

Summary of Proposed Revisions to Special Education Rules

Washington Administrative Code (WAC)
Chapter 392-172A, Chapter 392-173, and
Chapter 392-140, Sections -60105 through -685



CR-101 (Pre-Proposal Statement of Inquiry)

- Filed January 21, 2020 (WSR 20-03-151)
- Provides notice of the intent to consider rulemaking to revise WAC (amend and add new sections) 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), including new requirements under ESHB 1130 (2019)
 - (3) Make housekeeping changes to correct typographical errors, reorganize WACs for ease of reference, and make other rule changes that are technical in nature



CR-102 (Notice of Proposed Rule Making)

- Filed November 18, 2020 (WSR 20-23-116)
- Opens public notice and comment period on proposed rules
 - All public comments submitted via email, phone, and public hearing accepted until January 20, 2021
 - Two public hearings scheduled:
 - January 13, 2021 at 3:30pm
 - January 20, 2021 at 9:00am
- Copy of proposed rules and registration for public hearings available on [OSPI Rule Making webpage](#)



Next Steps after Public Comment Period

- OSPI publishes written response to all public comments
 - Changes made to proposed rules based on public comments
 - If substantial and material changes are made to proposed rule making, then OSPI may file another CR-102 to open another round of public notice and comment period
- When final rules are ready for adoptions, OSPI files CR-103 (Permanent Rule Making Order)
- New rules take effect 31 days after CR-103 filing





Proposed Changes to WAC 392-172A

Revised & Updated Terminology

- Adds special education “services” throughout WAC Chapter 392-172A
- Clarifies language throughout to reflect “students receiving” special education services
- Eliminates terms “deafness” and “hearing impairment” – similar revisions to “visual impairment” planned following public comment period
- Clarifies language throughout applicable to parentally placed private school students who attend “approved, non-profit” schools; does not include homeschool students



New & Revised Definitions

- WAC 392-172A-01035 Child with a disability or student eligible for special education services
 - Definition of “developmental delay” category now available to students ages three through nine
 - Clarifies that “(1)(e) Special education services may not be solely based on the disability category for which the student is eligible”
- New section - WAC 392-172A-01152 Regular early childhood program
 - Linked with revisions clarifying applicability of Least Restrictive Environment (LRE) and continuum of alternative placement options for preschool students eligible for special education services
- New section - WAC 392-172A-01197 Universal design for learning



LRE & Continuum of Alternative Placements

- WAC 392-172A-02050 Least restrictive environment
 - Clarifies that districts must provide free appropriate public education (FAPE) to eligible preschool students in the LRE “regardless of whether the local education agency operates public preschool programs for children without disabilities”
 - Includes – “For children ages three to five, a general education environment is a regular early childhood program”
- WAC 392-172A-02055 Continuum of alternative placements
 - Clarifies applicability to eligible students ages three through twenty-one
 - New section lists continuum options for eligible preschool students



Evaluation Timelines & IEP Process

- WAC 392-172A-03005 Referral and timelines for initial evaluations
 - Clarifies referral process: “Each school district must have a referral form for requesting an initial evaluation available to the general public and provide it upon receipt of an oral or written request in the requestor's native language or with the support of a qualified interpreter when needed.”
 - Clarifies timeline expectations for responding to referrals – proposes district response in 15 school days (currently 25 school days)
- WAC 392-172A-03090 Definition of individualized education program
 - Requirement to document that parents are informed of student participation in alternate assessment; effect on completing high school diploma
 - Requirement to align transition goals with High School and Beyond Plan



Parent Participation & Language Access

- WAC 392-172A-03100 Parent participation
 - Changes proposed to parent notification and parent participation procedures for IEP meetings in order to align with language access requirements of RCW 28A.155.230
- WAC 392-172A-05001 Parent participation in meetings
 - Proposes applying language access requirements to “any meeting under this section, including meetings related to a student's IEP, school discipline, and truancy, in accordance with RCW 28A.155.230”
 - Clarifies the opportunity for parents to observe any current or proposed educational placement for students receiving special education services



Non-Public Agencies (NPAs)

- WAC 392-172A-04085 Responsibility of the school district
 - Clarifies that districts remain responsible for ensuring students receive FAPE
 - Clarifies that districts must ensure:
 - That contracts with NPAs include assurances to follow Chapter 392-172A reporting, parent notification requirements, and conditions related to the use of restraint or isolation
 - That “the student will have an opportunity to participate in state and district assessments”
 - That “the student must be provided with an opportunity to fulfill the requirements to receive a Washington state diploma”



Dispute Resolution

- Proposes changing “citizen” complaints to “community” complaints
- WAC 392-172A-05085 Due process hearing request filing and response
 - Clarifies how to file request for due process hearing with the Office of Administrative Hearings (OAH) and when hearing timelines begin
- WAC 392-172A-05125 Student's status during proceedings
 - Clarifies that “the student's status during the pendency of any proceedings does not preclude the IEP team from meeting, as needed or as required under this chapter, and updating and implementing the student's IEP, unless those changes are in dispute”



Program Improvement & Federal Reporting

- WAC 392-172A-07010 Monitoring
 - Clarifies OSPI authority to collect, review, and analyze both quantitative and qualitative information
 - Includes collection of information about “racial and ethnic disproportionality with regard to the identification, placement, or discipline of students receiving special education services”
- WAC 392-172A-07040 Significant disproportionality
 - Includes requirement for districts to publicly report changes to district policies related to in the identification, placement, or discipline of eligible students
 - Clarifies district reporting requirements related to implementing comprehensive coordinated early intervening services (CCEIS) under this section





Proposed Changes to WAC 392-173 and WAC 392-140

Repeal and Update Rules

- Proposes repealing in full WAC 392-173
 - Outdated rules applicable to state School for the Deaf, state School for the Blind, and early childhood development centers covered by more recently enacted rules and statutes
- Updates rules WAC 392-140-60105 through -685 pertaining to the administration of safety net funds
 - Aligns definition of “High need student” with changes in state and federal law
 - Aligns definition of “Capacity for funding” with Medicaid billing practices
 - Updates applicable references to the Washington Center for Deaf and Hard of Hearing Youth (CDHY)





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