

# Chapter 392-173 WAC

## SPECIAL EDUCATION PROGRAMS—DSHS STUDENTS

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-173-060	Program evaluation and revision. [Order 16-76, § 392-173-060, filed 12/21/76.] Repealed by WSR 80-11-038 (Order 80-30), filed 8/15/80. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution.
392-173-070	Staff qualifications and ratios. [Order 16-76, § 392-173-070, filed 12/21/76.] Repealed by WSR 80-11-038 (Order 80-30), filed 8/15/80. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution.

**WAC 392-173-003 Authority.** The authority for this chapter is RCW 72.05.140 which requires educational programs operated by the department of social and health services to conform to standards defined by the state board of education or the office of superintendent of public instruction. Such authority is buttressed by RCW 28A.300.070 which authorizes the superintendent of public instruction to accept federal conditions upon the receipt of federal funds for educational programs operated by the department of social and health services and by Article III, section 22 of the state Constitution which requires the superintendent of public instruction to have supervision over all matters pertaining to the public schools.

[Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-173-003, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-003, filed 10/2/84.]

**WAC 392-173-005 Purpose.** The purpose of this chapter is to accommodate the unique goals and student population of the state schools for the deaf and the blind and the early childhood developmental centers operated by the department of social and health services by establishing the standards governing the development and implementation of special education and related services for residents with disabilities of such schools who are under the age of twenty-one. This chapter applies to the maintenance and operation of such

programs by the department of social and health services and the general supervisory authority of the office of the superintendent of public instruction.

[Statutory Authority: Chapter 28A.155 RCW. WSR 93-19-064 (Order 93-14), § 392-173-005, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-005, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-005, filed 8/15/80; Order 16-76, § 392-173-005, filed 12/21/76.]

**WAC 392-173-010 Definitions.** As used in this chapter:

(1) "Department" shall mean the department of social and health services.

(2) The meaning of terms as used in this chapter shall be as provided in WAC 392-171-310, 392-171-311, 392-171-315, and 392-171-320.

(3) The term "schools" shall mean the state schools for the deaf and the blind and the early childhood developmental centers.

(4) Early childhood developmental centers shall mean state/department supported community based programs for preschool students aged birth to three.

[Statutory Authority: Chapter 28A.155 RCW. WSR 93-19-064 (Order 93-14), § 392-173-010, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-010, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-010, filed 8/15/80; Order 16-76, § 392-173-010, filed 12/21/76.]

**WAC 392-173-015 General duties of the department of social and health services and the superintendent of public instruction.** In recognition of the fact that the department has the immediate statutory duty, authority, and responsibility to establish, maintain, operate, and administer a comprehensive program for the care, custody, control, and education of students at the state schools for the deaf and the blind and early childhood developmental centers; and that the superintendent of public instruction is charged with the responsibility of assisting the state schools so that the educational programs maintained therein shall be comparable to such programs provided for in chapter 392-171 WAC for children with similar aptitudes in local school districts; and that the superintendent of public instruction is appropriated federal funds for these programs from time to time and has the constitutional and statutory authority to supervise all matters pertaining to the public school system, the principal duties of the superintendent of public instruction and department shall be as follows:

(1) The superintendent of public instruction shall cooperate with the department in the exercise of powers granted by law with the objective of assuring each student a free appropriate public education consistent with this chapter;

(2) The superintendent of public instruction shall assist the department regarding the operation and maintenance of educational programs for students in such schools;

(3) The superintendent of public instruction shall seek, allocate, and distribute federal funds made available for these programs on the condition that funds made available for the education of students be expended in compliance with the requirements of this chapter and other state or federal funding conditions; and

(4) The superintendent of public instruction shall provide the department with information and the advice and services of his or her staff necessary to achieve the purpose of this chapter to the extent the same are reasonably available. This part may not be construed to permit the state to reduce medical and other assistance available to students with disabilities, or to alter the eligibility of a student with a disability, under Title V (Maternal and Child Health) or Title XIX (medicaid) of the Social Security Act, to receive services that are also part of a free appropriate public education.

[Statutory Authority: Chapter 28A.155 RCW. WSR 93-19-064 (Order 93-14), § 392-173-015, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-015, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-015, filed 8/15/80; Order 16-76, § 392-173-015, filed 12/21/76.]

**WAC 392-173-020 Referral and admission to a residential school—Eligibility for immediate placement.** Students admitted to the state school for the blind and the deaf shall be enrolled in an educational program within ten days of admittance. Students placed in an early childhood developmental center shall be immediately eligible for an educational program.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-020, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-020, filed 8/15/80; Order 16-76, § 392-173-020, filed 12/21/76.]

**WAC 392-173-025 Assessment, individual education plan, least restrictive environment, placement options, annual review of placement, and notice.** The following provisions from chapter 392-171 WAC shall be applicable to students in such schools: WAC 392-171-346, 392-171-351, 392-171-366, 392-171-371, 392-171-456, 392-171-461, 392-171-471, 392-171-481, 392-171-511, 392-171-516, 392-171-521, and 392-171-526.

[Statutory Authority: RCW 72.05.140 and 28A.300.070. WSR 90-19-069 (Order 30), § 392-173-025, filed 9/17/90, effective 10/18/90. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-025, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-025, filed 8/15/80; Order 16-76, § 392-173-025, filed 12/21/76.]

**WAC 392-173-030 Medical evaluation.** Medical evaluation shall be the responsibility of the department whenever a student with disabilities is suspected of having a health problem which may affect his or her educational program: Provided, That medical evaluations at the expense of the department as otherwise in behalf of the department shall be obtained only:

(1) At the direction of or with prior approval of the department's designee, except in the case of an independent assessment ordered pursuant to WAC 392-171-371.

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(2) In accordance with criteria established by the department, but not limited to, the location of the evaluation and report required.

(3) When the student's personal physician, if the student has a physician, has been involved in the planning.

[Statutory Authority: Chapter 28A.155 RCW. WSR 93-19-064 (Order 93-14), § 392-173-030, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-030, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-030, filed 8/15/80; Order 16-76, § 392-173-030, filed 12/21/76.]

**WAC 392-173-035 Education records.** In addition to applicable laws on records and privacy for persons admitted to the state schools for the blind and the deaf and early childhood developmental centers and the procedures, rules, and criteria of the department implementing such laws, the following provisions of chapter 392-171 WAC on education records shall be applicable to students admitted to these schools: WAC 392-171-591, 392-171-596, 392-171-601, 392-171-606, 392-171-611, 392-171-616, 392-171-621, 392-171-636, and 392-171-641. Hearings initiated to challenge information contained in the education record shall be conducted according to applicable state and federal laws and department procedures, rules, and criteria implementing such laws.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-035, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-035, filed 8/15/80; Order 16-76, § 392-173-035, filed 12/21/76.]

**WAC 392-173-040 Annual application.** The following provision from chapter 392-171 WAC shall be applicable as they relate to ESEA Title I, P.L. 89-313 funds: WAC 392-171-691, and 392-171-696.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-040, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-040, filed 8/15/80; Order 16-76, § 392-173-040, filed 12/21/76.]

**WAC 392-173-045 Staff qualifications.** WAC 392-171-701 shall be applicable to all employees of the state schools for the blind and the deaf and early childhood developmental disabilities centers.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-045, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-045, filed 8/15/80; Order 16-76, § 392-173-045, filed 12/21/76.]

**WAC 392-173-047 Interagency agreements.** WAC 392-171-728 shall be applicable to the department.

[Statutory Authority: Chapter 28A.155 RCW. WSR 93-19-064 (Order 93-14), § 392-173-047, filed 9/13/93, effective 10/14/93.]

**WAC 392-173-050 Monitoring.** WAC 392-171-731 shall be applicable for programs in the state schools for the blind and the deaf and early childhood developmental centers.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-050, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-050, filed 8/15/80; Order 16-76, § 392-173-050, filed 12/21/76.]

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**WAC 392-173-055 Audits.** WAC 392-171-736, 392-171-741, 392-171-746, 392-171-751, and 392-171-756 shall be applicable for programs in the state schools for the blind and the deaf and early childhood developmental centers: Provided, That audits and recovery of funds distributed to such schools shall be limited to federal ESEA Title I, P.L. 89-313 funds.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-055, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-055, filed 8/15/80; Order 16-76, § 392-173-055, filed 12/21/76.]

**WAC 392-173-065 Program length.** WAC 392-171-721 shall be applicable to all students provided for by this chapter.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-065, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-065, filed 8/15/80; Order 16-76, § 392-173-065, filed 12/21/76.]

**WAC 392-173-075 Transportation and facilities.** The department shall provide or make arrangements for the provision of transportation and facilities necessary or appropriate to the conduct of its educational program. All such service or physical elements in support of an educational program shall be provided in a manner and condition which reasonably assures the safety, health, and attainment of educational goals and objectives for each student.

[Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-075, filed 10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-075, filed 8/15/80; Order 16-76, § 392-173-075, filed 12/21/76.]

**WAC 392-173-080 Decisions, appeals and citizen complaints regarding educational programming and exclusion from an educational program.** (1) Decisions made by the state school for the deaf and the blind and early childhood developmental centers regarding the educational program of a student or the student's total or partial exclusion therefrom shall be the responsibility of the department, as shall be complaints registered by any person, entity, or organization alleging one or more violations of this chapter: Provided, That such procedures shall at least guarantee parents, guardians, surrogate parents, public agencies, and others such notice and right to register a complaint, including the appeal process, as may now or hereafter be provided for in and pursuant to chapter 392-168 WAC.

(2) Appeals and complaints by a parent, guardian, or a surrogate parent shall be pursuant to procedures as now or hereafter established by the department: Provided, That such procedures shall at least guarantee parents, guardians, surrogate parents, and others such notice and hearing rights as may now or hereafter be provided for in and pursuant to 20 U.S.C. §1415 as amended by Public Law 94-142 including, but not limited to, prior notice of and a right to an impartial due process hearing in connection with decisions to initiate or change, or to refuse to initiate or change, the identification, evaluation, or educational placement of a student or the provision of a free appropriate education.

[Statutory Authority: Chapter 28A.155 RCW. WSR 93-19-064 (Order 93-14), § 392-173-080, filed 9/13/93, effective 10/14/93. Statutory Authority: RCW 28A.02.100. WSR 84-20-086 (Order 84-46), § 392-173-080, filed

(9/13/93)

10/2/84. Statutory Authority: RCW 72.05.140(2) and Art. III, § 22 of the state Constitution. WSR 80-11-038 (Order 80-30), § 392-173-080, filed 8/15/80; Order 16-76, § 392-173-080, filed 12/21/76.]