



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: November 19, 2021

TIME: 7:34 AM

WSR 21-24-012

Agency: Department of Social and Health Services, Developmental Disabilities Administration (DDA)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) November 24, 2021

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: DDA is enacting changes to WAC 388-823-0720 on an emergency basis to remove the Woodcock-Johnson Test of Achievement. Recently under WSR 21-13-164, DDA mistakenly adopted language that says DDA will accept the Woodcock-Johnson Test of Achievement” as evidence of a person’s FSIQ; however, the text should continue to read “Woodcock-Johnson Test of Cognitive Abilities” as it stated before filing WSR 21-13-164.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: WAC 388-823-0720
- Suspended:

Statutory authority for adoption: RCW 71A.12.030, RCW 71A.12.120

Other authority: RCW 34.05.350

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The accidental removal of the test of cognitive abilities has the potential to create a health and safety issue for an applicant who urgently needs to become DDA-eligible and receive services. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest because DDA would not be permitted to continue to accept the Woodcock-Johnson test of cognitive abilities for several months; during that time some applicants might be denied eligibility who would otherwise be deemed eligible based on results of their Woodcock-Johnson test of cognitive abilities.

DDA relies on the test of cognitive abilities to determine full-scale intelligence quotient scores, which are a necessary part of determining DDA eligibility. The Woodcock-Johnson test of achievement measures a person’s academic level of achievement and does not produce an FSIQ score. In WAC 388-823-0720, *What evidence do I need of my FSIQ?*, the table lists tests that result in an FSIQ and DDA accepts the results of all of those tests as evidence of a qualifying FSIQ. It is not possible for DDA to determine an FSIQ based on the results of the Woodcock-Johnson test of achievement.

This is the second emergency filing on these changes. This filing is necessary to keep the emergency rule enacted until the permanent rule is adopted. DDA is progressing through the permanent rulemaking process, the public rules hearing was held November 9, 2021.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>1</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>1</u>	Repealed	___
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The number of sections adopted using:

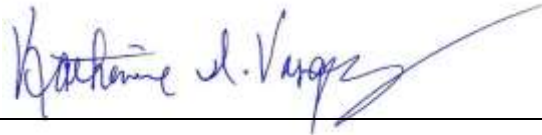
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

Date Adopted: November 19, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less
Differential abilities scale (DAS)	69 or less	77 or less	84 or less
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less
Woodcock-Johnson-Test of ((achievement) cognitive abilities III, III(r), or IV	69 or less	77 or less	84 or less
Reynolds intellectual assessment scales, 2nd edition (RIAS 2)	69 or less	77 or less	84 or less

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, reasonable in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are nonverbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS, WNV)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning Index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of nineteen at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.