



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: September 14, 2021

TIME: 1:35 PM

WSR 21-19-065

Agency: Office of Superintendent of Public Instruction (OSPI)

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) 31 days after filing, except for WAC 392-172A-01035, -02076, -02105, -02110 which are effective January 1, 2022 to align with Federal data collection and reporting requirements, and provide additional time for school districts to train school personnel. (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes No If Yes, explain:

Purpose: The purpose for the new and amended regulations, as well as for repealing existing regulations, is to (1) address changes to federal law and requirements; (2) clarify existing requirements under current state law that impact the free appropriate public education (FAPE) of students eligible for special education services; (3) add requirements from Engrossed Substitute House Bill (ESHB) 1130 (2020); and (4) make housekeeping changes to correct typographical errors, reorganize and remove outdated WACs in these chapters for ease of reference, and other rule changes that are technical in nature.

Citation of rules affected by this order:

New: WAC 392-172A-01152; WAC 392-172A-01197; WAC 392-172A-07057
Repealed: Chapter 392-173 WAC; WAC 392-172A-07065
Amended: Chapter 392-172A WAC; WAC Sections 392-140-60105 through -60685
Suspended:

Statutory authority for adoption: RCW 28A.155.090

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-09-088 on April 21, 2021 (date).

Describe any changes other than editing from proposed to adopted version: Language was added and/or amended after initial public comments were received under notice filed November 18, 2020 (WSR 20-23-116) and supplemental notice filed on April 21, 2021 (WSR 21-09-088). The following final language for the following sections was added and/or amended in response to substantive comments and to clarify for readability processes for consistent implementation:

- WAC 392-172A-01152 defining “regular early childhood program” was revised to include “transitional kindergarten.”
- WAC 392-172A-02050 regarding “least restrictive environment” was revised under section (3) to clarify that “...Least restrictive environment must be determined based on each individual child’s needs and should not automatically be developmental preschool.”
- WAC 392-172A-02050 regarding “least restrictive environment” was revised under section (4) to add clarity by stating “...as defined in WAC 392-172A-01152.”
- WAC 392-172A-02090 regarding personnel qualifications was revised to include “[...] (or early childhood special education endorsement, deaf education endorsement, deaf education with American Sign Language proficiency endorsement, teacher of the visually impaired endorsement) [...]” under subsection (1)(b) and to include “[...] (or early childhood special education certificated staff, deaf education certificated staff, deaf education with American Sign Language proficiency certificated staff, teacher of the visually impaired certificated staff) [...]” under subsection (1)(i) for consistency with rules established by the Washington Professional Educator Standards Board.
- WAC 392-172A-02105 regarding emergency response protocols was revised under subsection (1)(d) to state “(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and the safe use of isolation, restraint, or a restraint device.”
- WAC 392-172A-02110 regarding conditions for the use of restraint or isolation was revised under subsection (1) to read “(f) Any staff member or other adults using isolation must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques), and also trained by the district in isolation requirements, [...]” revised under subsection (2)(c) to read “(c) Any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention

(including de-escalation techniques) and such restraints, [...],” and revised under subsection (3)(d) to read “(d) Any staff member or other adults using a restraint device must be trained and currently certified by a qualified provider in the use of such restraint devices, [...].”

- WAC 392-172A-03005 regarding referrals and timelines for initial evaluations was amended under section (3) to state “(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within: [...].”
- WAC 392-172A-03100 regarding parent participation was revised under subsection (3)(c) to read “(c) Include whatever action is necessary to ensure that the parent understands the notification being provided, including but not limited to, providing the notification in writing in a parent’s native language when necessary for the parent’s understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English” and under section (7) to read “(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including but not limited to: [...].”
- WAC 392-172A-05001 regarding parent participation in meetings was revised under section (4) to read “(4) For any meeting under this section, including meetings related to a student’s IEP, school discipline, and truancy, in accordance with RCW 28A.155.230, each school district must take whatever action is necessary to ensure that the parent understands the proceedings of the meeting, including but not limited to: (a) Notifying parents in advance in the parent’s native language of the availability of interpretation and translation services at no cost to the parents; (b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and (c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student’s family was provided.”
- WAC 392-172A-07060 regarding the State special education advisory council was revised under subsection(2)(b) to state “(b) A majority of the members of the council shall be individuals with disabilities or parents of students eligible for special education services who are not also employed by a school district, educational service district, or the office of the superintendent of public instruction.”

And, WAC 392-140-60105 defining a “high need student” was revised back to the current language to maintain alignment with RCW 28A.150.392(6) since no other changes were enacted by the state Legislature: “(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the ~~((multiple of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual *Safety Net Bulletin*))~~ lessor of: (a) Two and three-tenths times the statewide average per pupil expenditure excluding provided state safety net funding; or (b) The average per pupil expenditure calculated using the methodology defined in 20 U.S.C. Sec. 7801, the Every Student Succeeds Act of 2015, excluding provided state safety net funding, using only the expenditure and average daily attendance data for the subset of districts receiving the same salary regionalization factor as the high need student’s district, as determined under RCW 28A.150.412 and the Omnibus Operating Appropriations Act.”

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Web site:
 Other:

**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	<u>128</u>	Repealed	___
Federal rules or standards:	New	<u>3</u>	Amended	<u>128</u>	Repealed	<u>17</u>
Recently enacted state statutes:	New	___	Amended	<u>3</u>	Repealed	___

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

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:


New ____ Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended 6 Repealed ____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	____	Repealed	____

Date Adopted: 9/14/21	Signature: 
Name: Chris Reykdal	
Title: State Superintendent of Public Instruction	