

and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. The costs for recording and/or transcription of proceedings shall be paid by the parties under the terms of their collective bargaining agreement or as agreed by the parties. The commission shall pay the salary and traveling expenses of a staff member assigned under WAC 391-65-070, but no other expenses of the proceedings. The parties shall pay the fees and expenses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]

Title 392 WAC

PUBLIC INSTRUCTION, SUPERINTENDENT OF

Chapters

392-121	Finance—General apportionment.
392-123	Finance—School district budgeting.
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392-172	Rules for the provision of special education to special education students.

Chapter 392-121 WAC

FINANCE—GENERAL APPORTIONMENT

WAC

392-121-031	Definition—School year.
392-121-10603	Repealed.
392-121-10604	Repealed.
392-121-107	Definition—Course of study.
392-121-182	Alternative learning experience requirements.
392-121-183	Repealed.
392-121-188	Instruction provided under contract.
392-121-201	Definition—Contractor certificated employee.
392-121-206	Definition—Contractor certificated instructional employee.
392-121-210	Definition—Basic education certificated instructional employee.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-121-10603	Definition—Higher education institution. [Statutory Authority: RCW 28A.150.290. 95-01-013, § 392-121-10603, filed 12/8/94, effective 1/8/95.] Repealed by 99-08-008 (Order 99-01), filed 3/25/99, effective 4/25/99. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290.
392-121-10604	Definition—Agency. [Statutory Authority: RCW 28A.150.290. 95-01-013, § 392-121-10604, filed 12/8/94, effective 1/8/95.] Repealed by 99-08-008 (Order 99-01), filed 3/25/99, effective 4/25/99. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290.
392-121-183	Contracting with a higher education institution. [Statutory Authority: RCW 28A.150.290. 95-01-013, § 392-121-183, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.41.055 and 28A.41.170. 88-03-013 (Order 88-8), § 392-121-183, filed 1/11/88.] Repealed by 99-08-008 (Order 99-01), filed 3/25/99,

effective 4/25/99. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290.

WAC 392-121-031 Definition—School year. As used in this chapter, "school year" means the annual period commencing on the first day of September of one calendar year and ending the last day of August of the ensuing calendar year: Provided, That for those school districts commencing basic education program prior to September 1, the following activities shall be considered to be within the school year that commences September 1.

- (1) School days scheduled prior to September 1; and
- (2) Staff days and activities in preparation for the school year included in employee contracts for the school year, but occurring before September 1.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-121-031, filed 9/28/99, effective 9/29/99. Statutory Authority: RCW 28A.41.055 and 28A.41.170. 88-03-013 (Order 88-8), § 392-121-031, filed 1/11/88.]

WAC 392-121-10603 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-121-10604 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-50, 180-51, 392-169 and 392-134 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - alternative learning experience provided by the school district in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - instruction provided by a contractor in conformance with WAC 392-121-188.

(d) National guard - participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.305.170 and WAC 180-50-320. Such participation may be counted as a course of study only by the school district which the individual last attended.

(e) Ancillary service - any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district, certificated contact time pursuant to RCW 28A.225.010 (4)(a)

with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - training provided pursuant to WAC 180-50-315 and reported as provided in WAC 392-121-124.

(g) Running start - attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district.

(i) Technical college direct funding - enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188;

(h) Enrollment in the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

[Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-107, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 97-22-013 (Order 97-06), § 392-121-107, filed 10/27/97, effective 11/27/97; 95-18-097, § 392-121-107, filed 9/6/95, effective 10/7/95; 95-01-013, § 392-121-107, filed 12/8/94, effective 1/8/95. Statutory Authority: 1990 c 33. 90-16-002 (Order 18), § 392-121-107, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.055 and 28A.41.170. 88-03-013 (Order 88-8), § 392-121-107, filed 1/11/88.]

[2000 WAC Supp—page 1918]

WAC 392-121-182 Alternative learning experience requirements. An alternative learning experience may be counted as a course of study. An alternative learning experience is an individualized course of study for a student who is not home-based pursuant to RCW 28A.225.010(4), a private school student pursuant to RCW 28A.225.010 (1)(a), or an adult education student. The alternative learning experience is provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences. The school district board policy must have been adopted in a public meeting. The alternative learning experience may be conducted in part outside of the regular classroom. A portion of the alternative learning experience may be provided by the student's parent(s) or guardian under supervision by school staff. As used in this section "school staff" means staff of the school district or a contractor pursuant to WAC 392-121-188. Alternative learning experience may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

(1) School district board policies for alternative learning experiences — Effective January 1, 1996, each school district claiming basic education funding for alternative learning experiences shall have written policies on file that:

(a) Require a written plan for each student participating in an alternative learning experience that meets the minimum criteria pursuant to subsection (2) of this section;

(b) Require that all alternative learning experience curriculum and course requirements be approved by the school district;

(c) Describe how student performance will be supervised, evaluated, and recorded by school staff;

(d) Require that each student's educational progress will be reviewed at least once during the first twenty school days and afterwards at least once every forty-five school days and that the results of each evaluation shall be communicated to the student and if the student is in grades K-8, the student's parent or guardian. If the school staff determines that a student is not substantially successful in completing the learning activities described in the written alternative learning experience plan, a revised written plan may be implemented. Any revised written plan shall be designed to enable the student to be substantially successful in completing the learning activities described in the revised written plan within ninety school days from the date that the school staff first determines that the student is not substantially successful in completing the assigned learning activities included in the original written plan. If the school staff determines that the student is still not substantially successful in completing their assigned learning activities after ninety school days from the date that the district first determines that the student is not substantially successful in completing the learning activities included in the original written plan, or sooner at the discretion of the school staff, a plan to remove the student from the alternative program shall be devised. Such plan shall specify that the student shall be removed from the alternative program no later than the end of the current school year for a period of at least one school term. Students removed from the alternative program shall be offered the opportunity to enroll in another course of study as defined in WAC 392-121-107;

(e) A requirement that the alternative learning experience plan for each student and all records of enrollment, attendance, and total hours of participation in educational activities for the student are maintained and available for audit in the appropriate school building; and

(f) At the discretion of the school district board, the policy may describe responsibilities of the student's parent(s) or guardian including, but not limited to:

(i) Approval of the written alternative learning experience plan;

(ii) Responsibility for the parent(s) or guardian to provide or supervise a portion of the student's alternative learning experience if the parent(s) or guardian agrees; and

(iii) Requirements to meet with school staff for purposes of evaluating the student's performance and/or receiving instructions on assisting with the student's alternative learning experience. The school district board may also prescribe requirements for appointing a person to provide or supervise a portion of the student's alternative learning experience in the event the student's parent(s) or guardian will not or can not be a participant in the student's alternative learning experience;

(2) A written alternative learning experience plan is developed — Effective January 1, 1996, the alternative learning experience plan for a student shall be a written plan of instruction designed to meet the individual needs of the student, and shall be approved by a school official and any other person(s) as required or allowed by school district policy. The written plan shall include, but not be limited to, the following elements:

(a) A schedule of the duration of the program, including beginning and ending dates;

(b) A description of the learning activities the student is expected to successfully complete. Such description shall be sufficient in detail to guide and advise the student of the expectations;

(c) A description of the teaching component(s) of the program, including where and when teaching activities will be conducted by school staff;

(d) A description of the responsibilities of the student including a requirement that if, on average, the student attends school less than five hours a week, the student shall meet one-on-one with qualified school staff for an average minimum of sixty minutes every five school days for instruction, review of the student's assignments, testing, and/or other learning activities. If more than one student meets with a qualified school staff member at one time, the required time is increased proportionately, for example, the requirement becomes one hundred twenty minutes if two 1.0 full-time equivalent students meet with the staff member at one time; and

(e) A reasonably accurate estimate of the average number of hours per month that the student will be engaged in learning activities to meet the requirements of the alternative learning experience plan. This estimate may be used in reporting enrollment in compliance with subsection (3) of this section and must be based upon the criteria in subsection (3)(a)(i) of this section;

(3) Reporting enrollment — Effective beginning with the 1995-96 school year the full-time equivalency of students

enrolled in alternative learning experiences shall be determined based upon both (a) and (b) of this subsection as follows:

(a) Using the definition of a full-time equivalent student in WAC 392-121-122 and the number of hours that each student engages in learning activities as determined by either (a)(i) or (ii) of this subsection as follows:

(i) The total number of hours that the student engages in learning activities pursuant to the written alternative learning experience plan including:

(A) Those hours that meet the criteria in WAC 392-121-107 (1)(a);

(B) Those hours of work based learning calculated in accordance with WAC 392-121-107 (1)(f);

(C) Those hours of learning activity other than those specified in (a)(i)(A), (B) and (D) of this subsection that are provided by the student's parent(s) or guardian, or other person as designated by the written plan, under the direct supervision of the school's qualified instructional staff; and

(D) Those hours that the student participates in learning activities other than those specified in (a)(i)(A), (B) and (C) of this subsection. Such learning activity shall be pursuant to the student's alternative learning experience plan and if the student is in grades K-8, only includes those hours the student is supervised by the student's parent(s) or guardian or other person designated by the written alternative learning experience plan;

(ii) The district may use the estimated average hours per month the student is engaged in learning activities as stated in the alternative learning experience plan which meet the requirements of (a)(i) of this subsection: Provided, That for any count date on which the student has averaged, for the immediate two prior months during the current school year, a number of hours engaged in learning activities that differ by more than five hours a week from the alternative learning experience plan estimate pursuant to subsection (2)(e) of this section, the full-time equivalency of the student for such count date shall be adjusted to the lesser of 1.0 or the full-time equivalency calculated using the two-month average;

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not met with appropriate school staff for twenty consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in their alternative learning experience or participated in another course of study as defined in WAC 392-121-107;

(4) Documentation required — Effective with the 1995-96 school year the district shall keep on file in the appropriate school building and have available for audit, documentation of all hours of learning activities used to determine the student's full-time equivalency including documentation of the following:

(a) For students in grades K-8, written statements from the student's parent(s) or guardian or other person as designated by the written alternative learning experience plan. Such statements shall be submitted to the district on a monthly basis or more often at the discretion of the district and shall list those hours that the student has engaged in planned learning activities while not in the presence of school

staff. Reported hours shall be used to determine the full-time equivalency of the student pursuant to subsection (3) of this section; and

(b) For students in grades 9-12, the student shall submit written statements on a monthly basis or more often at the discretion of the school staff. Such statements shall list those hours that the student has engaged in planned learning activities while not in the presence of school staff. Reported hours shall be used to determine the full-time equivalency of the student pursuant to subsection (3) of this section;

(5) Effective with the 1995-96 school year the school district shall either:

(a) Maintain a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade band of the students being reported for basic education funding pursuant to this section; or

(b) Separately account for, document, and have available for audit, evidence that the district expends during the school year at least seventy percent of the basic education entitlement claimed for students enrolled in alternative learning experiences during the school year. Such expenditures shall be direct expenditures in the following programs as defined in the *Accounting Manual for Public School Districts in Washington State* for the school year:

- (i) Program 01, Basic Education; and/or
- (ii) Program 31, Vocational, Basic, State; and/or
- (iii) Program 45, Skills Center, Basic, State.

[Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-182, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 95-18-097, § 392-121-182, filed 9/6/95, effective 10/7/95; 95-01-013, § 392-121-182, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.150.290, 28A.150.250 and 28A.150.260. 91-02-096 (Order 50), § 392-121-182, filed 1/2/91, effective 2/2/91. Statutory Authority: RCW 28A.41.055 and 28A.41.170. 88-03-013 (Order 88-8), § 392-121-182, filed 1/11/88.]

WAC 392-121-183 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-121-188 Instruction provided under contract. School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education pro-

gram pursuant to the contract and sets forth the rationale in support of the conclusion;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control.

(5) The contractor serves the students at no cost to the student for tuition and fees and enrollment is voluntary and no student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

(6) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(7) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section.

(8) The curriculum is approved by the district;

(9) The contractor provides enrollment reports to the school district that comply with this chapter;

(10) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(11) If a contractor other than an institution of higher education at any time during the school year serves more than twenty-five students which equals more than one quarter of one percent (.0025) of the district's annual average full-time equivalent enrollment claimed for basic education funding the school district reports the certificated instructional employees of the contractor funded with any state moneys or federal moneys that flow through the school district as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(12) If the contract is with an entity other than an institution of higher education, for the students served pursuant to the contract, the contractor maintains a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade level of the students being reported for basic education funding pursuant to this section;

(13) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district;

(14) The school district and contractor establish a process for periodic on-site monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor;

(15) Contracts for services for students with disabilities shall comply with WAC 392-172-220 and 392-172-222;

(16) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC; and

(17) When a school district contracts for an alternative learning experience program and the contractor exercises primary responsibility for the student's written learning plan, the program shall be for academically at-risk students and shall comply with RCW 28A.150.305. Enrollment in these programs shall be reported pursuant to WAC 392-121-182.

[Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-188, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 95-18-097, § 392-121-188, filed 9/6/95, effective 10/7/95; 95-01-013, § 392-121-188, filed 12/8/94, effective 1/8/95.]

WAC 392-121-201 Definition—Contractor certificated employee. As used in this chapter, "contractor certificated employee" means a person who holds a professional education certificate issued by the superintendent of public instruction and who is employed by a contractor as defined in WAC 392-121-188 in a position for which such certificate is required.

[Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-201, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 95-21-096 (Order 95-09), § 392-121-201, filed 10/18/95, effective 11/18/95.]

WAC 392-121-206 Definition—Contractor certificated instructional employee. As used in this chapter, "contractor certificated instructional employee" means a contractor certificated employee who:

(1) Is employed by a contractor, pursuant to WAC 392-121-288, to serve students claimed for basic education funding by a school district; and

(2) Is employed as one or both of the following:

(a) An elementary, secondary or other teacher who instructs pupils in classes or courses; or

(b) An educational staff associate who assists, evaluates, counsels, or instructs students in a manner consistent with the employee's educational staff associate certificate.

[Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-206, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 95-21-096 (Order 95-09), § 392-121-206, filed 10/18/95, effective 11/18/95.]

WAC 392-121-210 Definition—Basic education certificated instructional employee. As used in this chapter, "basic education certificated instructional employee" means a district certificated instructional employee or a contractor certificated instructional employee assigned in whole or in part to the following programs as defined in the accounting manual for public school districts in the state of Washington:

- (1) Basic education, program 01;
- (2) Vocational, basic, state, program 31;
- (3) Skills center, basic, state, program 45;

(4) Instruction support, program 94; and

(5) District-wide support, program 97.

[Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. 99-08-008 (Order 99-01), § 392-121-210, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. 95-21-096 (Order 95-09), § 392-121-210, filed 10/18/95, effective 11/18/95; 92-23-044 (Order 92-15), § 392-121-210, filed 11/16/92, effective 12/17/92. Statutory Authority: RCW 28A.41.055 and 28A.41.170. 88-03-013 (Order 88-8), § 392-121-210, filed 1/11/88.]

Chapter 392-123 WAC

FINANCE—SCHOOL DISTRICT BUDGETING

WAC

- 392-123-047 Definitions—Revenue, accrual basis expenditures, cash basis expenditures, appropriation, and disbursements.
- 392-123-049 Basis of budgeting and accounting.

WAC 392-123-047 Definitions—Revenue, accrual basis expenditures, cash basis expenditures, appropriation, and disbursements. As used in this chapter, the term:

(1) "Revenue" shall mean an addition to assets of a fund of a school district during a fiscal period that is available to finance the funds' expenditures during the fiscal period. Revenue does not accompany the increase of liabilities or represent refunds of previous disbursements. Revenue may be in the form of cash, or in the form of noncash assets such as donated commodities. Revenue for accrual basis expenditure funds is limited to amounts received in cash or noncash donations, plus or minus adjustments for revenue accruals.

(2) "Cash basis revenue" shall mean the actual receipt of revenue not adjusted for revenue accruals.

(3) "Revenue accruals" shall mean those revenues which are (a) anticipated to be received in cash after the close of the fiscal period and (b) represent reimbursement for expenditures incurred by the end of the fiscal period. In order for revenue to be included in revenue accruals, it must meet the above tests.

Revenue accruals, if they meet both tests include: Reimbursements on categorical grants for which expenditures have been made but payment has not been received; payments from other school districts that are due, but are not collected by the end of the fiscal period; deferrals of apportionment payments by the state when a deferral occurs because of district request or state mandate, and the revenue is due to the district; and rental or lease payments that are currently due, and there is reasonable assurance of payment.

Revenue that cannot be accrued because it does not meet the above tests includes: Collection of excess levies not expected to be received until after the end of the fiscal period and PL 874 funds that are to be received in cash in the following fiscal period, i.e. the twenty-five percent payment that is received after the end of the fiscal period.

(4) "Expenditures" shall mean the decrease in assets with no corresponding decrease in liabilities, or the increase in liabilities with no corresponding increase in assets. Expenditures for activities prior to September 1, but within the school year as defined in WAC 392-121-031, are considered expenditures of the school year commencing September 1.

(5) "Expenditure refunds" shall mean the increase in assets with a corresponding decrease in expenditures.

(6) "Revenue refunds" shall mean the increase in liabilities with a corresponding decrease in revenues.

(7) "Liabilities" shall mean debt or other legal obligations arising out of transactions in the past which are payable but not necessarily due.

(8) "Accrual basis expenditures" shall mean expenditures incurred during a given fiscal period, whether paid or unpaid.

(9) "Cash basis expenditures" shall mean the disbursement of cash for expenditures during a given fiscal period regardless of when liabilities are incurred, and the disbursement of inventory.

(10) "Appropriation" shall mean the maximum authorization during a given fiscal period to incur expenditures.

(11) "Disbursements" shall mean payments in cash, including the issuance of warrants, and the disbursement of inventory.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-123-047, filed 9/28/99, effective 9/29/99. Statutory Authority: RCW 28A.41.170, 28A.65.465 and 28A.41.055. 85-15-110 (Order 85-3), § 392-123-047, filed 7/24/85. Statutory Authority: RCW 28A.65.465, 83-21-027 (Order 83-12), § 392-123-047, filed 10/10/83; 82-19-048 (Order 82-13), § 392-123-047, filed 9/14/82.]

WAC 392-123-049 Basis of budgeting and accounting. All school districts must utilize the following methods of revenue and expenditure recognition in budgeting, accounting, and financial reporting:

(1) Recognize revenue as defined in WAC 392-123-047: Provided, That school districts that elect the cash basis of expenditure recognition as defined below shall recognize revenue on the cash basis.

(2) Recognition of expenditures for all funds shall be on the accrual basis: Provided, That school districts with under one thousand full time equivalent students for the preceding fiscal year may make a uniform election for all funds, except debt service funds, to be on the cash basis of expenditure recognition. Notification of such election shall be given to the state superintendent of public instruction in the budget of the school district and shall remain in effect for one full fiscal year.

(3) Expenditures for activities prior to September 1, but within the school year as defined in WAC 392-121-031, are considered expenditures of the school year commencing September 1.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-123-049, filed 9/28/99, effective 9/29/99. Statutory Authority: RCW 28A.65.465, 83-21-027 (Order 83-12), § 392-123-049, filed 10/10/83; 82-19-048 (Order 82-13), § 392-123-049, filed 9/14/82.]

Chapter 392-140 WAC

FINANCE—SPECIAL ALLOCATIONS, INSTRUCTIONS, AND REQUIREMENTS

WAC

392-140-950	Learning improvement days—Applicable provisions.
392-140-951	Learning improvement days—Purpose.
392-140-955	Learning improvement days—Definition—Learning improvement day.
392-140-956	Learning improvement days—Other definitions.
392-140-957	Learning improvement days—Allowable activities.

392-140-960	Learning improvement days—Determination of the number of days in the base contract in the 1998-99 school year.
392-140-961	Learning improvement days—Determination of the number of funded learning improvement days in the 1999-2000 school year and thereafter.
392-140-962	Learning improvement days—Salary allocations for learning improvement days.
392-140-965	Learning improvement days—School district requests for review and adjustment.
392-140-967	Learning improvement days—School district reporting requirements.

WAC 392-140-950 Learning improvement days—Applicable provisions. The provisions of WAC 392-140-950 through 392-140-967 govern state funding for up to three learning improvement days for certificated instructional staff in the 1999-2000 school year and thereafter.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-950, filed 9/28/99, effective 9/29/99.]

WAC 392-140-951 Learning improvement days—Purpose. These rules determine eligibility for state funding and establish guidelines for the use of learning improvement days. The purpose of these days is to expand the state-funded school year for certificated instructional staff. These additional days will provide time for teachers, other certificated instructional staff, and administrators to work together to plan and implement education reforms designed to increase student achievement.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-951, filed 9/28/99, effective 9/29/99.]

WAC 392-140-955 Learning improvement days—Definition—Learning improvement day. As used in this chapter "learning improvement day" means a scheduled work day during the school year for certificated instructional staff funded by the state for the purpose of improving student learning and implementing education reform.

(1) A learning improvement day is a scheduled work day on a district or school calendar.

(2) The length of a learning improvement day shall not be less than the length of a full work day for certificated instructional staff on a school day during the school year: Provided, That two half days may be scheduled in lieu of one full learning improvement day if the combined work hours equal or exceed hours in a full learning improvement day.

(3) No learning improvement day, or half day, shall be scheduled on a school day as defined in WAC 392-121-033.

(4) A school district may schedule learning improvement days for different school buildings or groups of employees on different calendar days.

(5) Learning improvement days shall be compensated as part of the employee's base contract.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-955, filed 9/28/99, effective 9/29/99.]

WAC 392-140-956 Learning improvement days—Other definitions. As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district certificated instructional employees and contractor certificated

instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- 01 Basic Education
- 21 Special Education-Supplemental-State
- 31 Vocational-Basic-State
- 45 Skills Center-Basic-State
- 55 Learning Assistance Program-State
- 65 Transitional Bilingual-State
- 74 Highly Capable
- 94 Instruction Support
- 97 District-wide Support

(5) "State institutional education programs" means the following programs:

- 26 Special Education-Institutions-State
- 56 State Institutions, Centers, and Homes-Delinquent

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-956, filed 9/28/99, effective 9/29/99.]

WAC 392-140-957 Learning improvement days—Allowable activities. Activities that may be conducted on learning improvement days include: Developing and updating student learning improvement plans; implementing curriculum materials and instructional strategies; providing professional development to implement the selected curricula and instruction; developing and implementing assessment strategies and training in assessment scoring; and conducting other activities intended to improve student learning for all students, including students with diverse needs. Activities shall be consistent with district and school plans for improving student learning. District and school plans shall delineate how the learning improvement days will be used to assist students in meeting the essential academic learning requirements and help the district or school achieve state and local accountability goals. Plans shall be made available to the public and to others upon request.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-957, filed 9/28/99, effective 9/29/99.]

WAC 392-140-960 Learning improvement days—Determination of the number of days in the base contract in the 1998-99 school year. The superintendent of public instruction shall separately determine for selected state-funded programs and state institutional education programs

the number of days in the base contract for each school district for the 1998-99 school year as follows:

(1) Using personnel data reported on the S-275 Personnel Report as of April 1999, select all certificated instructional staff with assignments in the programs.

(2) Exclude staff with administrative assignments if the assignment percent is greater than zero.

(3) Determine if eighty percent or more of remaining staff have the same number of days reported in the base contract.

(a) If so, use this number.

(b) If not, average the number of days for all staff in the calculation and use the result.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-960, filed 9/28/99, effective 9/29/99.]

WAC 392-140-961 Learning improvement days—Determination of the number of funded learning improvement days in the 1999-2000 school year and thereafter. The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district for the 1999-2000 school year and for each school year thereafter as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the programs.

(b) Exclude staff with administrative assignments if the assignment percent is greater than zero.

(c) For each employee, from the number of days reported in the base contract, subtract the district's number of days in the base contract for the 1998-99 school year.

(d) Take the lesser of three days or the result of (c) of this subsection but not less than zero.

(e) Sum the number of days determined for all employees pursuant to (c) and (d) of this subsection.

(f) Divide the result of (e) of this subsection by the number of employees and round to two decimal places.

(g) The result is the number of funded learning improvement days for the district.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-961, filed 9/28/99, effective 9/29/99.]

WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days. Using the number of learning improvement days determined pursuant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document 12E shall be reduced pro rata for any district with

less than three learning improvement days in selected state-funded programs.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allocation per pupil for three learning improvement days as calculated by the superintendent shall be reduced pro rata for any district with less than three learning improvement days in selected state-funded programs.

(4) For state institutional education programs the salary allocation for three learning improvement days as calculated by the superintendent shall be reduced pro rata for any district with less than three learning improvement days in state institutional education programs. Educational service districts or contractors operating state-funded institutional education programs shall be eligible for learning improvement day funding in the same manner as school districts.

(5) The superintendent shall reduce or eliminate a district's allocations for learning improvements days if the district fails to report as required by WAC 392-140-967, or if the district's report indicates that the activities provided during learning improvement days do not meet the requirements of WAC 392-140-957.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-962, filed 9/28/99, effective 9/29/99.]

WAC 392-140-965 Learning improvement days—School district requests for review and adjustment. A school district may at any time request that the superintendent of public instruction review and adjust data and calculations used to determine funding for learning improvement days pursuant to this chapter.

(1) Requests for adjustment to the number of days in the base contract in the 1998-99 school year shall be considered if the district shows that:

(a) The April 1999 S-275 data or calculations were in error;

(b) The district reported days in the base contract for services beyond the regular school calendar for a full-time certificated instructional employee of the district;

(c) The district had a signed multiyear collective bargaining agreement in April 1999 to reduce the number of days in the base contract in subsequent years; or

(d) Other bona fide adjustments are necessary.

(2) Requests for adjustment to the number of learning improvement days provided in the 1999-2000 school year and thereafter shall be considered if the district shows that the data or calculations are in error, or other bona fide adjustments are necessary.

(3) Requests for adjustment shall be accompanied by the relevant pages of a signed collective bargaining agreement stating the number of days in the base contract in the school district.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-965, filed 9/28/99, effective 9/29/99.]

WAC 392-140-967 Learning improvement days—School district reporting requirements. School districts

receiving funding for learning improvement days shall report annually to the superintendent of public instruction according to the superintendent's instructions. The report shall show the number of learning improvement days provided by the district and describe the activities on those days.

[Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 503(7). 99-20-021 (Order 98-07), § 392-140-967, filed 9/28/99, effective 9/29/99.]

Chapter 392-172 WAC

RULES FOR THE PROVISION OF SPECIAL EDUCATION TO SPECIAL EDUCATION STUDENTS (Formerly Chapter 392-171 WAC)

WAC

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392-172-062	Repealed.
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392-172-075	Availability of assistive technology.
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392-172-10900	Determination of needed evaluation data.
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392-172-110	Repealed.
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392-172-114	Definition and eligibility criteria for developmentally delayed.
392-172-116	Areas of developmental delay—Definitions.
392-172-118	Definition and eligibility for emotionally/behaviorally disabled.
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392-172-140	Definition and eligibility criteria for hearing impairment.
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392-172-150	Independent educational evaluation.
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392-172-230	Placement of students by parents.	392-172-392	Aversive interventions—Prohibited forms.
392-172-231	Reimbursement for private school placement.	392-172-394	Aversive interventions—Other forms—Conditions.
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392-172-236	Repealed.	392-172-404	Notice to parents.
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392-172-312	Mediation—Definition.	392-172-507	State level nonsupplanting and maintenance of effort.
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392-172-320	Repealed.	392-172-516	Recovery of funds.
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392-172-324	Definition—Complaint.	392-172-526	State responsibility.
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392-172-332	Contents of complaint.	392-172-554	Repealed.
392-172-334	Procedure for filing a complaint.	392-172-556	Repealed.
392-172-338	Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.	392-172-558	Repealed.
392-172-340	Repealed.	392-172-559	Improvement strategies.
392-172-346	Repealed.	392-172-560	Repealed.
392-172-348	Complaints and due process hearings.	392-172-561	School district implementation of comprehensive system of personnel development.
392-172-350	Right to initiate—Purposes.	392-172-562	Repealed.
392-172-351	Request for hearing, notice by parent.	392-172-564	Repealed.
392-172-352	Hearing officers—Selection and expenses of—Parent assistance.	392-172-566	Repealed.
392-172-354	Hearing rights.	392-172-568	Repealed.
392-172-356	Time line for hearing officer's decision—Time and place of hearing.	392-172-570	Repealed.
392-172-358	Repealed.	392-172-574	Professional standards review.
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392-172-576	Personnel shortages—Requirement.		178, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-57700	Performance goals and indicators.		
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392-172-580	School district eligibility—Requirements.	392-172-184	Reevaluation—Notice requirement. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-184, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
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392-172-590	Denial of requests—Opportunity for hearing.	392-172-206	Facilities. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-206, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-592	Repealed.		
392-172-594	Repealed.		
392-172-595	Records related to grant funds.		
392-172-600	School district or other public agency use of amounts.		
392-172-605	School district or other public agency use of federal funds for preschool children.	392-172-214	Administration of medication. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-214, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-610	School district or other public agency maintenance of effort.		
392-172-615	School district or other public agency exceptions to maintenance of effort.		
392-172-620	School district or other public agency—Treatment of federal funds in certain fiscal years.	392-172-216	Choice and running start programs. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-216, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-625	School-wide programs under Title I of the ESEA.		
392-172-630	School district or other public agency permissive use of funds.		
392-172-635	School district or other public agency coordinated services system.	392-172-228	Out-of-state agencies. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-228, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-640	School-based improvement plan.		
392-172-645	Plan requirements.		
392-172-650	School district responsibilities.		
392-172-655	Limitation.		
392-172-660	Additional requirements.	392-172-234	School district or other public agency responsibility for private school special education students. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-234, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-665	Extension of plan.		
DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER			
392-172-060	Definition—Transition services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-060, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-236	Determination of needs, numbers of students and types of services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-236, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-062	Definition of terms related to transition services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-062, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-320	Authority. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-320, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-110	Communication disordered students—Evaluation. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-110, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-322	Purpose. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-322, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-112	Medical evaluation. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-112, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-340	Complainant right to appeal. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-340, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-152	Summary analysis of evaluation data. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-152, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-346	Appeal to the secretary of education in complaints against the superintendent of public instruction. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-346, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-154	School district or other public agency decision on eligibility. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-154, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-358	Prospective application to amendments in <i>Washington Administrative Code</i> affecting hearings. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-358, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-168	Required student participation—Transition. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-168, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.	392-172-372	Disciplinary exclusion—Procedures, continuing district or other public agency responsibility. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-372, filed 10/11/95, effective 11/11/95.]
392-172-178	Preschool services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-		

- Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-374 Disciplinary exclusion—Determination of disability relatedness and/or appropriateness of program. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-374, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-376 Disciplinary exclusion—Definition significant change of placement. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-376, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-378 Disciplinary exclusion—Determination of what constitutes a pattern of exclusion. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-378, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-380 Emergency exclusion—Dangerous students. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-380, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-382 Disciplinary exclusion—Bringing a firearm to school. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-382, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-398 Aversive therapy—Parent complaint process. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-398, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-554 Scope of system. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-554, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-556 Establishment of a comprehensive system of personnel development advisory committee. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-556, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-558 Annual needs assessment. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-558, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-560 Data system on personnel and personnel development. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-560, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-562 Other sources of annual needs assessment data. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-562, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-564 Report of current and projected personnel needs. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-564, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-566 Administration of continuing education. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-566, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-568 Personnel development plan. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-568, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-570 Provision of technical assistance. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-570, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-592 Records related to grant funds. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-592, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
- 392-172-594 Program coordination. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-594, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.

WAC 392-172-010 Authority. The state authority for this chapter is RCW 28A.155.090(7). This authority enables the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.155 RCW. This authority is supplemented by RCW 28A.300.070 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law. Federal authority for this chapter is 20 USC 1400 et seq., the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-010, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-010, filed 10/11/95, effective 11/11/95.]

WAC 392-172-020 Purposes. (1) The purposes of this chapter are to:

(a) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 United States Code section 1400 et seq.;

(b) Ensure that all special education students as defined in this chapter have available a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

(c) Ensure that the rights of special education students and their parents are protected;

(d) Assist school districts and other public agencies to provide special education and related services; and

(e) Assess and ensure effectiveness of the public agencies responsible for providing special education pursuant to chapter 28A.155 RCW, including state residential school programs which are established and operated pursuant to RCW 28A.190.020 et seq., RCW 13.04.145 and chapter 72.40 RCW.

(2) School districts and other public agencies must be aware that there are additional federal and state civil rights regulations (29 US Code 764, RCW 49.60.030, 43 USC 12101 et seq.) that apply to students who have a disability regardless of the student's eligibility for special education and related services. If a student has a physical, sensory, or men-

tal impairment which substantially limits one or more major life activities, the district or other public agency has an obligation to provide that student appropriate educational services. Such services must be designed to meet the needs of the student with a disability to the same extent the needs of students without disabilities are met. A school district and other public agency's obligation to provide appropriate educational services to meet the needs of a student who has a disability exists separate and apart from the obligation to provide a free appropriate public education to a student who qualifies for special education and any necessary related services under these regulations.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-020, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-020, filed 10/11/95, effective 11/11/95.]

WAC 392-172-030 Students' rights to special education programs. (1) Each school district or other public agency shall provide every special education student between the age of three and twenty-one years, a free appropriate public education program, including special education for students who have been suspended or expelled from school. A free appropriate public education is also available to any eligible student even though the student is advancing from grade to grade. The right to special education for eligible students commences on their third birthday with an individualized education program (IEP) in effect by that date. If an eligible student's third birthday occurs during the summer, the student's individualized education program team shall determine the date when services under the individualized education program will begin.

(2) School districts or other public agencies may provide special education and related services to students with a disability who meet the eligibility criteria under WAC 392-172-114(1) in the birth through two years age group. If a school district or other public agency provides an education to any student who is not disabled in the birth through two years age group, the district or other public agency shall make any required special education and related services available pursuant to this chapter to all its special education students of the same age.

(3) Any student referred for special education and related services shall qualify pursuant to eligibility criteria set forth in this chapter.

(4) A special education student shall remain eligible for special education and any necessary related services until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation determines the student is no longer in need of special education; (In this case, while a disability may continue, and individual accommodations in the general education classroom may be necessary for educational benefit, such services would not represent special education services as defined in this chapter.) or

(b) The special education student has met high school graduation requirements established by the school district or other public agency pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. Graduation from high

school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172-302; or

(c) The special education student has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-030, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-030, filed 10/11/95, effective 11/11/95.]

WAC 392-172-035 Definitions of "free appropriate public education," "adult student," "special education student," "parent," and "public agency." As used in this chapter:

(1) "Free appropriate public education" or FAPE means special education and related services which:

(a) Are provided at public expense, under local school district or other public agency supervision and direction, and without charge to parents;

(b) Meet the standards of the state educational agency and the state board of education, including the requirements of this chapter;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformance with individualized education program (IEP) requirements of this chapter.

(2) "Special education student" means:

(a) Any student, enrolled in school or not, (i) who has been identified as having a disability, (ii) whose disability adversely affects the student's educational performance, (iii) and whose unique needs cannot be addressed exclusively through education in general education classes with or without individual accommodations and is determined to be eligible for special education services; or

(b) A student under the age of twenty-one who resides in a residential school serving students with a disability in accordance with RCW 28A.190.020 et seq., 13.04.145 and chapter 72.40 RCW; who also qualifies pursuant to (a) of this subsection.

(3) If it is determined through an appropriate evaluation that a student has one of the disabilities identified in WAC 392-172-114 through 392-172-148, but only needs a related service and not specially designed instruction, the student is not a special education student under this chapter.

(4) "Adult student" means a special education student who is eighteen years of age or older and who has not been judged incapacitated by a court of law. A student shall assume and be entitled to exercise all rights, duties and responsibilities otherwise granted to parents by this chapter upon attaining the age of eighteen consistent with WAC 392-172-309. The adult student shall retain and be entitled to exercise the same until he or she has been judged incapable of exercising these rights by a court of law.

(5) "Parent" means a natural or adoptive parent, a guardian, an adult person acting as a parent, or a surrogate parent

who has been appointed in accordance with WAC 392-172-308. The term includes a person acting in the place of a parent, such as a grandparent or stepparent with whom a special education student lives, as well as persons who are legally responsible for the student's welfare. The term does not include the state if the special education student is a ward of the state. It does include a foster parent if appointed as a surrogate parent.

(6) As used in this chapter, "public agency" means:

- (a) Each public school district in the state;
- (b) Each educational service district that provides special education or related services to one or more students with a disability;
- (c) Each state operated program; and
- (d) Each public organization or entity, including other political subdivisions of the state providing special education and/or related services to one or more special education students regardless of whether the organization or entity receives funds under the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-035, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-035, filed 10/11/95, effective 11/11/95.]

WAC 392-172-040 Definitions of "evaluation," "reevaluation," "consent," "day" and "native language." As used in this chapter:

(1) "Evaluation" means procedures used to determine:

- (a) Whether a student is disabled;
- (b) Whether the disability adversely affects educational performance; and
- (c) The nature and extent of the student's need for specially designed instruction and any necessary related services.

(2) "Reevaluation" means procedures used to determine the special education student's continuing eligibility and need for special education and related services consistent with WAC 392-172-182 through 392-172-190. Reevaluation shall also be used to determine the appropriateness of the services being provided to the special education student.

(3) "Consent" means that the parent or adult student:

- (a) Has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;
- (b) Understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and
- (c) Understands that the granting of consent is voluntary and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(4) "Day" means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for federal and state holidays, unless those holidays are specifically included in the designation of a business day in this chapter. School day means any day,

including a partial day, that students are in attendance at school for instructional purposes.

(5) "Native language" means:

(a) For an individual of limited English proficiency, the language normally used by that individual, or in the case of a student, the language normally used by the parents of the student. In all direct contact with a student, including evaluation, native language means the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-040, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-040, filed 10/11/95, effective 11/11/95.]

WAC 392-172-045 Definition of "special education" and other terms. (1) As used in this chapter "special education" means specially designed instruction provided to an eligible student as defined in WAC 392-172-035 (2) and (3). Specially designed instruction as defined in subsection (4)(a) of this section shall be provided at no cost to the parents, in conformance with the student's IEP, and designed to meet the unique needs of the student. Specially designed instruction includes instruction conducted in the classrooms, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) The term does not include individual accommodations within general education that alone would be sufficient and effective to meet the learning needs of the student; nor does it include the educational services necessary to meet the needs of those students identified under WAC 392-172-020(2).

(3) Travel training, vocational training, speech and language services, physical and occupational therapy, orientation and mobility instruction, behavioral intervention instruction, transition services, and audiological services are considered special education under this chapter if they are provided as specially designed instruction as defined in subsection (4) of this section. They are considered related services under WAC 392-172-055 if they are required to assist a special education student to benefit from special education, and not provided as specially designed instruction.

(4) The terms used in this section are defined as follows:

(a) "Specially designed instruction" means organized and planned instructional activities which adapt, as appropriate, to the needs of eligible students under this chapter, the content, methodology or delivery of instruction:

(i) To address the unique needs that result from the student's disability;

(ii) To ensure access of the student to the general curriculum so that the student can meet the educational standards of the school district or other public agency that apply to all students; and

(iii) Be provided by appropriately qualified special education certificated staff, or designed and supervised by this staff and carried out by general education certificated personnel or trained classified staff pursuant to a properly formu-

lated IEP consistent with WAC 392-172-160 (1)(c), so that the needs of the student and services provided to the student will be clear to the parents and other IEP service providers. Student progress must be monitored and evaluated by special education certificated staff.

(b) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as part of the general education program.

(c) "Audiology" means the provision of habilitative instruction related to a hearing impairment.

(d) "Behavioral intervention instruction" means providing instruction which addresses student behavior that impedes involvement and/or progress in the general curriculum.

(e) "Occupational therapy" is instruction designed to improve, develop or restore functions impaired or lost through illness, injury, or deprivation, or improve ability to perform tasks for independent function if functions are impaired or lost.

(f) "Orientation and mobility instruction" means the provision of training/instruction in orientation and mobility for students who are visually impaired, including travel training.

(g) "Physical education" means:

(i) The development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sport (including intramural and lifetime sports); and

(ii) Special physical education, adapted physical education, movement education, and motor development.

(h) "Physical therapy" means developing or restoring motor function and maintaining appropriate performance commensurate with the student's unique needs.

(i) "Speech and language services" means the provision of instruction for the habilitation of communication disorders.

(j) "Transition services" means a coordinated set of activities for a special education student that:

(i) Is designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(iii) Includes:

(A) Specially designed instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post-school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(k) "Travel training" means providing instruction, as appropriate, to students with significant cognitive disabilities, and other eligible students with disabilities who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in the school, in the home, at work, and in the community).

(l) "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-045, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-045, filed 10/11/95, effective 11/11/95.]

WAC 392-172-055 Related services. (1) As used in this chapter, the term "related services" means transportation and such developmental, corrective, preventative and other supportive services as are required to assist a special education student to benefit from special education.

Related services include classified staff services, counseling services, early identification and evaluation of disabilities in students, medical services, parent counseling and training, psychological services, recreation, rehabilitation counseling services, school health services, social work services in schools, and transportation.

The list of related services is not exhaustive and may include other developmental, corrective, preventative or supportive services, if they are required to assist a special education student to benefit from special education.

(2) The terms used in the definition of "related services" are defined as follows:

(a) "Classified staff services" includes:

(i) Services provided by classified staff which provide for the student's safety, personal care, and instructional assistance; and

(ii) Services provided to certificated staff by classified staff which provide assistance for special education students to achieve placement in the least restrictive environment.

(b) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. "Counseling services" also includes counseling and guidance of parents, children and teachers by audiologists regarding hearing loss and by speech pathologists regarding speech and language impairment.

(c) "Early identification and evaluation of disabilities in students" means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) "Medical services" means diagnostic and evaluation services provided by a licensed physician to determine a student's medically related disabling condition which may result in the student's need for special education and related services.

(e) "Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their student's IEP.

(f) "Psychological services" includes:

(i) Administering psychological and educational tests, and other evaluation procedures;

(ii) Interpreting evaluation results;

(iii) Obtaining, integrating, and interpreting information about the student's behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(g) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in school and community agencies; and

(iv) Leisure education.

(h) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a special education student. The term also includes vocational rehabilitation services provided to special education students by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(i) "School health services" means nursing or other health services provided to a special education student by a qualified school nurse, registered nurse, licensed practical nurse or other persons qualified or appropriately trained to provide the services in the student's educational setting.

(j) "Social work services in schools" include:

(i) Preparing a social or developmental history on a special education student;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and/or community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to benefit from his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(k) "Transportation" includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a special education student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-055, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-055, filed 10/11/95, effective 11/11/95.]

WAC 392-172-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-062 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-065 Definition—Supplementary aids and services. As used in this chapter, the term "supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable special education students to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172-172.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-065, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-065, filed 10/11/95, effective 11/11/95.]

WAC 392-172-070 Definition—Assistive technology device. The term "assistive technology device" means any item, piece of equipment, or product system—whether acquired commercially off the shelf, modified, or customized—that is used to increase, maintain, or improve the functional capabilities of special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-070, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-070, filed 10/11/95, effective 11/11/95.]

WAC 392-172-073 Definition—Assistive technology service. The term "assistive technology service" means any service that directly assists a special education student in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) The evaluation of the needs of a special education student, including a functional evaluation of the student in the student's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by special education students;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a special education student, or if appropriate, the student's family; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-073, filed 12/1/99, effective 1/1/00.]

WAC 392-172-075 Availability of assistive technology. Each public agency shall ensure that assistive technol-

ogy devices or assistive technology services, or both, are made available to a special education student if required as part of the student's:

- (1) Special education;
- (2) Related services; or
- (3) Supplementary aids and services.

On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-075, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-075, filed 10/11/95, effective 11/11/95.]

WAC 392-172-100 Child find. (1) The local district or other public agency shall conduct child find activities that apply to students ages birth through twenty-one for the purpose of locating, evaluating and identifying students with a suspected disability, regardless of the severity of their disability, who are residing within the boundaries of the district or other public agency and who are not currently receiving special education and related services.

These activities shall extend to students attending private schools, including religious schools. The activities undertaken to carry out child find in private schools shall be:

(a) Comparable to activities undertaken in public schools; and

(b) Developed in consultation with appropriate representatives of private school students on how to carry out the activities described in this section.

(2) Child find activities must be calculated to reach:

(a) Highly mobile students with disabilities, such as homeless and migrant students; and

(b) Students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district, or other public agency shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to: Written notification to all parents of students in the district's or other public agency's jurisdiction regarding access to and the use of its child find system; posting notices in school buildings and other public areas describing the availability of special education programs; offering preschool developmental screening; conducting local media informational campaigns; coordinating distribution of information with other child find programs within public and nonpublic agencies; screening district-wide test results; inservice education to staff; and other methods developed by the school district to identify, locate and evaluate students. Such methods may also include a systematic, intervention based, process within general education for determining the need for a special education referral.

(4) The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements in WAC 392-172-400 through 392-172-426.

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[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-100, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-100, filed 10/11/95, effective 11/11/95.]

WAC 392-172-102 Referrals. A referral of a student suspected of having a disability may be initiated by any source, in writing (or verbally, if the individual is unable to write) including but not limited to parents, medical personnel, school district or other public agency personnel, community agencies, civil authorities, through district screening procedures, and by other interested persons.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-102, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-102, filed 10/11/95, effective 11/11/95.]

WAC 392-172-104 Referral procedures—Time line. (1) When a student suspected of having a disability is brought to the attention of school personnel under WAC 392-172-102, the school district or other public agency must document the referral and:

(a) Provide the student's parent(s) or the adult student written notice that the student has been referred because of a suspected disabling condition and that the district or other public agency, with parental input, will determine whether or not there is good reason to believe that the student is a candidate for evaluation;

(b) Review the referral;

(c) Collect and examine existing school, medical and other records in the possession of the parent, school district or other public agency; and

(d) Within twenty-five school days after receipt of the referral, make a determination whether or not the student is a candidate for evaluation. This decision shall be recorded in writing and shall set forth the date and the names of the persons making the decision. The superintendent or designee shall direct a notice to the student's parent(s) or the adult student that complies with the requirements of WAC 392-172-302.

(2) When the student is a candidate for evaluation, the school district or other public agency shall obtain consent, fully evaluate the student and arrive at a decision pursuant to WAC 392-172-111 within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided by the parent(s) or the adult student; or

(b) Thirty-five school days after the date the refusal of the parent(s) or the adult student to grant consent has been overridden pursuant to a hearing (or appeal) in accordance with WAC 392-172-350 et seq.; or

(c) Such other time period as may be agreed to by the parent(s) or the adult student and documented by school authorities, including specifying the reasons for extending the time line.

(3) If determined eligible under this chapter, a meeting will be held consistent with WAC 392-172-156, to develop an IEP, and special education and any necessary related services will be made available to the student in accordance with this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-104, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-104, filed 10/11/95, effective 11/11/95.]

WAC 392-172-105 Parent participation in meetings and notice. (1) Parents shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education to the student.

(2) Each public agency shall notify parents consistent with WAC 392-172-15700 (1)(a) and (2) to ensure that parents have the opportunity to participate in meetings described in this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-105, filed 12/1/99, effective 1/1/00.]

WAC 392-172-106 General areas of evaluation. (1) The evaluation of a student shall be in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(2) The evaluation shall be sufficiently comprehensive to identify all of the student's special education and any necessary related services needs, whether or not commonly linked to the disability category in which the student has been classified.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-106, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-106, filed 10/11/95, effective 11/11/95.]

WAC 392-172-108 Evaluation procedures. The evaluation or reevaluation of a special education student or any student being considered for special education services shall be performed using the procedures established in this chapter. Each school district or other public agency shall establish and implement evaluation procedures which meet the requirements of this chapter.

(1) Before the initial provision of special education and any necessary related services, a full and individual initial evaluation of the student's educational needs must be conducted.

(2)(a) The evaluation of a student with a suspected disability will be conducted by a group of qualified professionals selected by the district or other public agency and knowledgeable about the student and the suspected areas of disabilities.

(b) For a student suspected of having a learning disability, the determination of whether the student is eligible under this chapter shall be made by child's parent(s) and a group of qualified professionals which must include:

(i) The student's general education classroom teacher; or
(ii) If the child does not have a general education classroom teacher, a general education classroom teacher qualified to teach a child of his or her age; or

(iii) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(iv) At least one individual qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech language pathologist, or remedial reading teacher.

(3) Each professional member of the evaluation group shall be licensed, registered, credentialed, or certificated according to his or her professional standards in accordance with state statutes and rules.

(4) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student, including information provided by the parents, and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

(a) Whether the student is a special education student consistent with WAC 392-172-035(2); and

(b) The content of the student's individualized education program.

(5) No single procedure shall be the sole criterion for determining a student's eligibility or disabling condition and/or for determining the appropriate educational program for a student.

(6) Tests and other evaluation materials, used for the purpose of identification, special education needs, related services needs, and placement shall be selected and administered so as not to be racially or culturally discriminatory.

(7) Materials and procedures used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

(8) Any standardized tests and other evaluation materials that are given to a student shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests are designed to measure. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility for special education based on other evidence of the existence of a disability and need for special education. This professional judgment shall be documented in the evaluation report. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(9) All tests and other evaluation materials shall be administered by trained and knowledgeable personnel in conformance with the instructions of the test producer.

(10) Tests and other evaluation materials shall be provided and administered in a student's native language or other mode of communication, unless it is clearly not feasible to do so. Tests shall be selected and administered so as to ensure that, when a test is administered to a student with impaired

sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test is designed to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test is intended to measure). Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(11) Each school district or other public agency shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(12) Each school district or other public agency shall use assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the student.

(13)(a) Medical evaluations at the expense of a school district or other public agency shall be obtained if:

(i) The group described in WAC 392-172-108(2) suspects a student of having a health problem which may affect his or her eligibility and need for special education and any necessary related services; and

(ii) In accordance with criteria established by the school district or other public agency.

(b) Medical evaluation services necessary to make a determination of the educational needs of residential school students, shall be the responsibility of the department of social and health services pursuant to RCW 28A.190.040. The state schools for the deaf and blind are responsible for the provision of these services under chapter 72.40 RCW.

(14) An evaluation report and documentation of determination of eligibility shall be developed consistent with the requirements of WAC 392-172-10905 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-108, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-108, filed 10/11/95, effective 11/11/95.]

WAC 392-172-10900 Determination of needed evaluation data. (1) As part of an evaluation, a group that includes the individuals described in WAC 392-172-153, and other qualified professionals, as appropriate, shall:

Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based assessment and observations; and

(c) Observations by teachers and related services providers.

(2) Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:

(a) Whether the student has a particular category of disability as described in this chapter;

(b) The present levels of performance and educational needs of the student; and

(c) Whether the student needs special education and related services.

(3) The public agency shall administer tests and any other evaluation materials, pursuant to WAC 392-172-108 as may be needed to produce the data required to make the determinations listed in subsection (2) of this section.

(4) The group described in subsection (1) of this section may conduct its review without a meeting. If the school district or other public agency conducts a meeting for the purposes under this section, parents must have an opportunity to participate in the meeting consistent with WAC 392-172-105.

(5) If no additional data are needed to make the determination listed in subsection (2) of this section, the public agency shall notify the student's parents of this fact and the reasons for this decision, consistent with WAC 392-172-302.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-10900, filed 12/1/99, effective 1/1/00.]

WAC 392-172-10905 Evaluation report and documentation of determination of eligibility. (1) In interpreting evaluation data for the purpose of determining if a student is a special education student under this chapter, and the educational needs of the student, each public agency shall:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) A student may not be determined to be a special education student if the determinant factor for that decision is:

(a) Lack of instruction in reading or math; or

(b) Limited English proficiency; and

(c) The student does not otherwise meet the eligibility criteria in this chapter.

(3) An evaluation report shall be sufficient in scope to develop an IEP consistent with WAC 392-172-160 through 392-172-164 and, at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) How the student's disability affects the student's involvement and progress in the general curriculum or for preschool children, in appropriate activities;

(c) The recommended special education and related services needed by the student including specially designed instruction;

(d) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(e) A statement that the student was evaluated in accordance with the evaluation procedures in WAC 392-172-108; and

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(4) For a student suspected of having a learning disability, the evaluation report must be signed by all members of the evaluation group in WAC 392-172-108 (2)(b) and must also include a statement of:

(a) All of the information required in subsection (1) of this section and the information required in WAC 392-172-132;

(b) The specific learning disability(ies);

(c) The basis for making the determination;

(d) The relevant behavior noted during the observation of the student;

(e) The relationship of that behavior to the student's academic functioning;

(f) The medically relevant findings, if any;

(g) A statement about whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(h) The determination of the group concerning the effects of environmental, cultural, or economic disadvantage.

(5) Each professional member of the group who contributed to the evaluation report shall document the results of their individual assessments. This documentation must include:

(a) The procedures and instruments used in any assessment and the results obtained;

(b) Any conclusions from observations of the student; and

(c) A statement of the apparent significance of the findings as related to the student's suspected disability(ies) and instructional program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-10905, filed 12/1/99, effective 1/1/00.]

WAC 392-172-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-111 Determination of eligibility and parental notification. (1) Upon completing the administration of tests and other evaluation materials:

(a) Consistent with WAC 392-172-105 and 392-172-15705, a group of qualified professionals and the parent of the student shall determine whether the student is a special education student in need of special education and any necessary related services, as defined in this chapter; and

(b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student in accordance with this chapter.

(3) If the decision is that the student is not eligible for special education, the parent(s) of the student shall be informed in writing of the evaluation findings in compliance with the notice requirements of WAC 392-172-302, within ten school days following the completion of the evaluation.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-111, filed 12/1/99, effective 1/1/00.]

WAC 392-172-112 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-114 Definition and eligibility criteria for developmentally delayed. Definition and eligibility criteria for developmentally delayed are as follows:

(1) As used in this chapter, the term "developmentally delayed, birth to three years" shall mean those children under three years of age who:

(a) Demonstrate a 1.5 standard deviation or twenty-five percent delay in cognitive development, communication development, physical development, social or emotional development, or adaptive development as defined in WAC 392-172-116; or

(b) Qualify for one of the other eligibility categories specified in this chapter; and

(c) Are in need of special education and any necessary related services. Children who qualify for special education services under this category must be reevaluated prior to age three in order to continue to be eligible for special education and related services.

(2) As used in this chapter, the term "developmentally delayed, three to six years" shall mean those children between three and six years of age who demonstrate a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental areas defined in WAC 392-172-116; or

(b) One and one-half standard deviations below the mean in two or more of the five developmental areas defined in WAC 392-172-116; or

(c) Qualify for one of the other eligibility categories specified in this chapter; and

(d) Are in need of special education and any necessary related services.

(e) Children aged six to nine years who previously qualified as "developmentally delayed, three to six years," may at the option of the school district or other public agency, continue to be eligible under the criteria for "developmentally delayed, three to six years" until they are reevaluated, but not later than three years after the eligibility decision for "developmentally delayed, three to six years" was initially made.

(3) As used in this chapter, the term "developmentally delayed, six to nine years" shall mean those children between six and nine years of age who either continue to qualify under subsection (2) of this section, or demonstrate a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental areas defined in WAC 392-172-116; or

(b) Qualify for one of the other eligibility categories specified in this chapter; and

(c) Are in need of special education and any necessary related services.

(4) Children who qualify for special education as "developmentally delayed, six to nine years" must be reevaluated prior to the age of nine consistent with WAC 392-172-182 et seq. and a determination made that the child either:

(a) Qualifies under the provisions of one of the other disabling conditions in this chapter; or

(b) Is no longer in need of special education and related services.

(5) A school district or other public agency is not required to adopt and use the category "developmentally delayed" for children, three to nine, within its jurisdiction.

(6) If a school district or other public agency uses the category "developmentally delayed," the district or public agency must conform to both the definition and age range of three to nine, established under this section.

(7) School districts or other public agencies who use the category "developmentally delayed," may also use any other eligibility category at any time.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-114, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-114, filed 10/11/95, effective 11/11/95.]

WAC 392-172-116 Areas of developmental delay—Definitions. The five developmental areas for the purpose of applying eligibility criteria to developmentally delayed children are:

(1) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(2) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(3) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(4) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(5) Adaptive development: The ability to develop and exhibit age appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-116, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-116, filed 10/11/95, effective 11/11/95.]

WAC 392-172-118 Definition and eligibility for emotionally/behaviorally disabled. (1) Students who are emotionally/behaviorally disabled are those who exhibit over a long period of time and to a marked degree, one or more of the following characteristics, which adversely affects their educational performance and requires specially designed instruction:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

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(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic.

(3) The term does not include students who are socially maladjusted, unless it is determined that they are also emotionally/behaviorally disabled.

(4) All students considered for special education and any necessary related services in this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-118, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-118, filed 10/11/95, effective 11/11/95.]

WAC 392-172-120 Definition and eligibility for communication disordered. A student shall be considered to have a communication disorder if there is a documented speech or language impairment such as stuttering, voice disorder, language impairment, or impaired articulation which adversely affects a student's educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-120, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-120, filed 10/11/95, effective 11/11/95.]

WAC 392-172-122 Definition and eligibility for orthopedically impaired. Students who are orthopedically impaired are those who lack normal function of muscles, joints or bones due to congenital anomaly, disease or permanent injury, and such conditions adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-122, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-122, filed 10/11/95, effective 11/11/95.]

WAC 392-172-124 Definition and eligibility for health impaired. Students with health impairments are those who have limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to chronic or acute health problems, such as a heart condition, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, lead poisoning, leukemia, or diabetes, that adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-124, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-124, filed 10/11/95, effective 11/11/95.]

WAC 392-172-126 Definition and eligibility for specific learning disability. (1) Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(2) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(3) All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability in accordance with the procedures in WAC 392-172-106 through 392-172-111 in addition to the procedures set forth in WAC 392-172-128 through 392-172-132.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-126, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-126, filed 10/11/95, effective 11/11/95.]

WAC 392-172-128 Specific learning disability—Evaluation procedures. The group described in WAC 392-172-108 (2)(b) may determine that a student has a specific learning disability if:

(1) The student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (2) of this section, if provided with learning experiences appropriate for the student's age and ability levels;

(2) The group finds that a student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading comprehension.
- (f) Mathematics calculations.
- (g) Mathematics reasoning;

(3) The group may not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

- (a) A visual, hearing, or motor impairment;
- (b) Mental retardation;
- (c) Emotional/behavioral disability; or

(d) Environmental, cultural or economic disadvantage;

(4) At least one group member other than the student's general education teacher shall observe the student's academic performance in the general classroom setting;

(5) In the case of a student of less than school age or out of school, a group member shall observe the student in an environment appropriate for a student of that age;

(6) Written documentation that the student has an academic achievement problem in the general education program shall be available. Examples of data used for documentation may include:

(a) Student performance on daily classroom work and/or criterion-referenced tests;

(b) Summary of past student performance;

(c) Group test results;

(d) Teacher observation and judgments; and

(e) Performance on state established standards;

(7) Documentation of the existence of a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas specified in this section shall be recorded. Such documentation shall conform to the requirements of WAC 392-172-132; and

(8) Tests used to assess the student's intellectual ability and academic achievement shall be:

(a) Reliable as demonstrated by a reliability coefficient of .85 or above;

(b) Normed on representative national samples; and

(c) Selected and individually administered in accordance with the general requirements of WAC 392-172-106 through 392-172-108.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-128, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-128, filed 10/11/95, effective 11/11/95.]

WAC 392-172-132 Method for documenting severe discrepancy. (1) A severe discrepancy shall be determined and documented from tables developed pursuant to WAC 392-172-130.

(2) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

(a) A total or full scale intellectual ability score;

(b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and

(c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas provided for in WAC 392-172-128 shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above. Where the evaluation results do not appear to accurately represent the student's intellectual ability and where the discrepancy between the student's intellectual ability and academic achievement does not initially appear to be severe upon application of the discrepancy tables in WAC 392-172-130, the evaluation group, described in WAC 392-172-108 (2)(b), shall apply professional judgment in order to determine the presence of a severe discrepancy. In this event, the group shall document in a written narrative an explanation as to why the student has a

severe discrepancy. The written narrative must provide supportive evidence, including the procedures used to determine that a severe discrepancy exists between the student's intellectual ability and academic achievement. If the prohibition against the use of specific tests or test results as provided in WAC 392-172-108 precludes the use of any of the tests referenced above, the evaluation group shall document the basis upon which the members decided that there exists a severe discrepancy.

(3) Each member of the evaluation group shall certify in writing whether the evaluation report in WAC 302-172-10905 (3) and (4) reflects his or her conclusion. If it does not, the group member must submit a separate statement presenting his or her conclusion.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-132, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-132, filed 10/11/95, effective 11/11/95.]

WAC 392-172-134 Definition and eligibility for mental retardation. Students with mental retardation are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects their educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-134, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-134, filed 10/11/95, effective 11/11/95.]

WAC 392-172-136 Definition and eligibility for multiple disabilities. Multiple disabilities means concomitant impairments which adversely affect education performance and require specially designed instruction (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-136, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-136, filed 10/11/95, effective 11/11/95.]

WAC 392-172-138 Definition and eligibility for deafness. Students who are deaf are those students who have a documented hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely

affects educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-138, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-138, filed 10/11/95, effective 11/11/95.]

WAC 392-172-140 Definition and eligibility criteria for hearing impairment. Students with hearing impairments have impaired hearing, whether permanent or fluctuating, that adversely affects the student's educational performance and requires specially designed instruction but is not included under the definition of deafness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-140, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-140, filed 10/11/95, effective 11/11/95.]

WAC 392-172-142 Definition and eligibility for visually impaired/blindness. Students with a visual impairment including blindness have an impairment that, even with correction, adversely affects the student's educational performance and requires specially designed instruction. The term includes both partial sight and blindness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-142, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-142, filed 10/11/95, effective 11/11/95.]

WAC 392-172-144 Definition and eligibility for deaf/blindness. Students with deaf/blindness are those whose hearing and vision impairments, in combination, cause such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or blindness. The impairments adversely affect the student's educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-144, filed 12/1/99, effective 1/1/00. Stat-

utory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-144, filed 10/11/95, effective 11/11/95.]

WAC 392-172-146 Definition and eligibility for autism. "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance and requires specially designed instruction. If a student manifests characteristics of autism after age three, that student still could be diagnosed as having autism if the criteria in this section are satisfied.

Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines and unusual responses to sensory experiences.

The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in this chapter. The category of autism includes students with pervasive developmental disorders.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-146, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-146, filed 10/11/95, effective 11/11/95.]

WAC 392-172-148 Definition and eligibility for traumatic brain injury. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance and requires specially designed instruction. The term applies to open or closed head injuries resulting in impairments in one or more of the following areas such as: Cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-148, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-148, filed 10/11/95, effective 11/11/95.]

WAC 392-172-150 Independent educational evaluation. (1) Parents of a special education student or a student referred for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's or other

public agency's evaluation subject to subsections (4) through (11) of this section.

(2) Each school district or other public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsections (10) and (11) of this section.

(3) For the purposes of this section:

(a) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district or other public agency responsible for the education of the student in question; and

(b) Public expense means that the school district or other public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(4) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district or other public agency.

(5) If a parent requests an independent educational evaluation at public expense, the school district or other public agency must either:

(a) Initiate a hearing within fifteen days under this chapter to show that its evaluation is appropriate; or

(b) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(6) If the school district or other public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(7) If a parent requests an independent educational evaluation, the school district or other public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the school district or other public agency must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the public evaluation.

(8) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district or other public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(9) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(10) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or other public agency uses when it initiates an

evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(11) Except for the criteria described in subsection (10) of this section, a school district or other public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-150, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-150, filed 10/11/95, effective 11/11/95.]

WAC 392-172-152 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-153 IEP team members. The school district or other public agency shall ensure that the IEP team for each special education student includes:

- (1) The parent(s) of the student;
- (2) At least one general education teacher (or preschool education provider) of the student if the student is, or may be participating, in the general education environment;
- (3) At least one special education teacher of the student, or if appropriate, at least one special education provider of the student;
- (4) A representative of the school district or public agency who:
 - (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of special education students;
 - (b) Is knowledgeable about the general curriculum; and
 - (c) Is knowledgeable about the availability of resources of the school district or other public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subsections (2) through (6) of this section.
- (6) At the discretion of the parent or the school district or other public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
- (7) If appropriate, the student; and
- (8) Transition services participants as described in WAC 392-172-166.

The determination of the knowledge or special expertise of any individual described in this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in this section are satisfied.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-153, filed 12/1/99, effective 1/1/00.]

WAC 392-172-154 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-156 IEP meetings. A meeting shall be held within thirty calendar days after the date the eligible student's evaluation is completed and group of qualified professionals and the parent determine the student is eligible pursu-

ant to WAC 392-172-111 for the purpose of developing the student's individualized education program. Meetings consistent with this section shall be conducted by the school district or other public agency periodically but at least annually for the purpose of reviewing and revising as necessary each student's individualized education program, to determine whether the annual goals for the student are being achieved. The individualized education program shall be revised, as appropriate, to address: Any lack of expected progress toward the annual goals and in the general curriculum if appropriate; the results of any reevaluation conducted; information about the student provided to, or by, the parents; the student's anticipated needs; or other matters.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-156, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-156, filed 10/11/95, effective 11/11/95.]

WAC 392-172-15700 Parent and general education teacher participation in meetings. (1) Each school district or other public agency shall take steps to ensure (in the case of nonadult students) that one or both parents of the special education student are present at each meeting or are afforded the opportunity to participate, by:

- (a) Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and
- (b) Scheduling the meeting at a mutually agreed upon place and time.

(2) The notice to the parent(s) shall include the purpose, time, location of the meeting and who will be in attendance. If the purpose of the meeting is to develop, review or revise an IEP, the notice shall also inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If the purpose of the meeting is the consideration of transition needs or services, the provisions in WAC 392-172-164 apply.

(3) If neither parent can attend, the district or other public agency shall use other methods to ensure participation, including individual or conference telephone calls, or video conferencing.

(4) If neither parent can attend (in the case of a nonadult student), a meeting may be conducted without a parent if the district or other public agency is unable to convince the parents that they should attend. In such a case the school district or other public agency must have a record of its attempts to arrange a mutually agreed upon time and place. The record shall contain such information as:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) The school district or other public agency shall take whatever action is necessary to ensure that the parent or adult student understands the proceedings at an IEP meeting, or any other meeting, including arranging for an interpreter for parents (or adult students) who are deaf or whose native language is other than English.

(6) The general education teacher of a special education student (or preschool education provider), as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revision of the student's individualized education program, including assisting in:

(a) The determination of appropriate positive behavioral interventions and strategies for the student; and

(b) The determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student consistent with WAC 392-172-160 (1)(c).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-15700, filed 12/1/99, effective 1/1/00.]

WAC 392-172-15705 Parent involvement in placement decisions. (1) Each public agency shall ensure that the parents of each special education student are afforded the opportunity to be members of any team that makes decisions on the educational placement of their student.

(2) In implementing the requirements of this section, the public agency shall use procedures consistent with the procedures described in WAC 392-172-15700.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a team without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of WAC 392-172-15700.

(5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any team discussions relating to the educational placement of their student, consistent with WAC 392-172-15700.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-15705, filed 12/1/99, effective 1/1/00.]

WAC 392-172-158 Individualized education program—Implementation. (1) At the beginning of each school year, each public agency shall have in effect an individualized education program for every special education student within its jurisdiction. An individualized education program must:

(a) Be in effect before special education and related services are provided to an eligible student; and

(b) Be implemented as soon as possible following the meetings under this chapter.

(2) The student's IEP shall be accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and

(3) Each teacher and provider described above shall be informed of:

(a) His or her specific responsibilities related to implementing the student's IEP; and

(b) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-158, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-158, filed 10/11/95, effective 11/11/95.]

WAC 392-172-159 Development, review, and revision of individualized education program-consideration of special factors. (1) In developing, reviewing and revising each student's individualized education program, the team shall consider:

(a) The strengths of the student and the concerns of the parents for enhancing the education of their student; and

(b) The results of the initial or most recent evaluation of the student; and

(c) As appropriate, the results of the student's performance on any general state or district-wide assessment programs.

(2) The individualized education program team also shall:

(a) In the case of a student whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(b) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's individualized education program;

(c) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(d) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(e) Consider whether the student requires assistive technology devices and services.

(3) If, in considering the special factors described above, the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education, the IEP team must include a statement to that effect in the student's individualized education program.

(4) Nothing in this section requires the team to include information under one component of a student's individualized education program that is already contained under another component of the student's individualized education program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-159, filed 12/1/99, effective 1/1/00.]

WAC 392-172-160 Individualized education program. (1) Each student's individualized education program shall include:

(a) A statement of the student's present levels of educational performance, including:

(i) How the student's disability affects the student's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled students); or

(ii) For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.

(b) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:

(i) Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled students), or for preschool students, as appropriate, to participate in appropriate activities; and

(ii) Meeting each of the student's other educational needs that result from the student's disability.

(c) A statement of the special education and any necessary related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student consistent with WAC 392-172-045 (4)(a):

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other special education students and nondisabled students in the activities described in this section.

(d) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general class and in activities described in this section.

(e) A statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the individualized education program team determines that the student will not participate in a particular state or district-wide assessment of student achievement (or part of an assessment), a statement of:

(i) Why that assessment is not appropriate for the student; and

(ii) How the student will be assessed.

(f) The projected date for the beginning of the services and modification described in this section and the anticipated frequency, location, and duration of those services and modifications.

(g) A statement of:

(i) How the student's progress toward the annual goals described in this section will be measured; and

(ii) How the student's parents will be regularly informed (through such means as periodic report cards), at least as

often as parents are informed of their nondisabled student's progress of:

(A) The annual goals; and

(B) The extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

(h) For each special education student beginning at age fourteen (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced placement courses or a vocational education program).

(i) For each student beginning at age sixteen (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(j) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(k) Beginning at least one year before a student reaches age eighteen, consistent with WAC 392-172-309, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority.

(l) Aversive interventions, if applicable, consistent with WAC 392-172-388 through 392-172-398. The individualized education program shall describe the positive interventions attempted by the district or other public agency prior to the use of aversive interventions.

(m) Extended school year services, pursuant to WAC 392-172-163.

(2) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to special education students who meet the eligibility criteria of that agency.

(3) The school district or other public agency shall provide the parent or the adult student a copy of the individualized education program at no cost.

(4) Each public agency must:

(a) Provide special education and related services to a special education student in accordance with an individualized education program; and

(b) Make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.

(i) Part B of the Individuals with Disabilities Education Act does not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives.

(ii) Nothing in this section limits a parent's right to ask for revisions of the student's IEP or to invoke due process procedures if the parent feels that the efforts required in this subsection are not being made.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-160, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-160, filed 10/11/95, effective 11/11/95.]

WAC 392-172-162 Physical education required. (1) Physical education services, specially designed if necessary, must be made available to every special education student receiving FAPE.

(2) Each special education student must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

(a) The student is enrolled full time in a separate facility; or

(b) The student needs specially designed physical education, as prescribed in the student's individualized education program.

(3) If specially designed physical education is prescribed in a student's individualized education program, the school district or other public agency shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district or other public agency shall ensure that any special education student who is enrolled in a separate facility will be provided with appropriate physical education services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-162, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-162, filed 10/11/95, effective 11/11/95.]

WAC 392-172-163 Extended school year services. (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with this section.

(2) Extended school year services must be provided only if a student's IEP team determines, on an individual basis, in accordance with this chapter that the services are necessary for the provision of FAPE to the student.

(3) In implementing the requirements of this section, a public agency may not:

(a) Limit extended school year services to particular categories of disability; or

(b) Unilaterally limit the type, amount, or duration of those services.

(4) As used in this section, the term extended school year services means special education and any necessary related services that:

(a) Are provided to a student with a disability:

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the student's IEP; and

(iii) At no cost to the parents of the student; and

(b) Meet the standards of the state for provision of special education and related services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-163, filed 12/1/99, effective 1/1/00.]

WAC 392-172-164 Parent notice of individualized education program meeting—Transition needs or services. If a purpose of the individualized education program

meeting is the consideration of transition services needs or services for a student, the notice required under WAC 392-172-15700 of the individualized education program meeting must also:

(1) For a special education student beginning at age fourteen, or younger, if appropriate:

(a) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and

(b) Indicate that the agency will invite the student.

(2) For a special education student beginning at age sixteen, or younger, if appropriate:

(a) Indicate that a purpose of the meeting is the consideration of needed transition services for the student;

(b) Indicate that the agency will invite the student; and

(c) Identify any other agency that will be invited to send a representative.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-164, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-164, filed 10/11/95, effective 11/11/95.]

WAC 392-172-166 Transition services, student participation. (1) The school district or other public agency shall invite a special education student of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of:

(a) The student's transition services needs;

(b) The needed transition services for the student; or

(c) Both.

(2) If the student does not attend the IEP meeting, the school district or other public agency shall take other steps to ensure that the student's preferences and interests are considered.

(3) In implementing the requirements of this section, the school district or other public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(4) If an agency invited to send a representative to a meeting does not do so, the school district or other public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-166, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-166, filed 10/11/95, effective 11/11/95.]

WAC 392-172-168 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-170 Initial service delivery—Parental consent for initial placement—Notice required. (1) Written consent of the parent(s) or adult student shall be requested and obtained, consistent with WAC 392-172-304 before initial special education and related services are provided.

(2) Each school district or other public agency shall provide prior written notice of the initial provision of special education services to the student, consistent with WAC 392-172-302.

(3) The student's proposed special education and related services shall begin when:

(a) Written consent has been given by the parent(s) or the adult student (using mediation if appropriate); or

(b) The refusal of a student's parent(s) or adult student to grant consent has been overridden by the school district or other public agency pursuant to a hearing (or appeal) conducted in accordance with WAC 392-172-350 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-170, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-170, filed 10/11/95, effective 11/11/95.]

WAC 392-172-172 Least restrictive environment.

Each public agency shall establish and implement procedures which meet the least restrictive environment requirements of this chapter. The provision of services to each special education student, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Nonacademic settings—Each special education student shall be provided nonacademic and extracurricular services and activities conducted by the school district or other public agency with students who are not disabled to the maximum extent appropriate to the needs of the student. Nonacademic and extracurricular services and activities may also include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district or other public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the district or other public agency and assistance in making outside employment available. Each school district or public agency shall take steps to ensure that its special education students have available to them the variety of educational programs and services available to nonspecial education students in the area served by the school district or public agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-172, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-172, filed 10/11/95, effective 11/11/95.]

WAC 392-172-174 Continuum of alternative service delivery options. (1) Each school district or other public agency shall ensure that a continuum of alternative placements is available to meet the needs of special education students for special education and related services.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172-045, such as instruction in general classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general classroom placement.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-174, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-174, filed 10/11/95, effective 11/11/95.]

WAC 392-172-176 Transition to preschool program.

Each school district or other public agency shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2) Each school district will participate in transition planning conferences arranged by the designated lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days (or at the discretion of all parties up to six months) prior to the student's third birthday.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172-030(1).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-176, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-176, filed 10/11/95, effective 11/11/95.]

WAC 392-172-178 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-180 Procedures for establishing educational placement. (1) The educational placement of each special education student, including a preschool student, shall be determined at least annually at a meeting conducted pursuant to WAC 392-172-156.

(2) The selection of the appropriate placement for each special education student shall be based upon:

(a) The student's individualized education program;

(b) The least restrictive environment requirements of WAC 392-172-172;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a special education student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. The place-

ment shall be as close as possible to the student's home, unless the parents otherwise agree.

(4) The decision on the educational placement shall be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(5) A special education student is not removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-180, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-180, filed 10/11/95, effective 11/11/95.]

WAC 392-172-182 Reevaluation—Requirement.

Each school district or other public agency shall ensure:

(1) That the IEP of each special education student is reviewed in accordance with this chapter; and

(2) That a reevaluation of each student is conducted in accordance with this chapter if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-182, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-182, filed 10/11/95, effective 11/11/95.]

WAC 392-172-184 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-185 Reevaluation—Notice and consent requirements. (1) A reasonable time prior to conducting a reevaluation, the district or other public agency shall provide prior written notice to parents or adult students consistent with WAC 392-172-302.

(2) Informed parental consent for reevaluation shall be obtained consistent with the provisions in WAC 392-172-304.

(3) Parental consent is not required before reviewing existing data as part of a reevaluation, or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(4) Informed parental consent need not be obtained for reevaluation if the school district or other public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

(5) To meet the reasonable measures requirement in this section, the public agency must use procedures consistent with those in WAC 392-172-15700 (3) and (4).

(6) A reevaluation shall be conducted consistent with the timelines in WAC 392-172-104(2) and 392-172-182(2).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-185, filed 12/1/99, effective 1/1/00.]

WAC 392-172-186 Reevaluation—Procedures. (1) As part of any reevaluation, a group that includes the individuals described in WAC 392-172-153, and other qualified professionals, as appropriate, shall review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based assessment and observations; and

(c) Observations by teachers and related services providers.

(2) Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:

(a) Whether the student continues to be a special education student and continues to need special education and any necessary related services;

(b) The present levels of performance and educational needs of the student; and

(c) If any additions or modifications to the special education and any necessary related services are needed to enable the student to meet the measurable annual goals set out in the student's individualized education program and to participate, as appropriate, in the general curriculum.

(3) The group described in subsection (1) of this section may conduct its review without a meeting. If the school district or other public agency conducts a meeting for the purposes under this section, parents must have an opportunity to participate in the meeting consistent with WAC 392-172-105.

(4) A public agency must evaluate a special education student in accordance with this chapter before determining that the student is no longer a special education student.

(5) The evaluation described in subsection (4) of this section is not required before the termination of a student's eligibility under this chapter due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under state law. Prior written notice is required, consistent with WAC 392-172-302.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-186, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-186, filed 10/11/95, effective 11/11/95.]

WAC 392-172-188 Reevaluation—Purposes. The group described in WAC 392-172-186 shall determine if additional evaluation procedures are necessary to confirm the decisions to be made in WAC 392-172-186, consistent with WAC 392-172-106 through 392-172-111.

If no additional data are needed to determine whether the student continues to be a special education student, the school district or other public agency shall notify the student's parents, consistent with WAC 392-172-302:

(1) Of that determination and the reasons for it; and

(2) Of the right of the parents to request an assessment to determine, for purposes of services under this chapter, the continuing eligibility of the student.

The school district or other public agency is not required to conduct the assessment unless requested to do so by the parents.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-188, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-188, filed 10/11/95, effective 11/11/95.]

WAC 392-172-190 Reevaluation—Notice of results.

Within ten calendar days of the completion of the reevaluation, the district or other public agency superintendent or designee shall notify the parent or adult student, pursuant to WAC 392-172-302, of one or more of the following decisions:

- (1) Whether the student continues to be eligible and in need of special education;
- (2) The present levels of performance and educational needs of the student; and
- (3) Whether any additions or modifications to the special education and any necessary related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

When a determination is made that the individualized education program is no longer appropriate, an individualized education program team meeting shall be convened in accordance with WAC 392-172-153 through 392-172-166.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-190, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-190, filed 10/11/95, effective 11/11/95.]

WAC 392-172-200 Staff qualifications for special education funding. All employees of a school district or other public agency funded in whole or part with state or federal special education excess cost funds shall be qualified as follows:

- (1) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the state board of education for the particular position of employment and shall meet such supplemental standards as may be established by the school district or other public agency of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by this section.

Pursuant to WAC 180-82-110, after August 31, 2000, a teacher who has completed twenty-four quarter hours (sixteen semester credit hours) of the required special education course work shall be eligible for a pre-endorsement waiver which will allow that person to be employed as a special education teacher. The remaining credits and all endorsement requirements shall be completed within three years of service as a special education teacher. Application for the special education or early childhood special education preendorsement waiver shall be made to the special education section at the office of superintendent of public instruction.

- (2) In addition to the requirement of subsection (1) of this section, all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the superintendent of public instruction.

- (3) Other certificated instructional personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the

educational staff associate rules of the state board of education, as now or hereafter amended.

- (4) Employees with only an early childhood special education endorsement shall be assigned to programs that serve students birth through age eight. Preference for early childhood special education assignment must always be given first to employees having early childhood special education endorsement.

- (5) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the state board of education pursuant to WAC 180-82-130.

- (6) Classified staff shall present evidence of skills and knowledge necessary to meet the needs of students with disabilities, and shall be supervised consistent with WAC 392-172-045 (4)(a)(iii). Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

- (7) General education classroom personnel providing specially designed instruction defined in WAC 392-172-045 (4)(a)(iii) pursuant to a properly formulated individual education program may be paid from state or federal special education excess cost funds if the district has in place a cost allocation plan which meets the requirements established by the superintendent of public instruction.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-200, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-200, filed 10/11/95, effective 11/11/95.]

WAC 392-172-202 Emergency—Temporary out-of-endorsement assignment. In order to temporarily assign classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

- (1) The district or other public agency must make one or more of the following factual determinations:

- (a) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

- (b) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

- (c) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

- (2) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course

work which are applicable to an endorsement in special education. The following requirements apply:

(a) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(c) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(d) The assignment of such teachers for the previous school year shall be reported annually to the state board of education by the employing school district as required by WAC 180-16-195. Included in the report shall be the number of teachers in out-of-endorsement assignments and the specific assistance being given to the teacher.

(3) An emergency out-of-endorsement assignment by the district or other public agency is only valid for one school year.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-202, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-202, filed 10/11/95, effective 11/11/95.]

WAC 392-172-206 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-214 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-216 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-219 Applicability. The provisions of WAC 392-172-220 through 392-172-226 apply only to special education students who are, or have been placed in, or referred to a nonpublic or public school agency by a school district as a means of providing special education and related services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-219, filed 12/1/99, effective 1/1/00.]

WAC 392-172-220 Contractual services. School districts shall be authorized to:

(1) Enter into interdistrict agreements with another school district(s) or other public agencies; or

(2) Contract with nonpublic and public agencies for special education and related services for special education students if the school district establishes that it cannot provide an appropriate education for the special education student within the district.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-220, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-220, filed 10/11/95, effective 11/11/95.]

WAC 392-172-222 Approval of nonpublic agencies.

(1) A school district or other public agency shall not award a contract to a nonpublic agency to provide special education to a special education student until the state board of education approves the nonpublic agency.

(2) The school district or other public agency shall notify the office of superintendent of public instruction, in writing, of their intent to enroll a student and/or contract with a nonpublic agency.

(3) The office of superintendent of public instruction shall provide the agency named with the procedures/application for nonpublic agency approval, which shall consist of description of agency and services provided, assurances, personnel record, and fire and health inspection forms.

(4) Upon review of the completed application and an on-site visitation the superintendent of public instruction or designee shall recommend approval or disapproval of the agency to the state board of education.

(5) The superintendent of public instruction or designee shall make information regarding currently approved nonpublic agencies available to all school districts.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-222, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-222, filed 10/11/95, effective 11/11/95.]

WAC 392-172-224 School district or other public agency responsibility when contracting for the delivery of services in a public agency or approved nonpublic agency. Any school district or other public agency contracting with a public or approved nonpublic agency for special education and related services shall:

(1) Initiate and conduct a meeting with appropriate personnel and the student's parent(s) to develop the student's individualized education program. The district or other public agency shall ensure that a representative of the approved nonpublic or public agency attends the meeting or in some other way assure participation. Meetings to review or revise the student's individualized education program after the student has been placed shall be initiated and conducted by the approved nonpublic or public agency at the discretion of the school district or other public agency. The district or other public agency shall assure that both the parent(s) or the adult student and the public agency or approved nonpublic agency are represented in any decision concerning the student's individualized education program and agree to proposed changes in the program before those changes are implemented. The responsibility for compliance with this section lies with the school district or other public agency.

(2) Develop a written contract which shall include, but not be limited to, the following elements:

(a) Names of the parties involved;

(b) The name(s) of the special education student(s) for whom the contract is drawn;

(c) Location and setting of the services to be provided;

(d) Description of services provided, program administration and supervision;

(e) Designation of responsible parties;

(f) Charges and reimbursement—Billing and payment procedures;

(g) Total contract cost;

(h) School district and other public agency's responsibility for compliance with due process, individualized education program, and yearly review and determination of placement requirements; and

(i) Other contractual elements that may be necessary to assure compliance with state and federal rules.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-224, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-224, filed 10/11/95, effective 11/11/95.]

WAC 392-172-226 Residential educational services—Methods of payment. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education and any necessary related services to a special education student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education to special education students in the state.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to special education students.

(3) Consistent with the IEP provisions in this chapter, the office of the superintendent of public instruction shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-226, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-226, filed 10/11/95, effective 11/11/95.]

WAC 392-172-228 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-230 Placement of students by parents. If a special education student has a free appropriate public education available and the parents choose to place the student in a private school or facility, the public agency is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the public agency shall include that student in the population whose needs are addressed consistent with WAC 392-172-232 through 392-172-248.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures of this chapter. Disagreements may also be resolved through the mediation process described in this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-230, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-230, filed 10/11/95, effective 11/11/95.]

[2000 WAC Supp—page 1948]

WAC 392-172-231 Reimbursement for private school placement. (1) If the parents of a special education student, who previously received special education and any necessary related services under the authority of a school district or other public agency, enroll the student in a private pre-school, elementary or secondary school without the consent of or referral by a school district or other public agency, a court or a hearing officer may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(2) The cost of reimbursement may be reduced or denied if:

(a) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district or other public agency to provide a free appropriate public education to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(b) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district or other public agency of the information described in (a) of this subsection; or

(c) If, prior to the parents' removal of the student from the public school, a school district or other public agency informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(d) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(3) Notwithstanding the notice requirement in subsection (2)(a) and (b) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

(a) The parent is illiterate and/or cannot write in English;

(b) Compliance with the notice requirements of this section would likely result in physical or serious emotional harm to the student;

(c) The school district or other public agency prevented the parent from providing the notice; or

(d) The parent had not received notice of the requirement to notify a school district or other public agency of the information required in subsection (2)(a) and (b) of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-231, filed 12/1/99, effective 1/1/00.]

WAC 392-172-232 Definition—"Private school special education student(s)." For the purpose of WAC 392-172-23300 through 392-172-248 "private school special education student(s)" means special education students who are

not full or part time enrolled in the public school or other public agency for the purpose of receiving special education and related services, who are enrolled in private schools or agencies, and whose private school enrollment is not the result of a contractual arrangement between a public school district or other public agency and the private school or agency. "Resident special education students" means those students who reside within school district or other public agency boundaries, consistent with chapter 28A.225 RCW.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-232, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-232, filed 10/11/95, effective 11/11/95.]

WAC 392-172-23300 Child count. (1) Each school district or other public agency shall:

(a) Consult with representatives of private school students in deciding how to conduct the annual count of the number of private school special education students; and

(b) Ensure that the count is conducted on December 1 of each year.

(2) The child count must be used to determine the amount that the school district or other public agency must spend on providing special education and related services to private school special education students, described in WAC 392-172-232, in the next subsequent fiscal year.

(3) State and local educational agencies are not prohibited from providing services to private school special education students in excess of those required by this section consistent with state law or local policy.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23300, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23305 Expenditures. Each school district or public agency shall spend a proportionate amount of federal funds on providing special education and related services to private school special education students as follows:

(1) For students aged three through twenty-one, an amount that is the same proportion of the school district's or other public agency's total subgrant under Part B of the Individuals with Disabilities Education Act as the number of private school special education students aged three through twenty-one residing in its jurisdiction is to the total number of special education students in its jurisdiction aged three through twenty-one; and

(2) For students aged three through five, an amount that is the same proportion of the school district's or other public agency's total subgrant under the school district's or other agency's preschool grant under section 619 of the Individuals with Disabilities Education Act as the number of private school special education students aged three through five residing in its jurisdiction is to the total number of special education students in its jurisdiction aged three through five.

(3) Expenditures for child find activities described in WAC 392-172-100 may not be considered in determining whether the school district or other public agency has met the requirements of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23305, filed 12/1/99, effective 1/1/00.]

WAC 392-172-234 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-236 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-23600 Determination (of needs, numbers of students and types) of services. (1) No private school special education student, as defined in WAC 392-172-232, has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Decisions about the services that will be provided to private school special education students under WAC 392-172-232 through 392-172-248 must be made in accordance with this section.

(2) Each school district or other public agency shall consult, in a timely and meaningful way, with appropriate representatives of private school special education students in light of the funding under WAC 392-172-23305, the number of private school special education students, the needs of private school special education students, and their location to decide:

- (a) Which students will receive services;
- (b) What services will be provided;
- (c) How and where the services will be provided; and
- (d) How the services provided will be evaluated.

(3) Each school district or other public agency shall give appropriate representatives of private school special education students a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(4) The consultation required by this section shall occur before the school district or other public agency makes any decision that affects the opportunities of private school special education students to participate in services under WAC 392-172-232 through 392-172-248.

(5) The school district or other public agency shall make the final decision with respect to the services to be provided to eligible private school students.

(6) If a special education student is enrolled in a religious or other private school and will receive special education or related services from a school district or other public agency, the district or agency shall:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student, in accordance with WAC 392-172-23605; and

(b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district or other public agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23600, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23605 Services provided. (1) The services provided to private school special education students, as defined in WAC 392-172-232, must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Private school special education students may receive a different amount of services than special education students in public schools.

(3) No private school special education student is entitled to any service or to any amount of a service the student would receive if enrolled in a public school.

(4) Each private school special education student who has been designated to receive services under WAC 392-172-23600 must have a services plan that describes the specific special education and related services that the school district or other public agency will provide to the student in light of the services that the district or agency has determined, through the process described in WAC 392-172-23300 and 392-172-23600, it will make available to private school special education students.

(5) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172-160 with respect to the services provided;

(b) Be developed, reviewed, and revised consistent with WAC 392-172-156, 392-172-158, and 392-172-161.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23605, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23610 Location of services and transportation. (1) Services provided to private school special education students, as defined in WAC 392-172-232, may be provided on-site at a student's private school, consistent with WAC 392-172-238.

(2) If necessary for the student to benefit from or participate in the services provided under this section, a private school special education student must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home.

(3) School districts or other public agencies are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district or other public agency has met the requirement of WAC 392-172-23305.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23610, filed 12/1/99, effective 1/1/00.]

WAC 392-172-239 Complaints. (1) The procedures under WAC 392-172-350 et seq., do not apply to complaints that a school district or other public agency has failed to meet the requirements of WAC 392-172-232 through 392-172-248, including the provision of services indicated on the student's individualized education program.

(2) The procedures under WAC 392-172-350 et seq. do apply to complaints that a school district or other public agency has failed to meet the requirements under child find, including evaluation and reevaluation procedures under this chapter.

(3) Complaints that the state, or a school district or other public agency, has failed to meet the requirements of WAC

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392-172-232 through 392-172-248 may be filed under the procedures in WAC 392-172-324 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-239, filed 12/1/99, effective 1/1/00.]

WAC 392-172-240 Personnel in private schools and agencies. (1) School district or other public agency personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the special education student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school special education students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-240, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-240, filed 10/11/95, effective 11/11/95.]

WAC 392-172-242 Equipment, property and supplies—Construction. (1) Equipment and supplies used with special education students in a private school or agency may be placed on nonsectarian private school or agency premises for the period of time necessary for the program, but title to and administrative control over all equipment property and supplies must be retained and exercised by the school district or other public agency.

(2) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(3) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(4) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-242, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-242, filed 10/11/95, effective 11/11/95.]

WAC 392-172-246 Funds and property not to benefit private schools. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district shall use funds provided under Part B of the IDEA to meet the special education and related services needs of special education students enrolled in private schools, but not for:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-246, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-246, filed 10/11/95, effective 11/11/95.]

WAC 392-172-300 General responsibility of public agencies. Each school district and public agency shall establish, implement and maintain procedural safeguards that meet the requirements of 34 CFR 300.500 through 34 CFR 300.529.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-300, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-300, filed 10/11/95, effective 11/11/95.]

WAC 392-172-302 When prior written notice must be given. A school district or other public agency shall give prior written notice in accordance with WAC 392-172-306 to the parent(s) of a student (or to the adult student) a reasonable time before the school district or other public agency:

(1) Proposes or refuses to initiate or change the identification, evaluation, educational placement of the student or provision of FAPE to the student.

(2) If the notice required under this section relates to an action proposed by a district or other public agency that also requires parental consent under WAC 392-172-185 and 392-172-304, notice may be given at the same time parental consent is being requested.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-302, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-302, filed 10/11/95, effective 11/11/95.]

WAC 392-172-304 Parent consent. (1) Informed parental consent must be obtained in writing (using mediation if appropriate), or denial of consent must be overridden by a due process hearing before:

(a) Conducting an initial evaluation, or reevaluation consistent with WAC 392-172-185; and

(b) Providing initial special education and any necessary related services to a special education student.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in this section.

(3) Parental consent is not required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(4) A public agency may not use a parent's refusal to consent to one service or activity under this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-304, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-304, filed 10/11/95, effective 11/11/95.]

WAC 392-172-306 Contents of prior written notice.

(1) The notice required by WAC 392-172-302 shall include:

(a) A statement that the parents of a special education student have protection under the procedural safeguards of this chapter. If a copy of the procedural safeguards are not included with the prior written notice, the district or other public agency shall include a statement that describes the means by which a copy of a description of the procedural safeguards can be obtained;

(b) A description of the action proposed or refused by the school district or other public agency, an explanation of why the district or other public agency proposes or refuses to take the action, and a description of any other options the district or other public agency considered and the reasons why those options were rejected;

(c) A description of each evaluation procedure, test, record, or report the district or other public agency used as a basis for the proposal or refusal;

(d) A description of any other factors which are relevant to the school district and other public agency's proposal or refusal;

(e) A description of any evaluation procedures the school district or other public agency proposes to conduct; and

(f) Sources for parents to contact to obtain assistance in understanding the procedural safeguards provisions of this chapter.

(2) The notice shall be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or adult student or other mode of communication used by the parent or adult student, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent or adult student is not a written language, the district or other public agency shall take steps to assure that:

(a) The notice is translated orally or by other means to the parent or adult student in his or her native language or other mode of communication;

(b) The parent or adult student understands the content of the notice; and

(c) There is written evidence that the requirements in (a) and (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-306, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-306, filed 10/11/95, effective 11/11/95.]

WAC 392-172-307 Procedural safeguards. (1) A copy of the procedural safeguards available to the parents of a special education student shall be given to the parents, at a minimum:

(a) Upon initial referral for evaluation;

(b) Upon each notification of an individualized education program meeting;

(c) Upon reevaluation of the student;

(d) Upon receipt of a request for due process; and

(e) Upon notification of a parent that a school district or other public agency intends to take disciplinary action that constitutes a change of placement.

(2) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, listed in 34 CFR 300.504 (4)(b), including and relating to:

- (a) Independent educational evaluation;
- (b) Prior written notice;
- (c) Parental consent;
- (d) Access to educational records;
- (e) Opportunity to present complaints to initiate due process hearings;
- (f) The student's placement during pendency of due process proceedings;
- (g) Procedures for students who are subject to placement in an interim alternative educational setting;
- (h) Requirements for unilateral placement by parents of students in private schools at public expense;
- (i) Mediation;
- (j) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (k) Civil actions;
- (l) Attorneys' fees; and
- (m) State complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

(3) The notice shall meet the requirements of WAC 392-172-306 (2) and (3).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-307, filed 12/1/99, effective 1/1/00.]

WAC 392-172-308 Surrogate parents. (1) Each school district or other public agency providing a special education program to a nonadult special education student shall assure that the rights of the nonadult student are protected when:

- (a) No parent, as defined in WAC 392-172-035(5), can be identified;
- (b) The school district or other public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
- (c) The student is a ward of the state. A student is a ward of the state if (i) parental rights have been terminated and no guardian has been appointed or (ii) the student is found dependent under chapter 13.34 RCW. If the child is found dependent and is placed with the parent or with relatives, those persons may be considered a parent under the definition of WAC 392-172-035(5).

(2) The duty of a school district or other public agency under this section includes the assignment of a person to act as a surrogate for the parents. This duty includes the establishment of a method:

- (a) For determining whether a nonadult student needs a surrogate parent; and
 - (b) For assigning a surrogate parent to the student.
- (3) Each school district or other public agency shall ensure that a person selected as a surrogate:
- (a) Has no interest that conflicts with the interests of the student he or she represents; and
 - (b) Has knowledge and skills that assure adequate representation of the student.

(4) (a) A person assigned as a surrogate may not be an employee of the office of superintendent of public instruc-

tion, a school district or other public agency which is involved in the education or care of the student; and

(b) A person who otherwise qualifies as a surrogate parent pursuant to this section is not an "employee" of the school district or other public agency solely because he or she is paid by the school district and/or agency to serve as a surrogate parent.

(c) A public agency may select as a surrogate, a person who is an employee of a nonpublic agency that only provides noneducational care for the student and who meets the standards in subsection (3) of this section.

(d) A foster parent may be appointed as a surrogate parent if he or she meets the qualifications of subsection (3) of this section and is willing to make educational decisions on behalf of the student.

(5) Responsibilities. A surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement of the student and the provision of FAPE to the student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-308, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-308, filed 10/11/95, effective 11/11/95.]

WAC 392-172-309 Transfer of parental rights at age of majority. (1) Consistent with RCW 26.28.010 and 26.28.015, when a special education student reaches the age of eighteen, unless declared incapacitated as to person under chapter 11.88 RCW, the following shall occur:

(a) A school district or other public agency shall provide any notice required under the chapter to both the student and the parents; and

(b) All other rights accorded to parents under Part B of the Individuals with Disabilities Education Act transfer to the student.

(2) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district or other public agency transfers rights under this section, they shall notify the individual and the parents of the transfer of rights.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-309, filed 12/1/99, effective 1/1/00.]

WAC 392-172-310 Mediation—Purpose. The purpose of mediation is to offer both the parent and the school district or other public agency an optional alternative to a formal due process hearing. Mediation requires the consent and agreement of both parties. Mediation cannot be used to deny or delay access by a parent to a due process hearing under this chapter, or to deny any other rights afforded under this chapter. Mediation is used to resolve disagreements concerning the identification, evaluation, educational placement of the special education student or provision of FAPE to the special education student. Mediation may be terminated by either party at any time during the process. Mediation shall be available whenever a hearing is requested under this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-310, filed 12/1/99, effective 1/1/00. Stat-

utory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-310, filed 10/11/95, effective 11/11/95.]

WAC 392-172-312 Mediation—Definition. Mediation is a dispute resolution process in which an impartial mediator assists both parties in reaching a mutually acceptable agreement on the educational needs of a special education student. The primary participants in the mediation process are the parent(s), school district or other public agency representative(s), and mediator. The process is voluntary, confidential, and informal. It is a collaborative process, conducted in a nonadversarial manner. Mediation services are provided by the office of superintendent of public instruction at no cost to either party, including the costs of meetings described in WAC 392-172-317. The office of superintendent of public instruction will provide mediation services for individuals whose primary language is not English unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-312, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-312, filed 10/11/95, effective 11/11/95.]

WAC 392-172-313 Mediators—Qualified and impartial. (1) Mediation is conducted by qualified and impartial mediators who are trained in effective mediation techniques.

(2) The office of superintendent of public instruction shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) An individual who serves as a mediator:

(a) May not be an employee of:

(i) Any school district or any state agency described under WAC 392-172-035(6); or

(ii) A state education agency that is providing direct services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest.

(4) A person who otherwise qualifies as a mediator is not an employee of a school district or other public agency solely because he or she is paid by the agency to serve as a mediator.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-313, filed 12/1/99, effective 1/1/00.]

WAC 392-172-314 Request for mediation services.

(1) To access the state-wide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the office of superintendent of public instruction. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(2) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in WAC 392-172-313, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-314, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-314, filed 10/11/95, effective 11/11/95.]

WAC 392-172-316 Written mediation agreement—Mediation discussions. (1) Agreements reached through the mediation process shall be documented in writing and signed by both parties. Solutions to the issue(s) raised through the mediation process shall not be in conflict with state and federal laws or regulations. The parties shall be given a copy of the written mediation agreement. A copy of the mediation agreement shall also be filed by the mediator with the office of superintendent of public instruction.

(2) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to and participants in the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-316, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-316, filed 10/11/95, effective 11/11/95.]

WAC 392-172-317 Meeting to encourage mediation.

(1) A school district or other public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with a parent training and information center or community parent resource center in the state established under the Individuals with Disabilities Education Act or an appropriate alternative dispute resolution entity; and

(b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district or other public agency may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.

(3) A school district or other public agency shall submit its procedures for implementing this section to the office of superintendent of public instruction for review and approval, including projected costs for carrying out the process.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-317, filed 12/1/99, effective 1/1/00.]

WAC 392-172-320 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-322 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-324 Definition—Complaint. As used in this chapter, the term "complaint" means an allegation, by the complainant, that the state, a local school district or other public agency, an educational service district, or other sub-grantee receiving federal funds (or receiving state funds to carry out a federal requirement), including private schools

and facilities where students are placed on a contractual basis, has violated a federal statute or regulation or a state regulation that applies to a federal program covered under this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-324, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-324, filed 10/11/95, effective 11/11/95.]

WAC 392-172-328 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

- (1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;
- (2) Conducting in-service training sessions on the complaint process through educational service districts; and
- (3) Including information about the system in state-wide conferences.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-328, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-328, filed 10/11/95, effective 11/11/95.]

WAC 392-172-329 Remedies for denial of appropriate services. In resolving a complaint in which it has found a failure to provide appropriate services, the office of the superintendent of public instruction pursuant to its general supervisory authority under Part B of the IDEA, must address:

- (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and
- (2) Appropriate future provision of services for all special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-329, filed 12/1/99, effective 1/1/00.]

WAC 392-172-330 Right to register a complaint. Any individual or organization, including an organization or individual from another state, may register a signed written complaint.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-330, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-330, filed 10/11/95, effective 11/11/95.]

WAC 392-172-332 Contents of complaint. (1) A written complaint filed under this chapter shall include:

- (a) A statement that an educational entity, which includes the state, a local school district or other public agency, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or

regulations or state regulations that apply to Part B of the IDEA;

- (b) The facts on which the statement is based;
- (c) The name and address of the complainant; and
- (d) The name and address of the educational entity.

(2) The complaint must be signed.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-332, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-332, filed 10/11/95, effective 11/11/95.]

WAC 392-172-334 Procedure for filing a complaint. The procedure for filing a complaint shall be as follows:

(1) All complaints alleging a violation by a local school district or other public agency, an educational service district, the state or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-172-344.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances relative to a particular complaint.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-334, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-334, filed 10/11/95, effective 11/11/95.]

WAC 392-172-338 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee. Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for their investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

- (a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Proposes reasonable corrective action(s) deemed necessary to correct the violation.

(4) Upon request, the superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Within thirty calendar days, and upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is violating a requirement of Part B of the Individuals with Disabilities Education Act or of this chapter.

(7) Consistent with the provisions of WAC 392-172-320 through 392-172-346, the superintendent of public instruction shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions and the reasonable corrective measures deemed necessary to correct any violation. Corrective measures necessary to resolve a complaint shall be instituted as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) If compliance by a local school district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-338, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-338, filed 10/11/95, effective 11/11/95.]

WAC 392-172-340 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-346 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-348 Complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the office of the superintendent of public instruction must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The office of the superintendent of public instruction must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the office of the superintendent of public instruction.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-348, filed 12/1/99, effective 1/1/00.]

WAC 392-172-350 Right to initiate—Purposes. (1) Hearings conducted in accordance with WAC 392-172-350 through 392-172-360 may be initiated in the following cases for the purposes stated:

(a) The parent(s) of a student (or an adult student) or a school district or other public agency may initiate a hearing to challenge or to show the appropriateness of a proposal or refusal by the school district or other public agency to initiate or change:

(i) The identification of the student;

(ii) The evaluation of the student;

(iii) The educational placement of the student; or

(iv) The provision of FAPE to the student pursuant to this chapter;

(b) A school district or other public agency may initiate a hearing to show that its evaluation of a student is appropriate if the student's parent(s) or adult student disagrees with the evaluation results and requests an independent educational evaluation, pursuant to WAC 392-172-150.

(2) A request by a student's parent(s) or adult student for a hearing pursuant to this section shall:

(a) Be in writing, specify the district or other public agency and the school the student attends, explain the concerns of the parent(s) or adult student in general or specific terms, and provide other information regarding the request for hearing described in WAC 392-172-351; and

(b) Be mailed or provided directly to the Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, P.O. Box 47200, Olympia, Washington 98504. A copy of the request for hearing should also be given to the district or other public agency, consistent with WAC 392-172-351.

(3) A request by a school district or other public agency for a hearing pursuant to this section shall:

(a) Be in writing;

(b) Be mailed or provided directly to Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, P.O. Box 47200, Olympia, Washington 98504. A copy of such request, including attachments shall be mailed to the student's parent(s) or adult student;

(c) Include a copy of the notice to parent(s) or adult student as required by WAC 392-172-302. If the hearing request by the district or other public agency is in response to a request for an independent educational evaluation pursuant to WAC 392-172-150, the school district or other public agency shall attach documentation of the parent's request.

(4) A notice of a hearing requested by a student's parent(s) or adult student or initiated by a school district or other public agency pursuant to this section shall be provided by the hearing officer and shall include, but not necessarily be limited to:

(a) The date, time, and place of the hearing;

(b) The issues to be addressed at the hearing to the extent the issues have been identified at the time of the notice;

(c) The rights, procedures, and other matters set forth in WAC 392-172-352 through 392-172-364; and

(d) The right of the parent(s) or adult student to seek an independent evaluation at public expense pursuant to WAC 392-172-150.

(5) The forty-five day time line for completing the hearing process shall begin on the day the superintendent receives the written request for a due process hearing.

(6) When a hearing is initiated under this section, the office of superintendent of public instruction shall inform the parents of the availability of mediation described in WAC 392-172-310 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-350, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-350, filed 10/11/95, effective 11/11/95.]

WAC 392-172-351 Request for hearing, notice by parent. (1) The school district or other public agency must have procedures that require the parent of a special education student or the attorney representing the student to provide notice (which must remain confidential) to the school district or other public agency in a request for a hearing to the office of superintendent of public instruction. The notice for a request for hearing must include:

- (a) The name of the student;
- (b) The address of the residence of the student;
- (c) The name of the school the student is attending;
- (d) A description of the nature of the problem of the student relating to the proposed initiation or change, including facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the parents at the time.

(2) The office of superintendent of public instruction shall develop a model hearing request form to assist parents in filing a request for a due process hearing that includes the information required above.

(3) A school district or other public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in this section. However, failure to provide the notice required in subsection (1) of this section may result in a reduction of attorneys' fees under WAC 392-172-362 (3)(e)(iv).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-351, filed 12/1/99, effective 1/1/00.]

WAC 392-172-352 Hearing officers—Selection and expenses of—Parent assistance. (1) If a hearing is initiated pursuant to WAC 392-172-350:

(a) The hearing shall be conducted by and at the expense of the superintendent of public instruction.

(b) The superintendent of public instruction shall provide for a court reporter's stenographic record of all testimony and other oral hearing proceedings at the expense of the superintendent of public instruction: A court reporter's stenographic record need not be transcribed for any purpose except as provided or required in WAC 392-172-354 (1)(g) and (h).

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(c) The superintendent of public instruction shall inform the parent(s) or adult student of any free or low-cost legal and other relevant services available in the area if:

(i) The parent or adult student requests the information; or

(ii) The school district or other public agency or the parent or adult student initiates a hearing.

(d) The hearing shall be conducted by a qualified person selected and appointed by the chief administrative law judge in the office of administrative hearings pursuant to chapter 10-08 WAC and shall be a person who:

(i) Is not an employee of a public agency which is involved in the education or care of the student; and

(ii) Does not have a personal or professional interest which would conflict with his or her objectivity in the hearing.

(2) A person who otherwise qualifies to conduct a hearing under this section is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) The hearing shall be conducted in accordance with the provisions of WAC 392-101-005 unless modified by this chapter.

(4) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-352, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-352, filed 10/11/95, effective 11/11/95.]

WAC 392-172-354 Hearing rights. (1) Any party to a hearing initiated pursuant to WAC 392-172-350 has the right to:

(a) Be accompanied and advised by persons with special knowledge or training with respect to the problems of special education students;

(b) Be advised and/or represented by an attorney;

(c) Present evidence, including the opinion(s) of qualified experts, confront, cross-examine, and compel the attendance of witnesses;

(d) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172-38415 (1)(b);

(e) At least five business days (or two business days if the hearing is expedited pursuant to WAC 392-172-38415 (1)(b)) prior to a hearing conducted pursuant to this section, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing;

(f) A hearing officer may bar any party that fails to comply with (e) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party;

(g) Obtain a written, or at the option of the parents, electronic verbatim record of the hearing at no cost to any party to a hearing; and

(h) Obtain written, or at the option of the parents, electronic findings of fact, decisions, conclusions of law and judgments. The state, after deleting any personally identifiable information, shall:

(i) Transmit those findings and decisions to the state advisory panel established under this chapter; and

(ii) Make those findings and decisions available to the public.

(2) Parents who are a party to a hearing have the right to have the student who is the subject of the hearing present.

(3) Parents (or adult students) who are a party to a hearing have the right to open the hearing to the public.

(4) The record of the hearing and the findings of fact and decisions described in this section shall be provided at no cost to parents.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-354, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-354, filed 10/11/95, effective 11/11/95.]

WAC 392-172-356 Time line for hearing officer's decision—Time and place of hearing. (1) Not later than forty-five days after the date of receipt of a request for a hearing pursuant to WAC 392-172-350:

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) A hearing officer may grant specific extensions of time beyond the period set forth in subsection (1) of this section at the request of the parent(s) or school district or other public agency.

(3) Each hearing shall be conducted at a time and place which is reasonably convenient to the parent(s) and student involved.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-356, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-356, filed 10/11/95, effective 11/11/95.]

WAC 392-172-358 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-360 Final decision—Appeal to court of law. (1) A decision made in a hearing initiated pursuant to WAC 392-172-350 is final, unless modified or overturned by a court of law. Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under this chapter has the right to bring a civil action under section 615 (e)(2) of the Individuals with Disabilities Education Act. A civil action may be filed in either state or federal court.

(2) In any action brought under this section, the court:

(a) Shall receive the records of the administrative proceedings.

(b) Shall hear additional evidence at the request of a party.

(c) Shall grant the relief that the court determines to be appropriate basing its decision on the preponderance of the evidence.

(3) The district courts of the United States have jurisdiction of actions brought under section 615 of the Individuals with Disabilities Education Act without regard to the amount in controversy.

(4) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of special education students, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Individuals with Disability Education Act, the procedures for a due process hearing in this chapter must be exhausted to the same extent as would be required had the action been brought under section 615 of the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-360, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-360, filed 10/11/95, effective 11/11/95.]

WAC 392-172-362 Attorneys' fees. (1) Each public agency shall inform parents that in any action or proceeding under section 615 of the Individuals with Disabilities Education Act, courts in their discretion, may award parents reasonable attorneys' fees as part of the costs to the parents of a special education student who is the prevailing party.

(2) Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and the procedural safeguards in this chapter. This does not preclude a public agency from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

(3) A court awards reasonable attorneys' fees under section 615 (i)(3) of the IDEA consistent with the following:

(a) Fees awarded under section 615 (i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this section.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(d) Notwithstanding (b) of this subsection, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(e) Except as provided in (f) of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

(i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with WAC 392-172-351.

(f) The provisions of (e) of this subsection do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-362, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-362, filed 10/11/95, effective 11/11/95.]

WAC 392-172-364 Student's status during hearing and judicial review processes. (1) Except as provided in WAC 392-172-370 through 392-172-385, during the pendency of any administrative or judicial proceeding regarding a hearing request initiated pursuant to WAC 392-172-350 unless the school district or other public agency and the parent(s) of the student or the adult student agree otherwise, the student involved in the hearing request shall remain in the educational program he or she was in at the time the hearing request was made.

(2) If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the decision of a hearing officer in a due process hearing agrees with student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state, school district or other public agency and the parents for purposes of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-364, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-364, filed 10/11/95, effective 11/11/95.]

WAC 392-172-370 Disciplinary exclusion—Purpose. The purpose of WAC 392-172-370 through 392-172-385 is to ensure that special education students are not being improperly excluded from school for disciplinary reasons. Each school district or other public agency, educational service district and public agency serving special education students shall take steps to ensure that each employee, contractor, and other agent of the district or other public agency responsible for education or care of a special education stu-

dent is knowledgeable of WAC 392-172-370 through 392-172-385. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of disciplinary procedures which violate chapter 180-40 WAC and WAC 392-172-370 through 392-172-385 by any employee, contractor, or other agent of the district or other public agency responsible for the education or care of a special education student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-370, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-370, filed 10/11/95, effective 11/11/95.]

WAC 392-172-371 Disciplinary exclusion—Definitions. The following definitions apply to this section only:

(1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) "Illegal drug" means a controlled substance, but does not include, a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

(3) "Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length.

(4) "Substantial evidence" means beyond a preponderance of the evidence.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-371, filed 12/1/99, effective 1/1/00.]

WAC 392-172-372 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-373 Change of placement for disciplinary removals. For purposes of removals of a special education student from the student's current educational placement under WAC 392-172-370 through 392-172-38410, a change of placement occurs if:

(1) The removal is for more than ten consecutive school days; or

(2) The student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-373, filed 12/1/99, effective 1/1/00.]

WAC 392-172-374 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-37500 Removals—Ten school days or less. To the extent removal would be applied to students

without disabilities, school personnel may order the removal of a special education student from the student's current placement for not more than ten consecutive school days for any violation of school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172-373(2).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-37500, filed 12/1/99, effective 1/1/00.]

WAC 392-172-37505 Required services. (1) A public agency need not provide services during periods of removal under WAC 392-172-37500 to a special education student who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

(2) In the case of a special education student who has been removed from his or her current placement for more than ten school days in that school year, the public agency, for the remainder of the removals, shall provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

(3) When there is no change of placement, school personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-37505, filed 12/1/99, effective 1/1/00.]

WAC 392-172-37510 Change of placement—Removals for weapons or drugs. School personnel may order a change in placement of a special education student to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five days, if:

(1) The student possesses a weapon, or carries a weapon to school or to a school function under the jurisdiction of a state or local education agency; or

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-37510, filed 12/1/99, effective 1/1/00.]

WAC 392-172-376 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-377 Functional behavioral assessment and intervention plan. Within ten business days after first removing a student for more than ten school days in a school year, including weapons violations, drugs violations, or behavior that is substantially likely to result in injury to the

student or to others, the following actions shall be taken by the school district or other public agency:

(1) If the district or other public agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, the district or other public agency shall convene an individualized education program meeting to develop an assessment plan.

(2) If the student already has a behavioral intervention plan, the individualized education program team shall meet to review the plan and its implementation and modify it, as necessary, to address the behavior.

(3) As soon as practicable after developing the plan described in subsection (1) of this section, and completing the assessments required by the plan, the district or other public agency shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(4) If subsequently, a special education student who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement under WAC 392-172-373, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-377, filed 12/1/99, effective 1/1/00.]

WAC 392-172-378 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-379 Dangerous behavior—Authority of hearing officer. A hearing officer, described in WAC 392-172-352, may order a change in the placement of a special education student to an appropriate interim alternative educational setting for not more than forty-five days if the hearing officer, in an expedited due process hearing:

(1) Determines that the district or other public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

(2) Considers the appropriateness of the student's current placement;

(3) Considers whether the district or other public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

(4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of WAC 392-172-381 (1) and (2).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-379, filed 12/1/99, effective 1/1/00.]

WAC 392-172-380 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-381 Determination of interim alternative educational setting. Any interim alternative educational setting in which a student is placed under WAC 392-172-37510 and 392-172-379 shall:

(1) Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program; and

(2) Include services and modifications designed to address the behavior described in WAC 392-172-37510 or 392-172-379, that are designed to prevent the behavior from recurring.

The individualized education program team shall determine an interim alternative educational setting under WAC 392-172-37510.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-381, filed 12/1/99, effective 1/1/00.]

WAC 392-172-382 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-38300 Manifestation determination review requirements. If an action is contemplated by a school district, other public agency personnel, or a hearing officer that involves removing a student for weapons violations, drugs violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement under WAC 392-172-373, the following actions shall be taken by the school district or other public agency:

(1) Not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice described under this chapter; and

(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to remove the student is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38300, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38305 Procedures for conducting a manifestation determination. The individualized education program team and other qualified personnel in a meeting shall conduct a manifestation determination review. In carrying out the review, the team may determine that the behavior of the student was not a manifestation of the student's disability only if the team:

(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information including:

(a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;

(b) Observations of the student; and

(c) The student's individualized education program and placement.

(2) Then determines that:

(a) In relationship to the behavior subject to disciplinary action, the student's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement;

(b) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

(3) If the team determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's disability.

(4) The manifestation determination review described in this section may be conducted at the same individualized education program meeting that is convened to address a functional behavioral assessment and behavioral intervention plan.

(5) If the review identifies deficiencies in the student's IEP or placement or in their implementation, the district or other public agency must take immediate steps to remedy those deficiencies.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38305, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38310 Determination that behavior was not manifestation of disability. (1) If the results of the manifestation determination review indicate that the behavior of the special education student was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a free appropriate public education shall continue to be made available to those students consistent with this chapter.

(2) The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

(3) If the school district or other public agency initiates disciplinary procedures applicable to all students, the district or other public agency shall ensure that the special education and disciplinary records of the special education student are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(4) If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, then the student shall remain

in the student's current educational placement as described in WAC 392-172-364 or interim alternative educational setting consistent with WAC 392-172-38405, whichever applies.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38310, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38400 Parent appeal. (1) If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement for disciplinary purposes, the parent may request a hearing.

(2) Pursuant to WAC 392-172-350 the office of superintendent of public instruction shall arrange for an expedited hearing in any case described in WAC 392-172-38415 if requested by the parent.

(3) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the district or other public agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of WAC 392-172-38305.

(4) In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall apply the standards, under WAC 392-172-379.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38400, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38405 Placement during appeals. (1) If a parent requests a hearing regarding a disciplinary action related to removals for weapons or drugs or dangerous behavior to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five day time period provided for, whichever occurs first, unless the parent and the school district or other public agency agree otherwise.

(2) If a student is placed in an interim alternative educational setting pursuant to this section and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student must remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided for below.

(3) If school or other agency personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the district or other public agency may request an expedited due process hearing.

(4) In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under WAC 392-172-379.

(5) A placement ordered pursuant to this section may not be longer than forty-five days.

(6) The procedure in this section may be repeated as necessary.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38405, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38410 Protections for students not yet eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and any necessary related services under this chapter and who has engaged in behavior that violated any rule or code of conduct of the school district or other public agency, including any behavior described in this section, may assert any of the protections provided for in this section if the school district or other public agency had knowledge that the student was a special education student before the behavior that precipitated the disciplinary action occurred. A school district or other public agency must be deemed to have knowledge that a student is a special education student if:

(a) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational or other public agency that the student is in need of special education and related services;

(b) The behavior or performance of the student demonstrates the need for these services in accordance with this chapter;

(c) The parent of the student has requested an evaluation of the student pursuant to this chapter; or

(d) The teacher of the student, or other personnel of the district or other public agency, has expressed concern about the behavior or performance of the student to the director of special education of the district or other public agency or to other personnel of the district or other public agency in accordance with their established child find or special education referral system.

(2) A district or other public agency would not be deemed to have knowledge under subsection (1) of this section, if as a result of receiving the information, the district or other public agency:

(a) Either:

(i) Conducted an evaluation consistent with this chapter and determined that the student was not a special education student; or

(ii) Determined that an evaluation was not necessary; and

(b) Provided notice to the student's parents of its determination consistent with this chapter.

(3) If the district or other public agency does not have knowledge that a student is a special education student prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this section.

(4) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this section, the evaluation must be conducted in an expedited manner.

(5) Until the evaluation is completed, the student remains in the educational placement determined by school or other public agency which can include suspension or expulsion without educational services.

(6) If the student is determined to be a special education student taking into consideration information from the evaluation conducted by the district or other public agency and information provided by the parents, the district or other public agency shall provide special education and any necessary related services in accordance with the provisions of this chapter, including the discipline procedures and free appropriate public education requirements.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38410, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38415 Expedited due process hearings. (1) Expedited due process hearings under this section shall:

(a) Result in a written decision being mailed to the parties within forty-five days of the office of superintendent of public instruction's receipt of the request for the hearing without exceptions or extensions. The timeline established in this subsection shall be the same for hearings requested by parents, school districts or other public agencies;

(b) Meet the requirements of WAC 392-172-354 except that the time periods identified for the disclosure of records and evaluations for purposes of expedited due process hearings are not less than two business days; and

(c) Be conducted by a due process hearing officer who satisfies the impartiality requirements of WAC 392-172-352.

(2) The decisions on expedited due process hearings are appealable under the state's normal due process appeal procedures.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38415, filed 12/1/99, effective 1/1/00.]

WAC 392-172-385 Referral to and action by law enforcement and judicial authorities. (1) Nothing in Part B of the Individuals with Disabilities Education Act, or this chapter prohibits a school district or other public agency from reporting a crime committed by a special education student to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a special education student.

(2) A school district or other public agency reporting a crime committed by a special education student shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(3) A school district or other public agency reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-385, filed 12/1/99, effective 1/1/00.]

WAC 392-172-388 Aversive interventions. The purpose of WAC 392-172-388 through 392-172-398 is to assure that special education students are safeguarded against the use and misuse of various forms of aversive interventions. Each school district or other public agency and educational

service district shall take steps to assure that each employee, volunteer, contractor, and other agent of the district or other public agency responsible for the education, care, or custody of a special education student is aware of WAC 392-172-388 through 392-172-398. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of aversive interventions which violates WAC 392-172-390 through 392-172-396 by any employee, volunteer, contractor or other agent of the district or other public agency responsible for the education, care, or custody of a special education student. Aversive interventions, to the extent permitted, shall only be used as a last resort. Positive interventions shall be attempted by the district or other public agency and educational service district and described in the individualized education program consistent with WAC 392-172-161 prior to the use of aversive interventions.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-388, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-388, filed 10/11/95, effective 11/11/95.]

WAC 392-172-390 Aversive interventions—Definition. For the purpose of WAC 392-172-388 through 392-172-398, the term "aversive interventions" means the systematic use of stimuli or other treatment which a student is known to find painful or unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:

(1) A clear and present danger of serious harm to the student or another person.

(2) A clear and present danger of serious harm to property.

(3) A clear and present danger of seriously disrupting the educational process.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-390, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-390, filed 10/11/95, effective 11/11/95.]

WAC 392-172-392 Aversive interventions—Prohibited forms. There are certain forms of aversive interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or both. The purpose of this section is to uniformly prohibit their use respecting special education students as follows:

(1) Electric current. No student may be stimulated by contact with electric current.

(2) Food services. No student who is willing to consume subsistence food or liquid when the food or liquid is customarily served may be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(3) Force and restraint in general. No force or restraint which is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law may be used. See RCW 9A.16.100 which cites the following uses of force or restraint as uses

which are presumed to be unreasonable and therefore unlawful:

- (a) Throwing, kicking, burning, or cutting a student.
- (b) Striking a student with a closed fist.
- (c) Shaking a student under age three.
- (d) Interfering with a student's breathing.
- (e) Threatening a student with a deadly weapon.

(f) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(4) The statutory listing of worst case uses of force or restraint described in subsection (3) of this section may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(5) Hygiene care. No student may be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(6) Isolation. No student may be excluded from his or her general instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172-394.

(7) Medication. No student may be denied or subjected to an unreasonable delay in the provision of medication.

(8) Noise. No student may be forced to listen to noise or sound that the student finds painful.

(9) Noxious sprays. No student may be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(10) Physical restraints. No student may be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172-394.

(11) Taste treatment. No student may be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

(12) Water treatment. No student's head may be partially or wholly submerged in water or any other liquid.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-392, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-392, filed 10/11/95, effective 11/11/95.]

WAC 392-172-394 Aversive interventions—Other forms—Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172-392 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited by WAC 392-172-392 is conditioned upon compliance with certain procedural and substantive safeguards, as follows:

(1) Bodily contact. The use of any form of aversive interventions not prohibited by WAC 392-172-392 which involves contacting the body of a special education student shall be provided for by the terms of the student's individual-

ized education program established in accordance with the requirements of WAC 392-172-396.

(2) Isolation. The use of aversive interventions which involves excluding a special education student from his or her general instructional area and isolation of the student within a room or any other form of enclosure is subject to each of the following conditions:

(a) The isolation, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172-396.

(b) The enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the enclosure or the student shall continuously remain within view of an adult responsible for supervising the student.

(3) Physical restraint. The use of aversive interventions which involves physically restraining or immobilizing a special education student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object is subject to each of the following conditions:

(a) The restraint shall only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.

(b) The restraint, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172-396.

(c) The restraint shall not interfere with the student's breathing.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the restraint or the student shall continuously remain within view of an adult responsible for supervising the student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-394, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-394, filed 10/11/95, effective 11/11/95.]

WAC 392-172-396 Aversive interventions—Individualized education program requirements. If the need for use of aversive interventions are determined appropriate by the IEP team, the individualized education program shall:

(1) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(2) Specify the aversive interventions that may be used.

(3) State the reason the aversive interventions is judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(4) Describe the circumstances under which the aversive interventions may be used.

(5) Describe or specify the maximum duration of any isolation or restraint.

(6) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(7) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(8) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-396, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-396, filed 10/11/95, effective 11/11/95.]

WAC 392-172-398 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-400 Definition of "educational records" as used in records rules. (1) For the purpose of WAC 392-172-400 through 392-172-426 and consistent with the Family Educational Rights and Privacy Act, the term "educational records" shall mean those records that:

(a) Are directly related to a student; and

(b) Are maintained by a school district or other public agency or by a party acting for the school district or other public agency.

(2) The term "educational records" does not include:

(a) Records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records:

(i) Are in the sole possession of the maker of the record; and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record and does not refer to an individual who permanently succeeds the maker of the record in his or her position;

(b) Records of a law enforcement unit of a school district or other public agency which are:

(i) Maintained separately from the educational records described in subsection (1) of this section;

(ii) Maintained solely for law enforcement purposes; and

(iii) Not disclosed to individuals other than law enforcement officials of the same district or other public agency. This exception from the definition of educational records does not apply if educational records are disclosed to personnel of the school district and other public agency's law enforcement unit;

(c) Records relating to an individual who is employed by a school district or other public agency, that:

(i) Are made and maintained in the normal course of business;

(ii) Relate exclusively to the individual in that individual's capacity as an employee; and

(iii) Are not available for use for any other purpose. This exception from the definition of "educational records" does not apply to records relating to an individual in attendance at the school district or other public agency who is employed as a result of his or her status as a student;

(d) Records relating to an adult student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in their professional or paraprofessional capacity;

(ii) Created, maintained, or used only in connection with the treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. However, the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the school district or other public agency;

(e) Records that only contain information about a student after he or she is no longer a student at that school district or other public agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-400, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-400, filed 10/11/95, effective 11/11/95.]

WAC 392-172-402 Definitions—"Destruction," "participating agency" and "personally identifiable." For the purpose of WAC 392-172-400 through 392-172-426 governing records of special education students:

(1) "Destruction" shall mean physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes school districts and other public agencies.

(3) "Personally identifiable" means information that includes:

(a) The name of the student, the student's parent, or other family member;

(b) The address of the student;

(c) A personal identifier, such as the student's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

(4) "Consent" and "Native language" are defined at WAC 392-172-040.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-402, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-402, filed 10/11/95, effective 11/11/95.]

WAC 392-172-404 Notice to parents. (1) Parents of special education students and adult students have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172-400 through 392-172-426, the Family Educational Rights and Privacy Act of 1974, as amended, chapter 28A.155 RCW, and other Washington state law.

(2) State publications regarding special education are available in alternative languages and formats on request.

(3) Personally identifiable information about students for use by the state may be contained in citizen's complaints, safety net applications, due process hearings and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(4) Before undertaking any major identification, location, or evaluation activity, the state, at a minimum, publishes notice in newspapers with circulation adequate to notify parents throughout the state of the activity and posts information on its web site.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-404, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-404, filed 10/11/95, effective 11/11/95.]

WAC 392-172-408 Access rights. (1) Each school district or other public agency shall permit parents of special education students (or adult students) to inspect and review, during school business hours, any educational records relating to their student or the adult student which are collected, maintained, or used by the district or other public agency under this chapter. The district or other public agency shall comply with a request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district or other public agency shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the educational agency to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district or other public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A school district or other public agency may presume that a parent has authority to inspect and review records relating to his or her student unless the district or other public agency has been advised that the parent does not have the

authority under applicable state law governing such matters as guardianship, separation, and divorce.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-408, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-408, filed 10/11/95, effective 11/11/95.]

WAC 392-172-410 Record of access. Each school district or other public agency shall keep a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, adult students, and authorized employees of the school district or other public agency with a legitimate educational interest in the records.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-410, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-410, filed 10/11/95, effective 11/11/95.]

WAC 392-172-414 List of types and locations of information. Each school district or other public agency shall provide parents (and adult students) on request a list of the types and locations of educational records collected, maintained, or used by the agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-414, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-414, filed 10/11/95, effective 11/11/95.]

WAC 392-172-416 Fees. (1) A participating educational agency may charge a fee for copies of records which are made for parents (or adult students) under this chapter if the fee does not effectively prevent the parents (or adult students) from exercising their right to inspect and review those records.

(2) A participating educational agency may not charge a fee to search for or to retrieve information under this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-416, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-416, filed 10/11/95, effective 11/11/95.]

WAC 392-172-418 Amendment of records at the request of a parent or adult student. (1) A parent of a special education student (or an adult student) who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district or other public agency which maintains the information amend the information.

(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the agency refuses to amend the information in accordance with the request, the agency shall inform the parent or adult student of the refusal and advise the parent or adult student of the right to a hearing provided for in WAC 392-172-420.

(4) The school district or other public agency, on request, shall provide the parent or adult student an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the school district or other public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent or adult student in writing.

(6) If, as a result of the hearing, the school district or other public agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parent(s) or adult student of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the participating agency as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and

(b) Also be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-418, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-418, filed 10/11/95, effective 11/11/95.]

WAC 392-172-420 Hearing procedures regarding records. A hearing initiated pursuant to WAC 392-172-418 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the agency has received the request;

(2) The parent or adult student shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the agency, who does not have a direct interest in the outcome of the hearing;

(4) The parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised pursuant to WAC 392-172-418 and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The agency shall provide a written decision to the parent or adult student within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-420, filed 12/1/99, effective 1/1/00. Stat-

utory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-420, filed 10/11/95, effective 11/11/95.]

WAC 392-172-422 Consent. (1) Subject to subsection (3) of this section, written consent of a parent or adult student shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information obtained under this chapter; or

(b) Used for any purpose other than meeting a requirement imposed by this chapter.

(2) The written parental consent must be signed, dated and:

(a) Specify the records that may be disclosed;

(b) State the purpose of the disclosure; and

(c) Identify the party or class of parties to whom the disclosure may be made.

(3) No school district or other public agency shall release information from educational records to participating agencies or other agencies or institutions without the written consent of a parent or adult student, unless release of the educational records is allowed under one of the exceptions under the rules implementing the federal Educational Rights and Privacy Act, 34 Code of Federal Regulations (CFR) 34 Part 99, sections 99.1 et seq.

(4) If a parent refuses to provide consent under this section, the school district or other public agency may offer mediation to the parent or use the due process hearing procedures in this chapter to override parental refusal.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-422, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-422, filed 10/11/95, effective 11/11/95.]

WAC 392-172-424 Safeguards. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. The same privacy provisions provided to parents are extended to special education students with consideration given to the type and severity of the student's disability.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding:

(a) The procedures on protection of the confidentiality of personally identifiable information, contained in this chapter, state law, the regulations implementing the Family Educational Rights and Privacy Act (34 CFR Part 99), and the school district's or other public agency's procedures.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-424, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-424, filed 10/11/95, effective 11/11/95.]

WAC 392-172-426 Destruction of information. (1)

Each school district or other public agency shall inform parent(s) (and adult students) when personally identifiable information collected, maintained, or used in compliance with this chapter is no longer needed to provide educational services to the student. State law regarding records retention is contained in chapter 40.24 RCW. State procedures for school district records retention is published by the secretary of state, division of archives and records management.

(2) The information shall thereafter be destroyed at the request of the parent(s) or adult student. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-426, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-426, filed 10/11/95, effective 11/11/95.]

WAC 392-172-500 Advisory council. (1) The special

education state advisory council is established in order to help facilitate the provision of special education and related services to meet the unique needs of special education students.

(2) The membership of the council shall include at least one representative of each of the following groups or entities:

- (a) Individuals with disabilities;
- (b) Teachers;
- (c) Parents of special education students;
- (d) Local administrators of special education programs;
- (e) Support services personnel;
- (f) Superintendents;
- (g) Principals;
- (h) Nonpublic schools serving special education students;
- (i) School directors;
- (j) Institutions of higher education that prepare special education and related services personnel;
- (k) State agencies involved in the financing or delivery of related services to special education students;
- (l) Vocational, community, or business organization concerned with the provision of transition services to special education students;
- (m) State juvenile and adult corrections agencies;
- (n) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

A majority of the members of the advisory council shall be individuals with disabilities or parents of special education students.

(3) The council's purposes are to:

- (a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of special education students including personnel needs as addressed in the state's comprehensive system of personnel development, WAC 392-172-550 et seq.;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Assist the state in developing and reporting such information and evaluations as may assist the federal government;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act;

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students; and

(f) Advise the state on the education of eligible special education students who have been convicted as adults and incarcerated in adult prisons.

(4) The council shall follow the procedures in this subsection.

(a) The advisory council shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes must be kept on all council meetings and shall be made available to the public on request to the office of superintendent of public instruction.

(d) All advisory council meetings and agenda items must be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at council meetings for council members or participants.

(f) The advisory council shall serve without compensation but the superintendent of public instruction must reimburse the council for reasonable and necessary expenses for attending meetings and performing duties.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-500, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-500, filed 10/11/95, effective 11/11/95.]

WAC 392-172-502 Interagency agreements. (1) The

superintendent of public instruction shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the superintendent of public instruction, in order to ensure that all services described in this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute. Consideration shall be given to preserving existing arrangements between school districts and other noneducational public agencies which are consistent with this chapter. These agreements or mechanisms shall:

(a) Describe the role that each agency plays in providing or paying for required services;

(b) Define the financial responsibility of each agency for providing special education students with a free appropriate

public education. The financial responsibility of each noneducational public agency including the state Medicaid agency and other public insurers of special education students, shall precede the financial responsibility of the school district (or the state agency responsible for development of the student's individualized education program);

(c) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements;

(d) Establish procedures under which school districts and other public agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements; and

(e) Establish procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

(2) If any public agency other than a school district is otherwise obligated under federal or state law, or assigned responsibility under state policy to provide or pay for any services that are also considered special education or related services as defined in this chapter, such as, but not limited to, assistive technology devices and services, supplementary aids and services and transition services that are necessary for ensuring a free appropriate public education to special education students within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(3) A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(4) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the school district (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The school district or state agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in this section, and the agreement described in subsection (1)(d) of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-502, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-502, filed 10/11/95, effective 11/11/95.]

WAC 392-172-50300 Special education students covered by public insurance. (1) A public agency may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this chapter, as permitted under the public insurance program, except as provided in subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student under this chapter, the public agency:

(a) May not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this chapter, but pursuant to WAC 392-172-50305, may pay the cost that the parent otherwise would be required to pay; and

(c) May not use a student's benefits under a public insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-50300, filed 12/1/99, effective 1/1/00.]

WAC 392-172-50305 Special education students covered by private insurance. (1) With regard to services required to provide FAPE to an eligible student under this chapter, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this chapter.

(2) Each time the public agency proposes to access the parent's private insurance proceeds, it must:

(a) Obtain parent consent in accordance with this chapter; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this chapter, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(4) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(5) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(6) If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions in this chapter.

(7) Nothing in this section should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-50305, filed 12/1/99, effective 1/1/00.]

WAC 392-172-504 Monitoring. (1) The superintendent of public instruction or designee shall annually monitor selected local school districts or other public agency special education programs, so that all districts or other public agencies are monitored at least once every four years. The purpose of monitoring is to determine the school district and other public agency's compliance with this chapter, chapter 28A.155 RCW, federal regulations implementing 20 USC Section 1400, et seq. (Part B of the Individuals with Disabilities Education Act) and other federal and state education laws necessary to validate compliance with this chapter, including validation of information included in school district or other public agency requests for federal funds.

(2) Procedures for monitoring school districts and other public agencies include:

- (a) Collection of data;
- (b) Conduct of on-site visits; and
- (c) Comparison of a sampling of evaluation reports and individualized education programs with the services actually provided.

(3) Following a monitoring visit, an interim monitoring report, including a proposed corrective action plan, shall be submitted to the school district or other public agency. The monitoring report shall include, but not be limited to:

- (a) Findings of noncompliance, if any; and
- (b) Required corrective actions for remediation of any such instance(s) of noncompliance.

(4) The school district or other public agency shall have thirty calendar days after the date of its receipt of the interim monitoring report to provide the office of superintendent of public instruction with:

- (a) Acceptance of the report; or
- (b) Supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report; and
- (c) Any revisions to the proposed action plan which sets forth the measures the district or other public agency shall take and time period(s) within which the district or other public agency shall act in order to remediate the instance(s) of noncompliance.

(5) In the event that the district or other public agency submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the office of superintendent of public instruction shall provide the district or other public agency with a final monitoring report within thirty calendar days after receipt of the supplemental arguments and/or facts.

(6) If the school district or other public agency fails to comply with a corrective action plan approved pursuant to subsection (5) of this section, the superintendent of public instruction or designee shall institute procedures to ensure corrective action. Such procedures may include one or more of the following:

- (a) Verification visits by office of superintendent of public instruction staff, or its designee, to:
 - (i) Determine whether the school district or other public agency is taking the required corrective action;

(ii) Expedite the school district and other public agency's response to the final monitoring report; and

(iii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withholding, in whole or part, a specified amount of state and/or federal special education funds, in compliance with the provisions of WAC 392-172-590 and 392-172-514.

(c) Initiating an audit of the school district or other public agency consistent with WAC 392-172-512.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-504, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-504, filed 10/11/95, effective 11/11/95.]

WAC 392-172-506 State use and allocation of Part B funds. (1) The superintendent of public instruction may not use more than fifteen percent of the total state allocation under Part B of the Individuals with Disabilities Education Act and section 619 (including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to special education students) in any preceding fiscal year, cumulatively adjusted by the secretary of the department of education for each succeeding fiscal year by the lesser of:

(a) The percentage increase, if any from the preceding fiscal year in the state's allocation under section 611 of the act; or

(b) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the consumer price index for all urban consumers, published by the bureau of labor statistics of the department of labor.

(2) Allowable costs for use of the administrative funds under Part B and section 619 of the Individuals with Disabilities Education Act include:

(a) Administration of state activities and for planning at the state level, including planning, or assisting in the planning, of programs or projects for the education of special education students;

(b) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of special education students;

(c) Technical assistance to districts with respect to the requirements of this chapter;

(d) Leadership services for the program supervision and management of special education activities for special education students; and

(e) Other state leadership activities and consultative services.

(3) The office of the superintendent of public instruction based on input from school districts may use the portion of its allocation it does not use for administration:

(a) For support services and direct services; and

(b) For the administrative costs of the state's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985;

(c) The establishment and implementation of the mediation process required by this chapter, including providing for the costs of mediators and support personnel;

(d) To assist school districts in meeting personnel shortages;

(e) Activities at the state and local levels to meet the performance goals established by the state and to support the development and implementation of the state improvement plan under subpart 1 of Part D of the IDEA if the state receives funds under that subpart;

(f) To supplement other amounts used to develop and implement a state-wide coordinated services system designed to improve results for students and families, including special education students and their families, but not to exceed one percent of the amount received by the state under section 611 of the IDEA. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the state under Part C of the IDEA; and

(g) For subgrants to school districts for capacity-building and improvement.

(4) Based upon the availability of federal funds for any given fiscal year, the office of superintendent of public instruction may establish priorities in awarding subgrants to school districts for capacity-building and improvement on a competitive or targeted basis.

These federal funds are to be used by school districts to assist them in providing direct services and in making systemic change to improve results for special education students through one or more of the following:

(a) Direct services, including alternative programming for students who have been expelled from school, and services for students in correctional facilities, and students enrolled in state-operated or state-supported schools;

(b) Addressing needs or carrying out improvement strategies identified in the state's improvement plan under subpart 1 of Part D of the IDEA;

(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources;

(d) Establishing, expanding, or implementing inter-agency agreements and arrangements between school districts and other agencies or organizations concerning the provision of services to special education students and their families; and

(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(5) For the purposes of this section:

(a) "Direct services" means services provided to a special education student by the state directly, by contract, or through other arrangements; and

(b) "Support services" includes implementing the comprehensive system of personnel development, recruitment and training of hearing officers, mediators, and surrogate parents, and public information and parent training activities relating to free, appropriate public education for special education students.

(6) Of the funds the office of the superintendent of public instruction retains under this section, the office may use the funds directly, or distribute them to school districts, educational service districts, and other public agencies on a competitive, targeted, or formula basis.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-506, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-506, filed 10/11/95, effective 11/11/95.]

WAC 392-172-507 State level nonsupplanting and maintenance of effort. (1) Except as provided under WAC 392-172-606, federal funds available for special education students under Part B of the Individuals with Disabilities Education Act, shall be used to supplement, and in no case supplant, federal, state and local funds (including funds that are not under the direct control of the state or local education agencies) expended for special education and related services provided to special education students.

(2) On either a total or per-capita basis, the state will not reduce the amount of state financial support for special education and related services for special education students, or otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-507, filed 12/1/99, effective 1/1/00.]

WAC 392-172-510 Child count procedures. The superintendent of public instruction shall report to the United States Secretary of Education no later than February 1 of each year the number of special education students aged three through twenty-one residing in the state who are receiving special education and related services. The superintendent shall submit the report on forms provided by the United States Secretary of Education.

(1) Information required in the report includes:

(a) The number of special education students receiving special education and related services on December 1 of that school year;

(b) The number of special education students aged three through five who are receiving free, appropriate public education;

(c) The number of those special education students aged six through seventeen and eighteen through twenty-one within each disability category, as defined in the definition of "special education students"; and

(d) The number of those special education students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count: December 1.

(3) The state superintendent may not report a student under more than one disability category.

(4) If a special education student has more than one disability, the superintendent shall report that student in accordance with the following procedure:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) The office of the superintendent of public instruction shall include in its report a certification signed by an autho-

rized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

(6) The office of the superintendent of public instruction will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:

(a) Provides them with both special education and related services; or

(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(7) The superintendent may not include special education students in its reports who:

(a) Are not enrolled in a school or program operated or supported by a public agency;

(b) Are not provided special education that meets state standards;

(c) Are not provided with a related service that they need to assist them in benefiting from special education;

(d) Are counted by the state's lead agency for Part C services; or

(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-510, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-510, filed 10/11/95, effective 11/11/95.]

WAC 392-172-511 Disproportionality. (1) The state shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the state with respect to:

(a) The identification of students as special education students, including the identification of students as special education students in accordance with a particular impairment described in this chapter; and

(b) The placement in particular educational settings of these students.

(2) In the case of a determination of significant disproportionality with respect to the identification of a student as a special education student, or the placement in particular educational settings of these students, the superintendent of public instruction shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-511, filed 12/1/99, effective 1/1/00.]

WAC 392-172-512 Audits. (1) The state auditor's office shall conduct fiscal/program audits of school district or other public agency special education programs. The purposes of such audits shall be:

(a) To determine compliance or noncompliance with:

(i) A school district and other public agency's application(s) for state and federal excess cost funds;

(ii) The provisions of this chapter; and

(iii) Any supplemental federal conditions to funding as may now or hereafter exist.

(b) To establish a factual basis for:

(i) The recovery of unlawfully received or expended state or federal special education funds; or

(ii) The initiation of fund withholding proceedings.

(2) The superintendent of public instruction shall comply with chapter 392-115 WAC in the resolution of all audits.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-512, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-512, filed 10/11/95, effective 11/11/95.]

WAC 392-172-514 Fund withholding. (1) In the event a school district or other public agency fails to submit an approvable corrective action plan required by chapter 392-115 WAC, audit resolution, or fails to submit an approvable corrective action plan pursuant to WAC 392-172-504, monitoring, or fails to comply with a corrective action plan approved pursuant to chapter 392-115 WAC or fails to comply with a corrective action plan pursuant to WAC 392-172-504, the superintendent or designee shall provide the school district or other public agency notice which complies with RCW 34.05.434 of:

(a) Intent to withhold a specified amount of state and/or federal special education funds; and

(b) The school district and other public agency's opportunity for a hearing before the superintendent of public instruction or designee prior to commencement of the withholding.

(2) Funds may be withheld in whole or part in the event the district or other public agency fails to request a hearing or the hearing decision upholds the final audit or monitoring in whole or part. (RCW 28A.155.100.)

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-514, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-514, filed 10/11/95, effective 11/11/95.]

WAC 392-172-516 Recovery of funds. The superintendent of public instruction shall comply with the provisions of chapter 392-115 WAC in the event an audit conducted pursuant to WAC 392-172-512 indicates that a district or other public agency has unlawfully received and/or expended state or federal special education funds.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-516, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-516, filed 10/11/95, effective 11/11/95.]

WAC 392-172-520 Implementation by state of special education students placed or referred by school districts or other public agencies. In implementing the private school provisions of WAC 392-172-219 through 392-172-226, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a special education student;

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them; and

(4) Ensure that a special education student who is placed in or referred to a private school or facility by a school district or other public agency:

(a) Is provided special education and related services;

(i) In conformance with an IEP that meets the requirements of WAC 392-172-156 et seq.; and

(ii) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by school districts and other public agencies, including the requirements of this chapter; and

(c) Has all of the rights of a special education student who is served by a school district or other public agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-520, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-520, filed 10/11/95, effective 11/11/95.]

WAC 392-172-526 State responsibility. The state shall ensure that to the extent consistent with their number and location in the state, provision is made for the participation of private school special education students in the program assisted or carried out under this chapter by providing them with special education and related services, in accordance with WAC 392-172-232 through 392-172-248.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-526, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-526, filed 10/11/95, effective 11/11/95.]

WAC 392-172-550 Comprehensive system of personnel development. The superintendent of public instruction shall establish and implement procedures for developing and conducting a comprehensive system of personnel development that:

(1) Is consistent with the purposes of Part B of the Individuals with Disabilities Education Act and the Part C Program for Infants and Toddlers with Disabilities;

(2) Is designed to ensure an adequate supply of qualified special education, general education, and related services personnel;

(3) Meets the requirements of 34 CFR 300.381 and 300.382; and

(4) Is updated at least every five years.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-550, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-550, filed 10/11/95, effective 11/11/95.]

WAC 392-172-552 Definitions. The following definitions apply to this chapter:

(1) "Appropriate professional requirements in the state," means those entry level requirements that are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing special education or related services and that establish suitable qualifications for personnel providing special education and related services under Part B of the IDEA to special education children

and youth who are served by state, local, and private agencies;

(2) "Highest requirements in the state applicable to a specific profession or discipline," means the highest entry-level academic degree needed for any state-approved or recognized certification, licensing, or registration or other comparable requirements that apply to that profession or discipline;

(3) "Profession or discipline," means a specific occupational category that provides special education and related services to special education children and youth under Part B of the IDEA, has been established or designated by the state, and has a required scope of responsibility and degree of supervision, and is not limited to traditional occupational categories;

(4) "Qualified" means that a person, in accordance with the provisions contained in 34 CFR 300.136 of the Individuals with Disabilities Education Act and WAC 392-172-200, has met superintendent of public instruction approved or recognized certification, licensing, registration, or other comparable requirements for the profession or discipline in which the person is providing special education and related services; and

(5) "State-approved or state-recognized certification, licensing, registration, or other comparable requirements" means the requirements that the state legislature either has enacted or has authorized a state agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in the state.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-552, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-552, filed 10/11/95, effective 11/11/95.]

WAC 392-172-553 Adequate supply of qualified personnel. The office of superintendent of public instruction shall complete an analysis of state and local needs for professional development for personnel to serve special education students that includes, at a minimum:

(1) The number of personnel providing special education and related services; and

(2) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-553, filed 12/1/99, effective 1/1/00.]

WAC 392-172-554 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-556 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-558 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-559 Improvement strategies. After conducting the analysis described in WAC 392-172-553, the office of superintendent of public instruction shall develop strategies to address the needs identified under WAC 392-172-553, and in accordance with federal requirements in 34 CFR 300.382.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-559, filed 12/1/99, effective 1/1/00.]

WAC 392-172-560 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-561 School district implementation of comprehensive system of personnel development. Each school district or other public agency shall have on file with the office of superintendent of public instruction information to demonstrate that:

(1) All personnel necessary to carry out Part B of the IDEA within the jurisdiction of the school district or other public agency are appropriately and adequately prepared consistent with WAC 392-172-550 et seq.; and

(2) To the extent the school district or other public agency determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the state established under WAC 392-172-550 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-561, filed 12/1/99, effective 1/1/00.]

WAC 392-172-562 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-564 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-566 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-568 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-570 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-574 Professional standards review. The superintendent of public instruction, shall periodically review the professional requirements in the statutes necessary for the provision of special education and related services. This professional standards review must include the requirements of all statutes and the rules of all state agencies applicable to serving special education students, and shall include the standards of the superintendent of public instruction, the department of licensing, the division of vocational rehabilitation, the department of social and health services, and any other public agency responsible for the licensing or certification of personnel who provide special education or related services. In conducting this review, the superintendent of public instruction must:

(1) Determine the highest standards applicable to each profession or discipline based upon the most current information available to the superintendent of public instruction;

(2) Identify those professions or disciplines for which the highest requirements of the state apply;

(3) Identify those specific professions or disciplines for which the existing personnel standards for special education or related services, including standards for temporary or emergency certification are not based on the highest requirement in the state applicable to that specific profession or discipline; and

(4) For those professions or disciplines for which the highest requirements of the state do not apply, detail the steps the superintendent of public instruction is taking (and the procedures for notifying public agencies and personnel of those steps and the time lines it has established) for the retraining or hiring of personnel that meet the appropriate professional requirements in the state of Washington. In determining the status of personnel standards for each applicable profession or discipline in the state (as defined in WAC 392-172-572), the superintendent of public instruction's review and determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the state for that profession or discipline.

The results of the review conducted in accordance with the provision of this section shall be submitted to the state advisory council for special education. Supporting documentation must be maintained in the files of the superintendent of public instruction's special education section and must be available to the public.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-574, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-574, filed 10/11/95, effective 11/11/95.]

WAC 392-172-576 Personnel shortages—Requirement. Each school district or other public agency will make a good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services. Where there are shortages of personnel that meet these qualifications, the school district or other public agency will make a good faith effort to recruit and hire the most qualified individuals available.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-576, filed 12/1/99, effective 1/1/00.]

WAC 392-172-57700 Performance goals and indicators. (1) The office of superintendent of public instruction shall establish goals for the performance of special education students that promote the purposes of the Individuals with Disabilities Education Act and are consistent, to the maximum extent appropriate, with the state's four learning goals and essential academic learning requirements for all students.

(2) In addition, the office of superintendent of public instruction shall establish performance indicators that shall be used to assess progress toward achieving those goals that

at a minimum address the performance of special education students on assessments, dropout rates, and graduation rates.

(3) The office of superintendent of public instruction shall report to the U.S. Secretary of Education and the public every two years on the progress of the state and of special education students in the state toward meeting the goals established under this section. Based on its assessment of that progress, the office of superintendent of public instruction shall revise its state improvement plan under subpart 1 of Part D of the IDEA as may be needed to improve its performance, if the state receives assistance under that subpart.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-57700, filed 12/1/99, effective 1/1/00.]

WAC 392-172-57800 Participation in assessments and reporting results. (1) The office of superintendent of public instruction shall file with the U.S. Secretary of Education information to demonstrate that special education students are included in general state and district-wide assessment programs, with appropriate accommodations and modifications in administration if necessary.

(2) As appropriate the office of superintendent of public instruction, school districts or other public agencies shall:

(a) Develop guidelines for the participation of special education students in alternate assessments for those students who cannot participate even with accommodations or modifications in state and district-wide assessment programs;

(b) Develop alternate assessments; and

(c) Begin not later than July 1, 2000, to conduct the alternate assessments.

(3) In implementing this section, the office of superintendent of public instruction shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled students, the following information:

(a) The number of special education students participating in:

(i) General assessments; and

(ii) Alternate assessments.

(b) The performance results of special education students:

(i) Participating in general assessments; and

(ii) On alternate assessments (not later than July 1, 2000,) if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual students.

(4) Reports to the public must include:

(a) Aggregated data that include the performance of special education students together with all other students; and

(b) Disaggregated data on the performance of special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-57800, filed 12/1/99, effective 1/1/00.]

WAC 392-172-57900 Reporting on suspension and expulsion rates. (1) Annually, school districts or other public agencies shall report to the state on the rates of long-term suspensions and expulsions of special education students and nondisabled students for the preceding school year. The state

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shall examine this data to determine if significant discrepancies are occurring:

(a) Among school districts or other public agencies; or

(b) Between nondisabled students and special education students within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with Part B of the IDEA.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised include:

(a) The development and implementation of individualized education programs;

(b) The use of behavioral interventions; and

(c) Procedural safeguards.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-57900, filed 12/1/99, effective 1/1/00.]

WAC 392-172-580 School district eligibility—

Requirements. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the school district and other public agency's state approved plan. The request shall be made on forms developed and distributed by the superintendent. Request forms shall include, but not be limited to, the following assurance(s) and types of information:

(1) Assurance that:

(a) The school district or other public agency is in compliance with the provisions of this chapter and the rules implementing Part B of Individuals with Disabilities Education Act (34 CFR 300.1 et seq.) that may supplement this chapter, including procedural safeguards;

(b) The district or other public agency shall remain in compliance with this chapter and any such supplemental rules for the entire school year; and

(c) The funds applied for shall be expended in compliance with the request, this chapter, and any such supplemental federal rules, including excess cost, nonsupplanting, and comparable services;

(2) The information and assurances required by 34 CFR 300.220 through 34 CFR 300.250 and any other pertinent federal rules;

(3) Identification of the local district or other public agency designee responsible for child identification activities and confidentiality of information;

(4) A description of the policies, procedures and/or activities to be implemented or continued to provide for:

(a) Identification, location and evaluation (child find) of special education students including students in private schools;

(b) Confidentiality of personally identifiable information;

(c) Implementation of a system for personnel development;

(d) Involvement of parents of special education students, including the participation of non-English speaking parents;

(e) Participation of special education students with students without disabilities;

(f) Delivery of services to special education students in the least restrictive environment;

(g) Development of individualized education programs for each eligible special education student;

(h) Availability of career development and vocational education programs for special education students;

(i) A description of the numbers and types of special education students receiving special education and related services by placement option within the school district and other public agency's continuum of alternative placements;

(j) A goal and detailed timetable for providing full educational opportunity to all special education students, aged birth through twenty-one;

(k) Transition of students from Part C to preschool programs;

(l) Private school students;

(m) Performance goals and indicators;

(n) Participation in assessments and reporting results;

(o) Suspension and expulsion; and

(p) A description of the use of funds received under Part B of the Individuals with Disabilities Education Act (34 CFR 300.1 et seq.).

(5) Any other pertinent information requested by the superintendent of public instruction which is necessary for the management of the special education program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-580, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-580, filed 10/11/95, effective 11/11/95.]

WAC 392-172-582 Collaborative requests. The superintendent of public instruction may require districts to submit a collaborative request for payments under Part B of the Individuals with Disabilities Education Act if it is determined that a single district or other public agency would be disapproved because the district or other public agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of special education students. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single district or other public agency applicant. The request must be signed by the superintendent of each participating school district or other public agency. The districts are jointly responsible for implementing programs receiving payments under Part B of the Individuals with Disabilities Education Act. The total amount of funds made available to the affected school districts or other public agencies shall be equal to the sum each would have received separately.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-582, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-582, filed 10/11/95, effective 11/11/95.]

WAC 392-172-583 Exception for prior policies and procedures. If a school district or other public agency has on file with the office of superintendent of public instruction policies and procedures that demonstrate that the school district or other public agency meets any requirement under

WAC 392-172-580, including any policies and procedures filed under Part B of the IDEA as in effect before June 4, 1997, the office of superintendent of public instruction shall consider the school district or other public agency to have met the requirement for purposes of receiving Part B funds.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-583, filed 12/1/99, effective 1/1/00.]

WAC 392-172-584 Review and amendment process.

(1) Requests for Part B funding shall be submitted to the office of superintendent of public instruction for review by program supervisors using state checklist and for final approval by the superintendent's designee.

(2) Prior to making a final decision on a request for Part B funding, office of superintendent of public instruction staff shall consider any decision resulting from a hearing under WAC 392-172-350 that is adverse to the district or other public agency involved in the decision.

(3) If a district or other public agency makes a significant amendment to its policies and procedures, the district or other public agency must follow the same steps it took for submitting its original request. The review and approval process shall be the same as that used for an initial request for funds under Part B of the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-584, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-584, filed 10/11/95, effective 11/11/95.]

WAC 392-172-585 Amendments to policies and procedures. (1) Policies and procedures submitted by a school district or other public agency, in accordance with WAC 392-172-580, shall remain in effect until a school district or other public agency submits to the office of superintendent of public instruction modifications that a district or agency decides are necessary.

(2) The office of superintendent of public instruction may require a school district or other public agency to modify its policies and procedures, but only to the extent necessary to ensure a district's or agency's compliance with Part B of the IDEA, if:

(a) After June 4, 1997, the provisions of the IDEA or its implementing regulations are amended;

(b) There is a new interpretation of the IDEA by federal or state courts; or

(c) There is an official finding of noncompliance with federal or state law or regulations.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-585, filed 12/1/99, effective 1/1/00.]

WAC 392-172-588 Availability of information and public participation. Each district or other public agency shall:

(1) Make policies and procedures, any evaluations, periodic program plans, and reports relating to the Part B program available for public inspection; and

(2) Provide reasonable opportunities for the participation by teachers, parents of special education students, families, other interested agencies, organizations, and individuals in

the planning for and operation of the Individuals with Disabilities Education Act Part B program as an integral part of the overall school program; and

(3) At a minimum, a school district and other public agency's procedures must describe the steps taken to:

(a) Make policies and procedures and any required evaluations, plans, and reports available to the public; and

(b) Involve the required constituency groups, as noted above, in the planning and operation of the Part B program. Parental participation in the individualized education program process does not constitute involvement in the planning and operation of the program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-588, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-588, filed 10/11/95, effective 11/11/95.]

WAC 392-172-590 Denial of requests—Opportunity for hearing. (1) In the event the superintendent of public instruction or designee proposes to deny, in whole or part, the request of a district or other public agency for federal special education funds, the district or other public agency shall be provided notice pursuant to RCW 34.05.434 of:

(a) Intent to deny the request of the district or other public agency; and

(b) The school district and other public agency's opportunity for a hearing before the superintendent of public instruction or designee prior to a denial of the request.

(2) The superintendent of public instruction shall provide an opportunity for a hearing before the office of superintendent of public instruction disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of the action of the superintendent of public instruction.

(b) Within thirty days after it receives a request, the superintendent of public instruction shall hold a hearing on the record and shall review its action.

(c) No later than ten days after the hearing the office of superintendent of public instruction shall issue its written ruling, including findings of fact and reasons for the ruling. If supported by substantial evidence, findings of fact by the superintendent of public instruction are final.

(3) If the office of superintendent of public instruction determines that its action was contrary to state or federal statutes or regulations that govern the applicable program, the action shall be rescinded.

(4) If the superintendent of public instruction does not rescind its final action after a review, the applicant may appeal to the United States Secretary of Education. The applicant shall file a notice of the appeal with the United States Secretary of Education within twenty days after the applicant has been notified by the superintendent of public instruction of the results of the agency's review.

(5) The superintendent of public instruction shall make available at reasonable times and places to each applicant all records pertaining to any review or appeal an applicant is pursuing under this section, including records of other applicants.

(6) The school district and other public agency's request may be denied, in whole or part, if the district or other public

agency fails to request a hearing or the hearing decision upholds the proposed basis for denial.

(7) Any school district or other public agency in receipt of a notice described in this section shall, by means of a public notice, take the measures necessary to bring a pending action pursuant to this section to the attention of the public within its jurisdiction.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-590, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-590, filed 10/11/95, effective 11/11/95.]

WAC 392-172-592 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-594 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-172-595 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

(a) The amount of funds under the grant;

(b) How the funds were used;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation and placement of special education students and the development and implementation of individualized education programs. Program and fiscal information records shall be available to authorized representatives of the office of superintendent of public instruction for the purpose of compliance monitoring under WAC 392-172-504 or auditing under WAC 392-172-512.

(3) Records shall be retained for five years after completion of the activities for which grant funds were used.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-595, filed 12/1/99, effective 1/1/00.]

WAC 392-172-600 School district or other public agency use of amounts. The school district or other public agency must have on file with the state information to demonstrate that amounts provided under Part B of the IDEA:

(1) Will be expended in accordance with the applicable provisions of this chapter;

(2) Will be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and

(3) Will be used to supplement state, local and other federal funds and not to supplant those funds.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-600, filed 12/1/99, effective 1/1/00.]

WAC 392-172-605 School district or other public agency use of federal funds for preschool children. In general, federal Part B funds are to be used for eligible special education students birth through twenty-one years of age.

Federal preschool funds under section 619 may only be used for eligible special education children aged three through five years.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-605, filed 12/1/99, effective 1/1/00.]

WAC 392-172-610 School district or other public agency maintenance of effort. (1) Except as provided under WAC 392-172-615 and 392-172-620, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of special education students made by it from local funds below the level of those expenditures for the preceding fiscal year.

(2) Except as provided in subsection (3) of this section, the office of superintendent of public instruction determines that a school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of special education students, at least the same total or per-capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

- (a) Local funds only.
- (b) The combination of state and local funds.

(3) A district that relies on subsection (2)(a) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of special education students in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in:

(a) The most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997; or

(b) If later, the most recent fiscal year for which information is available and the standard in subsection (2)(a) of this section was used to establish its compliance with this section.

(4) The office of superintendent of public instruction may not consider any expenditures made from funds provided by the federal government for which the office of superintendent of public instruction is required to account to the federal government or for which the district is required to account to the federal government directly or through the office of superintendent of public instruction in determining a district's compliance with the requirement of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-610, filed 12/1/99, effective 1/1/00.]

WAC 392-172-615 School district or other public agency exceptions to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;

(2) A decrease in the enrollment of special education students;

(3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education to a particular special education student that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district or agency;

(b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

(5) In order for a school district to invoke the exception in subsection (1) of this section, the district must ensure that those voluntary retirements or resignations and replacements are in full conformity with:

(a) Existing school board policies in the agency;

(b) The applicable collective bargaining agreement in effect at that time; and

(c) Applicable state statutes.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-615, filed 12/1/99, effective 1/1/00.]

WAC 392-172-620 School district or other public agency—Treatment of federal funds in certain fiscal years. (1) For any fiscal year in which the total of federal funds available for IDEA-B exceeds \$4.1 billion dollars, a school district or other public agency may treat as local funds up to twenty percent of the amount of funds it receives under Part B of the IDEA that exceeds the amount it received under Part B of the IDEA for the previous fiscal year. The requirements regarding supplanting and maintenance of effort do not apply with respect to the amount that may be treated as local funds under this section.

(2) If the state determines that a school district or other public agency is not meeting the requirements of this chapter, the state may prohibit the district or agency from treating funds received under Part B of the IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the state constitution or a state statute.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-620, filed 12/1/99, effective 1/1/00.]

WAC 392-172-625 School-wide programs under Title I of the ESEA. (1) A school district or other agency may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

(a) The amount received by the district or agency under Part B for that fiscal year; divided by the number of special education students in the jurisdiction; multiplied by

(b) The number of special education students participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172-600(1).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting.

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that special education students in school-wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to special education students under the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-625, filed 12/1/99, effective 1/1/00.]

WAC 392-172-630 School district or other public agency permissive use of funds. (1) Funds provided to a school district or other public agency under the IDEA-B may be used for the costs of special education and related services and supplementary aids and services provided in a general class or other education related setting to a special education student in accordance with the individualized education program of the student, even if one or more nondisabled students benefit from these services; and/or

(2) To develop and implement a fully integrated and coordinated services system in accordance with WAC 392-172-635.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-630, filed 12/1/99, effective 1/1/00.]

WAC 392-172-635 School district or other public agency coordinated services system. (1) A school district or other public agency may use not more than five percent of the amount the district or agency receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including special education students and their families.

(2) In implementing a coordinated services system under this section, a school district or other public agency may carry out activities that include:

(a) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(b) Service coordination and case management that facilitate the linkage of individualized education programs under Part B of the IDEA and individualized family services plans under Part C of the IDEA with individualized service plans under multiple federal and state programs, such as Title I of the Rehabilitation Act of 1973 (vocational rehabilitation), Title XIX of the Social Security Act (Medicaid) and Title XVI of the Social Security Act (supplementary security income);

(c) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the IDEA; and

(d) Interagency personnel development for individuals working on coordinated services.

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(3) If a school district or other public agency is carrying out a coordinated services project under Title XI of the Elementary and Secondary Education Act of 1965 and a coordinated project under Part B of the IDEA in the same schools, the district or agency shall use the amounts under this section in accordance with the requirements of that title.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-635, filed 12/1/99, effective 1/1/00.]

WAC 392-172-640 School-based improvement plan.

(1) The state may grant authority to a school district or other public agency to permit a public school (through a school-based standing panel) to design, implement, and evaluate a school-based improvement plan for a period not to exceed three years.

(2) A school district or other public agency may use Part B funds to permit a public school within its jurisdiction to implement a school-based improvement plan. The plan must be consistent with the purposes described in section 651(b) of the IDEA (state program improvement grants). These purposes include reforming and improving state systems for providing educational, early intervention, and transitional services. The systems involved include professional development, technical assistance, and the dissemination of knowledge about best practices to improve results for students with disabilities.

(3) The plan must be designed to improve results for all special education students and, as appropriate, for other students consistent with WAC 392-172-630.

(4) If the state grants the authority to a school district or other public agency to develop a plan, the district or agency must have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-640, filed 12/1/99, effective 1/1/00.]

WAC 392-172-645 Plan requirements. (1) A school-based improvement plan described in WAC 392-172-640 is for those students who attend the school for which the plan is designed and implemented.

(2) The plan must:

(a) Be designed, evaluated, and as appropriate, implemented by a school-based standing panel established in accordance with WAC 392-172-650;

(b) Include goals and measurable indicators to assess the progress of the public school in meeting these goals; and

(c) Ensure that all special education students receive the services described in their individualized education programs.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-645, filed 12/1/99, effective 1/1/00.]

WAC 392-172-650 School district responsibilities. A school district or other public agency that is granted authority under WAC 392-172-640 to develop a plan shall:

(1) Select each school under the jurisdiction of the district or agency that is eligible to design, implement, and evaluate the plan;

(2) Require each school selected in accordance with criteria established by the district or agency to establish a school-based standing panel to carry out the duties described in WAC 392-172-645;

(3) Establish:

(a) Criteria that must be used by the district or agency in the selection of an eligible school;

(b) Criteria that must be used by an eligible public school in the establishment of a school-based standing panel to carry out the duties described in WAC 392-172-645 that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum:

(i) Parents of special education students who attend a public school, including parents of special education students from unserved and underserved populations, as appropriate;

(ii) Special education and general education teachers of public schools;

(iii) Special education and general education administrators, or the designee of those administrators, of those public schools; and

(iv) Related services providers who are responsible for providing services to the special education students who attend those public schools.

(c) Criteria that must be used by the district or agency with respect to the distribution of funds under Part B of the IDEA to carry out this section.

(4) Disseminate the criteria to local school district personnel and local parent organizations within the jurisdiction of the district or agency;

(5) Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner and accompanied by the information, that the district or agency shall reasonably require; and

(6) Establish procedures for approval by the district or agency of a school-based improvement plan designed under Part B of the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-650, filed 12/1/99, effective 1/1/00.]

WAC 392-172-655 Limitation. A school-based improvement plan may be submitted to a district or agency, for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of the plan is reached by the school-based standing panel that designed the plan.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-655, filed 12/1/99, effective 1/1/00.]

WAC 392-172-660 Additional requirements. (1) In carrying out the requirements of WAC 392-172-640 et seq., a school district or other public agency shall ensure that the parents of special education students are involved in the design, evaluation, or if appropriate, implementation of school-based improvement plans in accordance with this section.

(2) A district or agency may approve a school-based improvement plan of a public school within its jurisdiction for a period of three years if:

(a) The approval is consistent with the policies, procedures, and practices established by the district or agency in accordance with WAC 392-172-640 et seq.; and

(b) A majority of the parents of students who are members of the school-based standing panel and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-660, filed 12/1/99, effective 1/1/00.]

WAC 392-172-665 Extension of plan. If a public school within the jurisdiction of a school district or other public agency meets the applicable requirements and criteria described in this section, at the expiration of the three-year approval period, the district or agency may approve a school-based improvement plan of the school for an additional three-year period.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-665, filed 12/1/99, effective 1/1/00.]

Title 399 WAC

COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF (PUBLIC WORKS BOARD)

Chapters 399-30

Public works loans and pledges.

Chapter 399-30 WAC

PUBLIC WORKS LOANS AND PLEDGES

WAC

399-30-032

What are the requirements for meeting the Growth Management Act under RCW 43.155.070 (1)(d)?

399-30-033

How will the board address a "public health need" under RCW 43.155.070 (1)(d)?

399-30-034

How will the board address "substantial environmental degradation" as found in RCW 43.155.070 (1)(d)?

WAC 399-30-032 What are the requirements for meeting the Growth Management Act under RCW 43.155.070 (1)(d)? (1) "Compliance with the Growth Management Act" means that at the time of application for financial assistance:

(a) A local government that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan and development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan and development regulations be adopted; and

(b) The local government has not been found out of compliance by a growth management hearings board; or

(c) A growth management hearings board has found a local government in compliance with the requirements of