, if necessary, develop a correction schedule.</u> Approaches and timelines... presented by the condition, and may include <u>consideration of low-cost alternatives.</u> ”
<p><b>020(2)(b)</b> Concern about local health officer allowing school officials to do inspections two out of three years.</p>	Parent	This issue was heavily discussed by the Board’s EH Committee regarding earlier drafts of the rule.	No change
<p><b>020(3)</b> Specify a timeline for DOH to establish school rule technical advisory committee.</p>	Parent	Establishing voluntary technical advisory committees is common activity of DOH. The Board’s EH Committee may wish to consider need to make recommendations to DOH for frequency of meetings of technical advisory committee and time frame for first meeting.	No change
<p><b>020(3)</b> Make joint training available to schools and local health.</p>	Puget Sound School Coalition (2.C.)	Not a request to change the rule. Co-training is current practice and principle is supported by Board staff and DOH school program. DOH is required under 020(3) to make training available to local health and school personnel.	No change
<p><b>020(3)</b> Provide feedback process through the technical advisory committee regarding coordination with building officials.</p>	Building Code Council	DOH could include a representative of the Building Code Council or local building official on technical advisory committee.	No change
<p><b>030(1)</b> Allow more flexibility by local health officer for site assessments needed for converting an existing structure.</p>	Spokane Regional Health District	If an existing building is in an area not likely to be impacted by past or present uses that could present a hazard, a variance could be given by the local health officer from preparation of an environmental site assessment.	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>030(2)</b> Delete authority for site review of existing sites.</p>	<p>Puget Sound School Coalition (2.F.)</p>	<p>Disapproval language was removed already. Considerable local health discretion is allowed. There are situations where site review would be appropriate, for example, excavation for a second building on an existing site where no assessment was done originally and there may be concerns about high groundwater or soil contamination.</p>	<p>No change</p>
<p><b>030(3)</b> Specify who may conduct environmental site assessments (ESA)</p>	<p>Whatcom County Health Department</p>	<p>ASTM Standard 1527-05 and US Environmental Protection Agency rules (40CFR 312.10) specify qualifications of persons who may prepare ESAs.</p>	<p>No change</p>
<p><b>030(5)</b> Restore language about health officer consulting with school on need for and scope of assessment.</p>	<p>Puget Sound School Coalition (2.G.)</p>	<p>Section was rearranged but language very similar to 030(5) in June 2008 draft is contained in 030(2).</p>	<p>No change</p>
<p><b>030(5)</b> Restore language describing when site assessment request is complete.</p>	<p>Puget Sound School Coalition (2.H.)</p>	<p>Similar language removed in multiple sections as redundant. Subsection 030(4)(d)(iv) specifies that the information required would be “any site assessment-related information requested by the local health officer to complete the site assessment review and approval process.” Review of documents initially requested by the local health officer could reveal issues about which additional information could be requested before the application would be complete.</p>	<p>No change</p>
<p><b>030(5)</b> Allow local health officer to deny use of a proposed site under any circumstance.</p>	<p>Spokane Regional Health District</p>	<p>Language in subsections 030(5)(c) and 030(5)(d) were heavily discussed at stakeholder meetings held in spring 2008.</p>	<p>No change</p>
<p><b>030(5)(a)</b> Allow local health officer discretion on whether to conduct an inspection of a proposed school site.</p>	<p>Spokane Regional Health District</p>	<p>A site inspection could be limited to a simple visit to the site. No time frame is specified.</p>	<p>No change</p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>030(6)</b> Clarify whether notification to local health officer must be in writing and place limit on timelines.</p>	<p>Spokane Regional Health District</p>	<p>It is the intention that this notification be in writing. During discussions with stakeholders during spring 2008, this compromise language was intended to reflect bonding time frames for school construction projects. The longest time mentioned in those discussions was 8 years.</p>	<p>Amended 030(6) to read: “If school officials notified the local health officer <u>in writing</u> prior to September 1, 2010... timelines for completion.”</p>
<p><b>040</b> Requiring plan review by local health officers is redundant with building department.</p>	<p>School districts</p>	<p>Plan review activities are in existing rule. This proposal intends to clarify consultative role of local health officer.</p>	<p>No change</p>
<p><b>040(1)</b> School officials notify local health officer of all modifications to lighting and ventilation.</p>	<p>Spokane Regional Health District</p>	<p>Issue was discussed at stakeholder meetings held in spring 2008.</p>	<p>No change</p>
<p><b>040(1)(c)</b> Clarify regarding application of size of additions and alterations that trigger local health officer review.</p>	<p>Spokane Regional Health District</p>	<p>The language could use some clarification.</p>	<p>Amended 040(1)(c) to read: “<u>Additions or alterations consisting of more than five thousand square feet of floor area or having a value of more than ten percent of the total replacement value of an existing school facility;</u>”</p>
<p><b>040(1)(c)</b> A threshold of 10% would be inequitable because costly to assess value.</p>	<p>Spokane Regional Health District</p>	<p>Issue was discussed at stakeholder meetings in spring 2008. Staff recommended to SBOH EH Committee that 10% was appropriate threshold to warrant plan review. OSPI determines construction reimbursement based on an amount per square foot called the area cost allowance, which it sets under WAC 392-343-060.</p>	<p>No change</p>
<p><b>040(1)(c)</b> Threshold for alterations and additions should be 10% of replacement cost only; delete 5,000 sq. ft threshold.</p>	<p>Puget Sound School Coalition (2.I.)</p>	<p>5,000 sq. ft equivalent of adding 4–6 new classrooms. SBOH EH Committee felt such projects are not minor and warrant plan review.</p>	<p>No change</p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>050(1)(a)</b> Indicate timing of the preoccupancy inspection, whether before or after the final building department inspection.</p>	<p>Building Code Council</p>	<p>Health and safety hazards may still need correction at the time the building department issues a certificate of occupancy, as their review is for major systems.</p>	<p>Amended 050(1)(a) to read: “Obtain a preoccupancy inspection...subject to WAC 246-366A-040(1), <u>conducted in coordination with a final inspection by the local building official, in order to ensure imminent health hazards are corrected</u> before allowing school facilities to be occupied;...”</p>
<p><b>060(2)</b> Restore “typical student” language in day-lighting section.</p>	<p>Puget Sound School Coalition (2.J.)</p>	<p>“Typical student” language appeared in O&amp;M section because some students may require windowless areas. All day-lighting references were removed from O&amp;M. Individual student needs are not usually designed into schools at time of construction. List of special purpose spaces is not exhaustive and schools may, however, design in rooms in anticipation of students with special needs not intended to be general purpose classrooms. Provisions are in existing rule.</p>	<p>No change</p>
<p><b>060(3)</b> Reconsider requirement to exclude sun angles higher than 42 degrees.</p>	<p>Professional engineer</p>	<p>This is in existing rule.</p>	<p>No change</p>
<p><b>060(5)</b> Prohibit the use of carpet tile unless seams are sealed.</p>	<p>Parent</p>	<p>Sealing of seams is standard practice for rolled carpets. Rule would allow use of carpet tiles without sealed seams, provided they have impervious backing. Risk of intrusion may be offset by ease of replacing damaged or moldy sections. It should be noted that other carpets could be allowed if plan reviewer is confident that the material can be easily cleaned and dried.</p>	<p>No change</p>

<b>Public comment on original proposal</b>	<b>Source of comment</b>	<b>Staff evaluation</b>	<b>Changes SBOH made to Chapter 246-366A WAC</b>
<b>060(5)</b> Allow carpet tile with impervious backing	Email from manufacturers	See immediately above	No change
<b>060(8), 150(1) and 155(2)</b> Delete prohibition of the use of certain treated woods in general construction accessible to students and structures on which children might play.	Three wood processing associations	Prohibition of treated wood for all school general construction accessible to students might be interpreted to mean such items as treated utility poles and guard rail posts could not be used on school grounds. Prohibition of use for structures on which children might play is more limited.	Deleted prohibition on use of treated wood in general construction subsection 060(8), but retained in playground sections 150 and 155.
<b>060(9)(c)</b> For health rooms, specify that the handwashing sink deliver hot water within 15 seconds.	Whatcom County Health Department	This issue was discussed during development of the proposal. Such a requirement would supersede building code requirements that address hot water. Some public health benefits might result, but staff does not believe there to be a compelling need to differ from building code.	No change
<b>060(9)(d)</b> Restrooms adjoining health rooms should be restricted to health room use only.	Whatcom County Health Department	The issue of adjoining restrooms for health rooms was extensively discussed at stakeholder workgroup meetings in spring 2008. Restricting the use of restrooms adjoining health rooms would not be necessary on a general basis.	No change
<b>065</b> Require walk off mats	Parents	Such a draft provision was removed between last discussion draft and original formal rule proposal because of dramatic costs, inability to locate studies on specific benefits, and availability of alternative means to address tracked in dirt and moisture.	No change
<b>065(9) [060(9)?]</b> Prohibit the use of carpeting in health rooms and within 36 inches of all plumbing fixtures.	Whatcom County Health Department	Flooring near many plumbing fixtures is regulated by building codes. Subsection 060(8)(b), renumbered from 060(9)(b), would require health rooms to have surfaces that are easy to clean and sanitize. Carpeting, even with water impervious backing, would not be easy to sanitize.	No change
<b>065(10)</b> Delete requirements to notify health officer if there are certain types of sewer backups.	Central Kitsap School District	This issue was discussed during stakeholder workgroup meetings in spring 2008. Many schools do not have in-house expertise on health hazards regarding sewage spills.	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<b>070</b> Specify that carpeting cleaned by wet method be thoroughly dried.	Parents	Such a draft provision was removed between last discussion draft and original formal rule proposal because staff recommended to the SBOH EH Committee the issue was adequately addressed in other parts of 070.	No change
<b>070(4)</b> Specify notification for schools affected by mold, including posting at entrances, at levels less than 10 square feet.	Parents	Proposed 070(4) states that notification when "...there is significant risk of exposure, including when the total area affected is greater than ten square feet..." The need for notification is situation dependent. The issue of requiring posting at entrances was extensively discussed by stakeholders during workgroup meetings in spring 2008.	No change
<b>090</b> Require commissioning of HVAC systems.	Parents	HVAC commissioning is required by the latest building code. Recommend rule proposal language be retained.	No change
<b>095(2)</b> Provide more specific reference regarding ventilation standards.	Spokane Regional Health District and Building Code Council	The reference could be more specific. The applicable section is WAC 51-52-0403.	Amended the reference to chapter 51-52 WAC in 095(2)(a) and 095(2)(b) to WAC 51-52-0403.
<b>095(2)</b> Clarify whether ventilation operation requirements apply to portables.	Spokane Regional Health District	Clarification is warranted. It is the intention that ventilation requirements apply to portables. Permits are not required for portable construction but are required for portable siting.	Amended 095(2)(a) and 095(2)(b) to start with the phrase: "For school facilities constructed <u>or sited</u> under a building permit..."
<b>095(2)(b)</b> Clarify ventilation requirements for existing schools.	Puget Sound School Coalition (1. C. third paragraph) and Building Code Council	Intent is to require existing schools to operate ventilation systems as close to ventilation standards in WAC 51-52-0403 as possible, if need be, using maximum capacity of existing system. The rule intends to require proper maintenance of the system. The rule does not intend to require a commissioning study of the ventilation system.	Amended 095(2)(a) and (b) to read: (a) For...provide, <u>as a minimum, outdoor air according to WAC 51-52-0403, Table 404.3 Required Outdoor Ventilation Air.</u> (b) For...2010, <u>conduct standard operation and maintenance best</u>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
			<p><u>practices including, but not limited to, making timely repairs, removing obstructions, and replacing filters and fan drive belts, and setting system controls so that, to the extent possible given the design of the ventilation system, outdoor air is provided consistent with WAC 51-52-0403, Table 404.3 Required Outdoor Ventilation Air.</u></p>
<p><b>095(4)</b> Clarify requirements to follow manufacturer recommendations for maintaining office equipment to limit student exposure to air contaminants of public health importance.</p>	<p>Puget Sound School Coalition (1. C. fourth paragraph)</p>	<p>The existing rule requires: “All sources producing air contaminants of public health importance shall be controlled by the provision and maintenance of local mechanical exhaust ventilation systems as approved by the local health officer.” The proposal intends to provide some clarity about possible preventive measures for office equipment. The basic provision from the existing rule is retained in 095(3) with the added recognition that controlling excess moisture will prevent mold problems. The provision for laminators is restricted to heat laminators because they are the type most likely to produce air contaminants of public health importance. Change maintenance requirements to ensure users receive information, rather than requiring proof of maintenance.</p>	<p>Deleted subsection 095(4) about locating laminators and amended 095(5) in the original proposal to read: “Limit student exposure to air contaminants of public health importance produced by <u>heat laminators, laser printers, photocopiers, and other office equipment by placing such equipment in appropriately ventilated spaces and providing instruction to users on how to operate and maintain equipment as recommended by the manufacturer.</u></p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>110</b> Include a reference to the Washington State Energy Code (Chapter 51-11 WAC) for Lighting</p>	<p>Building Code Council</p>	<p>The lighting provisions are from the existing Board rule and relate to intensity. The Board directed staff to limit references to other codes. Reference to authority of building code council under Title 51, as recommended for 005, would accomplish this request in a general fashion.</p>	<p>No change</p>
<p><b>115(1)</b> Change minimum lighting requirements for shower rooms and locker rooms from 20 foot candles to 10 foot candles to be consistent with IESNA recommendations.</p>	<p>Professional engineer</p>	<p>The Illuminating Engineering Society of America (IESNA) is an industry association of lighting manufacturers, designers, and contractors. It publishes lighting design guides widely used on a voluntary basis. The lighting requirements in this proposal are in existing SBOH rules. Shower and locker rooms are areas where cleaning and mold control are important issues, which lighting levels could impact.</p>	<p>No change</p>
<p><b>125(1)</b> Clarify how handwashing soap must be provided in relation to sinks.</p>	<p>Spokane Regional Health District</p>	<p>Clarification is warranted. It is the intention that a single service handwashing soap dispenser could be used for multiple handwashing sinks nearby.</p>	<p>Amended 125(1)(b) to read: "Single service handwashing soap <u>near</u> each handwashing sink;"</p>
<p><b>125(2)</b> Require hot water to arrive at handwashing sinks in restrooms within 15 seconds.</p>	<p>Whatcom County Health Department</p>	<p>This issue was discussed during development of the proposal. Such a requirement would supersede building code requirements that address hot water. Some public health benefits might result, but staff does not believe there to be a compelling need.</p>	<p>No change</p>
<p><b>125(5)</b> Require provision of restrooms for after-hours use of sports fields even for activities that are not school-sponsored.</p>	<p>Parent</p>	<p>This issue was extensively discussed during stakeholder workgroup meetings in spring 2008. Rules generally do not regulate contractual use of school facilities by community when not related to educational use.</p>	<p>No change</p>
<p><b>130 and 135</b> Water testing for lead and copper may be too burdensome.</p>	<p>Spokane Regional Health District, school officials, others</p>	<p>Extensively discussed by Board members previously.</p>	<p>No change</p>

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<b>130(3)</b> Require only 25% representative testing for lead in elementary schools.	Puget Sound School Coalition	Representative sampling is an accepted environmental health practice but does not guarantee all drinking water sources that exceed lead standards would be detected, particularly with small sample sizes. Risks from lead are greater for children six and under, hence desire to do more comprehensive testing in elementary schools while relying on representative sampling for schools serving older children.	No change
<b>130(3)</b> Require 100% testing for lead in all schools (middle, junior and high schools)	Parent	See immediately above	No change
<b>130(3)</b> More clearly state water monitoring requirements for preschools.	Spokane Regional Health District	Requirements appear clear to staff. Additional clarification could be provided in guidance.	No change
<b>130(4)</b> Re-evaluate need for repeat sampling for lead.	Industrial hygienist and Puget Sound Schools Coalition	Whether re-sampling for lead in five years identifies additional fixtures with high lead will not be known until second round is done. Changes in water conditions over time could lead to more lead contamination (as happened in Washington, DC) and breakdown of solder over time could lead to particle contamination.	No change
<b>165(7)</b> Specifically require handwashing sinks in barns, shops, art rooms, and laboratories.	Whatcom County Health Department	Barns used for student instruction would be considered agricultural shops under proposed 010(34), renumbered from 010(33). Art laboratories are included in 010(21), renumbered from 010(20). Subsection 160(4) would require handwashing sinks in all laboratories and shops.	No change
<b>170</b> Modify variance section to consider financial hardships, particularly for small schools or small private schools.	Board discussion following private schools' testimony and numerous written comments.	A dual standard for public and private schools is not recommended. Public schools can also be very small (Shaw Island SD has 37 students). Students in smaller schools deserve same level of protection and may actually be at greater risk (consider Vader SD, whose only school was condemned). Plan of correction should be able to take into	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
	Also related to comment from Puget Sound School Coalition (2.K.)	account financial capacity of smaller schools and districts.	
<b>190</b> Extend complaint process beyond local level.	Parents	This was heavily discussed by stakeholder workgroup in spring 2008. The issue has also been reviewed by the SBOH EH Committee. The Board received a briefing from the Office of the Education Ombudsman in June 2008.	No change
<b>190(1)(b)</b> Allow more flexibility than requiring promptly investigating complaints and correction of any lack of compliance with rules.	Puget Sound School Coalition (2.L.)	“Promptly” was debated by stakeholder work group in spring 2008. Subsection 020(2)(iii) states that approaches and timelines for noncompliant conditions will depend on the level of risk to health and safety.	Deleted “promptly” from 190(1)(b) and added at end: <u>“within an appropriate timeframe given the level of risk to health and safety.”</u>

**Table 3. Summary of Comments on Original  
State Board of Health School Rule Proposal for Chapter 246-366A WAC  
Filed as WSR 08-15-174  
Received after September 10, 2008 through June 10, 2009**

<b>Public comment on original proposal</b>	<b>Source of comment</b>	<b>Staff evaluation</b>	<b>Changes SBOH made to Chapter 246-366A WAC</b>
<b>General</b> Delay action on rules until after 2009 legislative session.	Legislators	At its October 8, 2008 meeting, the Board postponed further action on the rule until June 2009, based on legislator' requests.	SBOH filed supplemental proposal July 1, 2009.
<b>General</b> Do not adopt rules without consideration of legislative budget process for funding improvements to public schools and budget proviso adopted in 2009 session.	Legislators	The Board and DOH were restricted from implementing new or amended provisions during the 2009-2011 biennium by Section 222(1) of ESHB 1244, the state operating budget, unless the Legislature provides funding.	SBOH filed supplemental proposal July 1, 2009, which deferred to existing and potential legislative restrictions on implementing new or amended rules.
<b>General</b> The paramount duty of the State is basic education. More important than teaching our kids is ensuring they are safe while at school. Supportive of drinking water monitoring and mold remediation provisions.	Legislators	Primary goal of these rules is to update requirements to better assure children have a safe school environment.	No change
<b>General</b> Provide flexibility to local health officers and school officials for implementation of rules.	Legislator and private school official	The Board has consistently considered these proposed rules to be applicable to all public and private K-12 schools, as is the existing chapter 246-366 WAC. The proposed rules would clarify that local health officers have flexibility regarding developing plans of correction with school officials to reflect time frames based on level of risk and availability of funding to schools.	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>General</b> Private schools do not receive federal stimulus money or state funding. Parents of private school students pay taxes that support public schools, none of which benefits private school students. Timeline for rule implementation for private schools should reflect the difficult economy.</p>	Private school officials	See evaluation immediately above.	No change
<p><b>General</b> These rules should not impose building standards.</p>	Private school official	Some proposed provisions are intended to be more stringent than the building code where there are gaps related to function. The Board has directed staff to work with the Building Code Council to try to get it to recognize these provisions for schools.	No change
<p><b>General</b> Small private schools that share space with another entity, such as a religious sanctuary, cannot always assure that the other entity meets these rules.</p>	Private school official	Proposed section -005 would exempt facilities hosting educational programs where educational instruction is not the primary purpose.	No change
<p><b>General</b> Support new rules, provided sufficient time is allowed for local health districts to receive training and staff resources to implement.</p>	Kittitas County Public Health Department	Proposed section -020 allows a year before annual inspections are required.	No change
<p><b>General</b> Strongly endorse proposed rules. The provisions are supported by peer-reviewed medical literature.</p>	Northwest Pediatric Environmental Health Specialty Unit, UW	A goal of the Board is to update existing rules based on best available science.	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>General</b> School officials have history of hiding information and denying health and safety problems to protect PR. Existing rules are too weak. School districts should give priority to ensuring a safe environment.</p>	Teacher	The rule proposal encourages correction of problems by requiring investigation of public complaints and by school officials reporting at least annually to school boards.	No change
<p><b>General</b> Former students, staff, and workers in a school with reported indoor air problems and mold have developed health problems years later. School officials hired consultants who based recommendations on now disputed science.</p>	Teacher	A goal of the Board is to update the rule based on best available science.	No change
<p><b>General</b> Encourage the Board to work with legislators to move forward to adopt new rules.</p>	Parents, teachers, student, and Washington Education Assoc	Not a request to change the rule.	No change
<p><b>General</b> The Board should be ashamed, or fired, for failing to act on October 8, 2008 to help correct unhealthy schools. The Board should not consider cost above public health and move forward to adopt new rules.</p>	Parents	Not a request to change the rule.	No change
<p><b>General</b> Expressed concern that public schools have hired lobbyists to fight proposed rules.</p>	Parents	Not a request to change the rule.	No change

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
Governor Gregoire released a report over a decade ago when she was Attorney General about “sick school buildings.”			
<b>General</b> Student test scores improve after repairs.	Teacher	Although the Board’s goals for these rules are to improve health and safety, improving school environmental conditions could improve student learning.	No change
<b>General</b> These rules on such things as noise levels are not needed.	Parents of students in private schools	This proposal would not change existing requirements related to noise.	No change
<b>General</b> If need be because of concerns from Legislators, delay implementation of more costly measures.	Parent	The EH Committee considered the issue of prioritizing provisions between earlier drafts and developed a phased-in approach for the more costly new measures.	No change
<b>General</b> Support expressed for rule proposal. Schools tend to divert funds from maintenance. The percentage of funding for maintenance is declining. School districts should build reserve accounts so that they do not have to rely on special levees for major repairs. Schools need state grants to make up for years of neglected maintenance.	Former employee of OSPI	School officials have also told staff that the percentage of total funding used for maintenance has declined due to prioritization for other activities that are mandated.	No change
<b>General</b> Even school districts with history of voter support would have difficulty meeting new rule requirements in current poor economy. Board should prioritize most critical issues and	School officials	The EH Committee considered the issue of prioritizing provisions between earlier drafts and developed a phased-in approach for the more costly new measures.	Supplemental proposal reflects postponing implementation based on funding conditions set by Legislature.

Public comment on original proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
work with legislators to find funding before implementing new rules.			
<b>020</b> Require schools to indefinitely retain records related to environmental health and safety.	Parent	Chapter 40.14 RCW requires public agencies to generally retain official records for six years.	No change
<b>070(4)</b> Specify no threshold amount of mold requiring schools to notify parents, students and teachers; as well as post warning at entrances.	Parents	Proposed 070(4) states that notification when "...there is significant risk of exposure, including when the total area affected is greater than ten square feet..." The need for notification is situation dependent. The issue of requiring posting at entrances was extensively discussed by stakeholders during workgroup meetings in spring 2008.	No change

**Table 4. Summary of Testimony on Supplemental  
State Board of Health School Rule Proposal for  
Chapter 246-366 WAC and Chapter 246-366A WAC  
Filed as WSR 09-14-136**

<b>Public comment on supplemental proposal</b>	<b>Source of comment</b>	<b>Staff evaluation</b>	<b>Changes SBOH made to Chapter 246-366A WAC</b>
<b>General</b> Adopt these rules to support better working and learning environments for the staff and students of Washington State... ...Amending CR103 annually until there is funding makes more sense than leaving a door open allowing for interpretation of the effective date...	Washington Education Assoc.	CR103 process to revise effective dates each year based on outcome of each legislative session is the process from Alternative A of the supplemental proposal and could be done on a section by section basis. Some rule language from Alternative B better clarifies that implementation is dependent on current and future legislative requirements, but needs amendment to fit with CR103 process for revising effective dates.	No change
<b>General</b> Support adoption with concern that rule cannot be implemented immediately.	Teacher and parent	The Board and DOH are restricted from implementing new or amended provisions during the 2009-2011 biennium by Section 222(1) of ESHB 1244, the state operating budget, unless the Legislature provides funding.	No change
<b>General</b> Support adopting blended version of Alternatives 1 and 2.	Washington Education Assoc and Washington State Federation of Independent Schools (WSFIS)	The Board's EH Committee recommended adopting a blended version of Alternatives 1 and 2 of the supplemental rule proposal.	No change
<b>General</b> Concern about the implementation of these regulations without sufficient, sustainable funding.	School officials	The Board adopts many different rules applicable to many different people without the ability to provide funding for implementation. The implementation of new or amended provisions are currently restricted by ESHB 1244.	No change
<b>General</b> Some provisions unnecessarily duplicate regulations of other agencies, such as building departments.	School officials	Some proposed provisions are intended to be more stringent than the building code where there are gaps related to function. The Board has directed staff to work with the Building Code Council to try to get it to recognize these provisions.	No change

<b>Public comment on supplemental proposal</b>	<b>Source of comment</b>	<b>Staff evaluation</b>	<b>Changes SBOH made to Chapter 246-366A WAC</b>
<p><b>General</b> Refine and try to reach greater consensus on cost estimates for messaging to help obtain funding.</p>	<p>School officials</p>	<p>DOH asked school officials for cost estimates while developing the Significant Analysis and incorporated comments into that document. This process was as robust as for other rule making. Staff believes no consensus could be reached on cost estimates.</p>	<p>No change</p>
<p><b>General</b> Concern for costs to private schools and need for local health officers to mitigate cost impacts in a consistent manner. Particular concern for school located in faith-based facilities.</p>	<p>Washington State Federation of Independent Schools</p>	<p>A dual standard for public and private schools is not recommended. Public schools can also be very small (Shaw Island SD has 37 students). Students in smaller schools deserve same level of protection and may actually be at greater risk (consider Vader SD, whose only school was condemned). Plan of correction would be able to take into account financial capacity of smaller schools and districts.</p>	<p>No change</p>
<p><b>General</b> Concern about lack of funding for local health agencies to implement rule, especially for costs hard to recover by fees such as training. Training would help achieve statewide consistency.</p>	<p>Skagit County Public Health</p>	<p>The EH Committee has extensively discussed funding issues and recognizes that there are local health jurisdictions that have successfully implemented existing school rules. The Board has discussed that sustainable funding to local health agencies is important for full implementation of existing and new rules.</p>	<p>No change</p>
<p><b>General</b> It is unlikely funding will be available to implement entire rule at once so provisions should be prioritized.</p>	<p>North Kitsap School District and Skagit County Public Health</p>	<p>Phase-in of provisions was extensively discussed at stakeholder workgroup meetings in spring 2008 and between staff and members of the SBOH Environmental Health Committee and built into proposal.</p>	<p>No change</p>
<p><b>Alternative B 246-366A-003(3)</b> In Alternative B it is difficult to discern when implementation of the rule would become effective under different sets of circumstances...</p>	<p>Mukilteo School District</p>	<p>Using the CR103 process for establishing effective dates for implementation, as proposed in Alternative A, has eliminated the need for language in published Alternative B 246-366A-003(3) regarding interpretive statements.</p>	<p>No change. The Board adopted amendments to blend alternatives A and B and follow CR103 process for effective dates and implementation of provisions.</p>

Public comment on supplemental proposal	Source of comment	Staff evaluation	Changes SBOH made to Chapter 246-366A WAC
<p><b>Alternative B 246-366A-003(2)(c)</b> Revise to read: “The office of superintendent of public instruction shall forward, to the extent possible, the notice of implementation electronically to school districts, school principals and approved private schools.”</p>	Office of Superintendent of Public Instruction	OSPI-recommended changes reflect practical limits of OSPI electronic distribution lists.	Amended as recommended.
<p><b>246-366A-010(2)</b> Definition of “air contaminants of public health importance” needs to be more specific to provide clear design guidance that would be interpreted consistently.</p>	McKinstry Company	This comment calls for a fundamental policy shift and has been rejected numerous times. Rule takes a source control approach. This would require no action unless standards exceeded. For many contaminants standards do not exist (or they exist only for ambient or industrial circumstances), for others standards are not specific to children, and for others standards are highly controversial and are likely to be more stringent in the near future. Specific standards would necessitate ongoing air monitoring for numerous contaminants, which could be costly.	No change
<p><b>246-366A-010(2)</b> Suggestions about the definition of “air contaminants of public health importance” could have been provided earlier in the process.</p>	Washington Education Assoc	This issue was heavily discussed during workgroup meetings in the spring of 2008. Stakeholder consensus was not reached.	No change
<p><b>246-366A-095(4)</b> Provision limiting student exposure to air contaminants of public health concern from office equipment</p>	McKinstry Company	The existing rule requires: “All sources producing air contaminants of public health importance shall be controlled by the provision and maintenance of local mechanical exhaust ventilation systems as	No change

<b>Public comment on supplemental proposal</b>	<b>Source of comment</b>	<b>Staff evaluation</b>	<b>Changes SBOH made to Chapter 246-366A WAC</b>
<p>would be difficult to interpret and might not be able to be met by relocating equipment to other place in room. It might require thorough assessment of ventilation status. The provision should be revised to adopt applicable (unspecified) ASHRAE standards.</p>		<p>approved by the local health officer.” The proposal intends to provide some clarity about possible preventive measures for office equipment. The basic provision from the existing rule is retained in 095(3) with the added recognition that controlling excess moisture will prevent mold problems. The provision for laminators is restricted to heat laminators because they are the type most likely to produce air contaminants of public health importance. The supplemental proposal changed provisions from original proposal to require that users receive information, rather than requiring proof of maintenance. DOH reviewed ASHRAE standards during rule development and recommended that there was no applicable standard that provided a comparable level of public health protection.</p>	
<p><b>246-366A-190(2)</b> Local health agencies should investigate when someone raises a compliance issue.</p>	<p>Parent</p>	<p>Existing chapter 246-366 WAC does not contain a provision that local health officer investigate a complaint about compliance with the rules. This rule proposal would add a section called “Complaints” that would require a local health officer to do a preliminary inquiry and investigate if he or she determines an imminent health hazard exists.</p>	<p>No change</p>