Chapter 392-172A WAC
RULES FOR THE PROVISION OF SPECIAL EDUCATION
(Formerly chapter 392-172 WAC)

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-172A-04075 Other service arrangements for students, including students placed in sectarian schools. [Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04075, filed 6/29/07, effective 7/30/07.] Repealed by 09-20-053, filed 10/1/09, effec-

tive 11/1/09. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300.

GENERAL

WAC 392-172A-01000 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 U.S.C. Sec. 1400 et seq., the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01000, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01005 Purposes. The purposes of this chapter are to:

(1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.;

(2) Ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

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

(4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education; and

(5) Assess and ensure the effectiveness of efforts to educate students eligible for special education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01005, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of students eligible for special education, including:

(i) The OSPI to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, state schools for the deaf and blind established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapter 28A.193 RCW; and

(b) Are binding on each public agency in the state that provides special education and related services to students eligible for special education, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district or public agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are:

(a) Referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110; or

(b) Placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01010, filed 6/29/07, effective 7/30/07.]

DEFINITIONS

WAC 392-172A-01020 Act. Act means Part B of the Individuals With Disabilities Education Act, as amended.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01020, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01025 Assistive technology device. 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 a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01030 Assistive technology service. Assistive technology service means any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) The evaluation of the needs of a 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 students eligible for special education;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, 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 student eligible for special education or, if appropriate, that student's family; and

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

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01030, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disabil-

ity in one of the following eligibility categories: Intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsection (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(c) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) 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. 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.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates 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; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) 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;

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

(C) 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;

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

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

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that 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.

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

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, 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, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the 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, that adversely affects a student's educational performance.

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

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) 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 a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more 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. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-01035, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01040 Consent. (1) Consent means that:

(a) The parent 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) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

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

(3) If the parent revokes consent in writing for their child's receipt of special education services after the student is initially provided special education and related services, the school district is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-01040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01040, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01045 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01045, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01050 Day—Business day—School day. (1) Day means calendar day unless otherwise indicated as business day or school day.

(2) Business day means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of a business day, in other sections of this chapter.

(3) School day means any day, including a partial day that students are in attendance at school for instructional purposes, including students with and without disabilities.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01050, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01055 Educational service district. Educational service district means a regional public multiservice agency:

(1) Authorized under chapter 28A.310 RCW to develop, manage, and provide services or programs to students eligible for special education within school districts.

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01055, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school, including a private school, that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-01060, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01065 Equipment. Equipment means:

(1) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(2) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01070 Evaluation. Evaluation means procedures used in accordance with WAC 392-172A-03005 through 392-172A-03080 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01070, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01075 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(1) Amounts received:

(a) Under Part B of the act;

(b) Under Part A of Title I of the ESEA; and

(c) Under Parts A and B of Title III of the ESEA; and

(2) Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subsection (1) of this section, but excluding any amounts for capital outlay or debt service.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01075, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01080 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the OSPI, and the act;

(3) Include an appropriate preschool, elementary school, or secondary school education in the state; and

(4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01080, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01085 Highly qualified special education teachers. (1)(a) For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 C.F.R. 200.56; and in addition, to meet the definition of highly qualified, public elementary school or secondary school special education teachers must have a bachelors degree and obtained full certification as a teacher and a special education endorsement, which can include certification obtained through alternative routes to certification, or a continuing certificate.

(b) A teacher does not meet the highly qualified definition if he or she is teaching pursuant to a temporary out-of-endorsement assignment or is teaching special education with a preendorsement waiver.

(c) A teacher will be considered to meet the highly qualified standard in (a) of this subsection if that teacher is participating in an alternative route to special education certification program under which the teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification according to the state professional standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(2) Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the state certification requirements and has an endorsement in special education, or holds a continuing certificate.

(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 C.F.R. 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 C.F.R. 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(b) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, based on the state professional standards board's certification requirements.

(4) Requirements for special education teachers teaching multiple subjects. Subject to subsection (5) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students eligible for special education, highly qualified means that the teacher may:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 C.F.R. 200.56 (b) or (c);

(b) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(c) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 C.F.R. 200.56(c), which may include a single HOUSSE covering multiple subjects.

(5) Teachers may meet highly qualified standards through use of the state's HOUSSE which meets all the requirements for a HOUSSE for a general education teacher.

(6) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular school district employee to be highly qualified, or to prevent a parent from filing a state citizen complaint under WAC 392-172A-05025 through 392-172A-05040 about staff qualifications with the OSPI.

(7)(a) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(b) A certified general education teacher who subsequently receives a special education endorsement is a new special education teacher when first hired as a special education teacher.

(8) Teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by school districts to provide equitable services to parentally placed private school students eligible for special education are not required to meet highly qualified standards addressed in this section. However, nonpublic agencies are required to ensure that teachers providing services to students placed by a school district meet the certification and special education endorsement standards established by the professional educators standards board in Title 181 WAC and in accordance with WAC 392-172A-04095.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01085, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01090 Homeless children. Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. Sec. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. Sec. 11431 et seq.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01090, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01095 Include. Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01095, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01100 Individualized education program. Individualized education program or IEP means a written statement of an educational program for a student eligible for special education that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01100, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01105 Individualized education program team. Individualized education program team or IEP team means a group of individuals described in WAC 392-172A-03095, responsible for developing, reviewing, or revising an IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01105, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01110 Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01110, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01115 Local educational agency or school district. (1) Local educational agency or school district means a public board of education with administrative control and direction of any combination of public kindergarten through grade 12 in a school district.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including the school for the deaf and the school for the blind.

(3) For the purposes of this chapter, use of the term school district includes public agencies described in WAC 392-172A-01150 who provide special education and/or related services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01115, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is limited English proficient, means the following:

(a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.

(b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.

(2) 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01120, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01125 Parent. (1) Parent means:

(a) A biological or adoptive parent of a child;

(b) A foster parent;

(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student, but not the state, if the student is a ward of the state;

(d) An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or

(e) A surrogate parent who has been appointed in accordance with WAC 392-172A-05130.

(2)(a) Except as provided in (b) of this subsection, if the biological or adoptive parent is attempting to act as the parent under this chapter, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student.

(b) If a judicial decree or order identifies a specific person or persons under subsection (1)(a) through (d) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this section.

(3) The use of the term, "parent," includes adult students whose rights have transferred to them pursuant to WAC 392-172A-05135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01125, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01130 Parent training and information center. Parent training and information center means a center assisted under sections 671 or 672 of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01130, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01135 Part-time enrollment. Part-time enrollment means a student eligible for special education who is home schooled or attends private school, and whose parent chooses to enroll the student in his or her resident school district for special education or related services pursuant to RCW 28A.150.350 and chapter 392-134 WAC.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01135, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01140 Personally identifiable. Personally identifiable means information that contains:

(1) The name of the student, the student's parent, or other family member;

(2) The address of the student;

(3) A personal identifier, such as the student's Social Security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01140, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01145 Private school. Private school means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program of any combination of grades one through twelve and meeting:

(1) Minimum state board private school approval standards as outlined in chapter 180-90 WAC; and

(2) The definition of elementary and secondary schools in WAC 392-172A-01060.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-01145, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01145, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01150 Public agency. Public agency includes school districts, ESDs, state operated programs identified in WAC 392-172A-02000 and any other political subdivisions of the state that are responsible for providing special education or related services or both to students eligible for special education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01150, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01155 Related services. (1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special

education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

(a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;

(b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(3) Individual related services terms used in this definition are defined as follows:

(a) Audiology includes:

(i) Identification of students with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and

(vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(c) Early identification and assessment 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) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are deaf-blind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) 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 child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.

(j) Psychological services includes:

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

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, 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.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

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

(iv) Leisure education.

(l) 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 student with a disability. The term also includes vocational rehabilitation services pro-

vided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

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

(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 community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(p) 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 student eligible for special education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01155, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01160 Residency or resident student. Residency or resident student has the same meaning as is defined in WAC 392-137-115.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01160, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01165 Scientifically based research. Scientifically based research:

(1) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(2) Includes research that:

(a) Employs systematic, empirical methods that draw on observation or experiment;

(b) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(c) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(d) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random assignment experiments, or other designs to the extent that those designs contain within condition or across condition controls;

(e) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(f) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01165, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01170 Services plan. Services plan means a written statement that describes the special education and related services the school will provide to a parentally placed student eligible for special education who is enrolled in a private school who has been designated to receive services. The plan will include the location of the services and any transportation necessary. The plan will be developed using the procedures for development and implementation of an IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01170, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01175 Special education. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) Special education includes:

(a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035 (1)(c);

(b) Travel training; and

(c) Vocational education.

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

(a) 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 a part of the general education program.

(b) Physical education means the development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and

(iv) Includes special physical education, adapted physical education, movement education, and motor development.

(c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

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

(ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

(d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students 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 school, in the home, at work, and in the community).

(e) 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 not requiring a baccalaureate or advanced degree.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01175, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01180 State educational agency. State educational agency or SEA means the office of superintendent of public instruction (OSPI).

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01180, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01185 Supplementary aids and services. 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 students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172A-02050 through 392-172A-02065.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01185, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

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

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01190, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01195 Universal design. The term universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. Sec. 3002. It means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01195, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-01200 Ward of the state. Ward of the state means a student within the jurisdiction of the department of social and health services, children's administration through shelter care, dependency or other proceedings to protect abused and neglected children, except that it does not include a foster child who has a foster parent who meets the definition of a parent in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01200, filed 6/29/07, effective 7/30/07.]

FAPE REQUIREMENTS

WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE). (1) Each school district, public agency, and residential or day schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible 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 eligible for special education; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW 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; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2)(e).

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-02000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02000, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02005, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02010 Methods of payment for FAPE. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education services to an eligible 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 FAPE to students eligible for special education.

(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 students eligible for special education.

(3) Consistent with the IEP provisions in this chapter, the OSPI 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02010, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02015 Availability of assistive technology. (1) Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student eligible for special education if required as part of the student's:

(a) Special education;

(b) Related services; or

(c) Supplementary aids and services.

(2) 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02015, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02020 Extended school year services. (1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

(a) Beyond the normal school year;

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

(c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02020, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02025 Nonacademic services. (1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02030 Physical education. (1) Physical education services, specially designed if necessary, must be made available to every student receiving FAPE.

(2) Each student eligible for special education services 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 described in the student's individualized education program.

(3) If specially designed physical education is required in a student's individualized education program, the school district 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 shall ensure that any student eligible for special education who is enrolled in a separate facility will be provided with appropriate physical education services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02030, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02035 Program options. Each school district shall ensure that its students eligible for special education have available to them the variety of educational programs and services available to nondisabled students in the school district's area, including art, music, industrial arts, consumer and homemaking education, and vocational education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02040 Child find. (1) The school district shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing in the district whether or not they are enrolled in the public school system. Students attending private elementary or secondary schools located within the district shall be located, identified and evaluated consistent with WAC 392-172A-04005. Districts will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and 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 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 activities such as:

(a) Providing written notification to all parents of students in the district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of special education programs;

(c) Offering preschool developmental screening;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Using internal district child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-02040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02040, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02045 Routine checking of hearing aids and external components of surgically implanted medical devices. (1) Hearing aids. Each school district must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

(2) External components of surgically implanted medical devices. Each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(3) A school district is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02045, filed 6/29/07, effective 7/30/07.]

LEAST RESTRICTIVE ENVIRONMENT

WAC 392-172A-02050 Least restrictive environment. Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, 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 eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02050, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02055 Continuum of alternative placements. (1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education 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 education classroom placement.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02055, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

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

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(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 student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

(4) A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

(5) Notwithstanding subsections (1) through (4) of this section, an IEP team, or other team making placement decisions for a student convicted as an adult and receiving educational services in an adult correctional facility, may modify the student's placement if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02065 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency must ensure that each student eligible for special education has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02070 Students in public or private institutions. The state shall make arrangements with public and private institutions as may be necessary to ensure that the least restrictive environment provisions in this chapter are effectively implemented.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02070, filed 6/29/07, effective 7/30/07.]

OTHER REQUIREMENTS

WAC 392-172A-02075 Prohibition on mandatory medication. (1) School district personnel are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. Sec. 812(c)) for a student as a condition of attending school, receiving an evaluation, or receiving special education services.

(2) Nothing in subsection (1) of this section shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02075, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02080 Transition of children from the Part C program to preschool programs. Each school district 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 designee of the 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 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 392-172A-02000(1).

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02080, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02085 Homeless children. In carrying out the provisions of this chapter, school districts shall ensure that the rights of homeless children and youth are protected consistent with the requirements under the McKinney-Vento Homeless Assistance Act, as amended.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02085, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02090 Personnel qualifications. (1) In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), 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 OSPI, professional education and certification section.

(c) Other certificated related services 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 professional educator standards board, as now or hereafter amended.

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

(e) 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 professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title 1 school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a 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:

(i) The school district 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.

(ii) 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 professional educator standards board by the employing school district as required by WAC 180-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-02090, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-02090, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02090, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of the student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of the student shall be in accordance with rules of the OSPI governing transportation by public school districts.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the OSPI.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an interagency agreement—i.e., an appropriate placement in the least restrictive environment.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02095, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-02100 Home/hospital instruction. Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education. It shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-02100, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-02100, filed 6/29/07, effective 7/30/07.]

EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

Consent

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-172A-05015 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedures to override consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) 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.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide con-

sent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-03000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03000, filed 6/29/07, effective 7/30/07.]

EVALUATIONS AND REEVALUATIONS

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1) A parent of a child, a school district, a public agency, other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.

(2) The school district must document the referral and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

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

(b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03005, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03010 Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03010, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, within the time frames in subsection (2) of this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03015, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03020 Evaluation procedures. (1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for

special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments 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.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed 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.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03020, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

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

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and 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 education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03030 Evaluations before change in eligibility. (1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020

through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03030, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope to develop an IEP, 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) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

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

(d) The recommended special education and related services needed by the student;

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

(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.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03040 Determination of eligibility. (1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's 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.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03040, filed 6/29/07, effective 7/30/07.]

ADDITIONAL PROCEDURES FOR IDENTIFYING STUDENTS WITH SPECIFIC LEARNING DISABILITIES

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-03045, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03045, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03050 Additional members of the evaluation group. The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals which must include:

(1) The student's general education classroom teacher; or

(2) If the student does not have a general education classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; or

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

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

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03050, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03055 Specific learning disability—Determination. The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if:

(1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

(a) Oral expression.

(b) Listening comprehension.

(c) Written expression.

(d) Basic reading skill.

(e) Reading fluency skills.

(f) Reading comprehension.

(g) Mathematics calculation.

(h) Mathematics problem solving.

(2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and

(b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data.

(3) The group determines that its findings under subsection (2) of this section are not primarily the result of:

(a) A visual, hearing, or motor disability;

(b) Intellectual disability;

(c) Emotional disturbance;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English proficiency.

(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

(a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation under WAC 392-172A-03005:

(a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; or

(b) Whenever a student is referred for an evaluation.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-03055, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03055, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03060 Process based on a student's response to scientific research-based intervention. (1) School districts using a process based on a student's response to scientific, research-based interventions to determine if a student has a specific learning disability shall adopt procedures to ensure that such process includes the following elements:

(a) Universal screening and/or benchmarking at fixed intervals at least three times throughout the school year;

(b) A high quality core curriculum designed to meet the instructional needs of all students;

(c) Scientific research-based interventions as defined in WAC 392-172A-01165 are identified for use with students needing additional instruction;

(d) Scientific research-based interventions used with a student are appropriate for the student's identified need and are implemented with fidelity;

(e) A multitiered model is developed for delivering both the core curriculum and strategic and intensive scientific research-based interventions in the general education setting;

(f) Frequent monitoring of individual student progress occurs in accordance with the constructs of the multitiered delivery system implemented in the school consistent with the intervention and tier at which it is being applied; and

(g) Decision making using problem solving or standard treatment protocol techniques is based upon, but not limited to, student centered data including the use of curriculum based measures, available standardized assessment data, intensive interventions, and instructional performance level.

(2) Such policies and procedures outlined in subsection (1) of this section shall be designed so that districts can establish that:

(a) The student's general education core curriculum instruction provided the student the opportunity to increase her or his rate of learning;

(b) Two or more intensive scientific research-based interventions, identified to allow the student to progress toward his or her improvement targets, were implemented with fidelity and for a sufficient duration to establish that the student's rate of learning using intensive scientific research-based interventions in the general education setting, in addition to or in place of the core curriculum, did not increase or allow the student to reach the targets identified for the student;

(c) The duration of the intensive scientific research-based interventions that were implemented was long enough to gather sufficient data points below the student's aim line to demonstrate student response for each of the interventions through progress monitoring to determine the effectiveness of the interventions.

(3) OSPI has developed guidelines for using response to intervention to assist districts in developing the procedures required under this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03065 Use of discrepancy tables for determining severe discrepancy. (1) If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement.

(2) The tables are developed on the basis of a regressed standard score discrepancy method that includes:

(a) The reliability coefficient of the intellectual ability test;

(b) The reliability coefficient of the academic achievement test; and

(c) An appropriate correlation between the intellectual ability and the academic achievement tests.

(3) The regressed standard score discrepancy method is applied at a criterion level of 1.55.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03070 Method for documenting severe discrepancy. (1) 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 areas addressed in WAC 392-172A-03055(1) 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.

(2) Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group, described in WAC 392-172A-03050, may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, reviewing of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03070, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03075 Observation of students suspected of having a specific learning disability. (1) School districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty.

(2) The evaluation group must:

(a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or

(b) Have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.

(3) In the case of a student of less than school age or out of school, a group member must observe the student in a learning environment appropriate for that student.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03075, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities. (1) In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

(a) Whether the student has a specific learning disability;

(b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;

(c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) Any educationally relevant medical findings;

(e) Whether:

(i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and

(ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or

(B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and

(C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development.

(f) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:

(i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and

(ii) The documentation that the student's parents were notified about:

(A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the student's rate of learning; and

(C) The parents' right to request an evaluation.

(2) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-03080, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03080, filed 6/29/07, effective 7/30/07.]

INDIVIDUALIZED EDUCATION PROGRAMS

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

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

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to enable the student:

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

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Aversive interventions, if any, required for the student.

(i) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

(k) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03090, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03095 IEP team membership. (1) School districts must ensure that the IEP team for each student eligible for special education includes:

(a) The parents of the student;

(b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5)(a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03095, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03100 Parent participation. A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

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

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such 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.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03100, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03105 When IEPs must be in effect. (1) At the beginning of each school year, each school district

must have an IEP in effect for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

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

(b) Each teacher and provider described in (a) of this subsection is informed of:

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

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

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-03105, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-03105, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03105, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03110 Development, review, and revision of IEP. (1) In developing each student's IEP, the IEP team must consider:

(a) The strengths of the student;

(b) The concerns of the parents for enhancing the education of their student;

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

(d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) 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;

(iv) 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

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports and other strategies for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP

the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive interventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) 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 students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03110, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03115 Educational placements. Consistent with WAC 392-172A-05000 (3)(a), each school district must ensure that the parents of each student eligible for special education are members of any group that makes decisions on the educational placement of the student.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03115, filed 6/29/07, effective 7/30/07.]

AVERSIVE INTERVENTIONS

WAC 392-172A-03120 Aversive interventions definition and purpose. (1) The term "aversive interventions" means the systematic use of stimuli or other treatment which a student is known to find 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:

(a) A clear and present danger of serious harm to the student or another person.

(b) A clear and present danger of serious harm to property.

(c) A clear and present danger of seriously disrupting the educational process.

(2) The purpose is to assure that students eligible for special education are safeguarded against the use and misuse of various forms of aversive interventions. Each school 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 aversive intervention requirements and the conditions under which they may be used. 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 392-172A-03120 through 392-172A-03135 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 behavioral supports interventions shall be used by the school district and described in the individualized education program prior to the determination that the use of aversive intervention is a necessary part of the student's program.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03120, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03125 Aversive intervention prohibitions. There are certain interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their legality. The purpose of this section is to uniformly prohibit their use with students eligible for special education 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)(a) 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:

(i) Throwing, kicking, burning, or cutting a student.

(ii) Striking a student with a closed fist.

(iii) Shaking a student under age three.

(iv) Interfering with a student's breathing.

(v) Threatening a student with a deadly weapon.

(vi) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(b) The statutory listing of worst case uses of force or restraint described in this subsection 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.

(4) Hygiene care. No student may be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(5) Isolation. No student may be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-03130.

(6) Medication. No student may be denied or subjected to an unreasonable delay in the provision of medication.

(7) Noise. No student may be forced to listen to noise or sound that the student finds painful.

(8) Noxious sprays. No student may be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(9) 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 392-172A-03130.

(10) 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.

(11) 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03125, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03130 Aversive interventions—Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172A-03125 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Bodily contact. The use of any form of aversive interventions which involves contacting the body of a student shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(2) Isolation. The use of aversive interventions which involves excluding a student from his or her regular 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 392-172A-03135.

(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 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 392-172A-03135.

(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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03130, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the individualized education program shall:

(a) 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.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are 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.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) 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.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation at least every three months when school is in session.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-03135, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03135, filed 6/29/07, effective 7/30/07.]

STUDENTS IN PRIVATE SCHOOLS

Students Eligible for Special Education Enrolled by Their Parents in Private Schools

WAC 392-172A-04000 Definition of parentally placed private school students. Parentally placed private school students means students eligible for special education services enrolled by their parents in private, including religious, elementary or secondary schools. It does not include students placed by a school district in a nonpublic agency for the provision of FAPE.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04000, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04005 Child find for parentally placed private school students eligible for special education. (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district, in accordance with general child find procedures and subsections (2) through (5) of this section.

(2) The child find process must be designed to ensure:

(a) The equitable participation of parentally placed private school students; and

(b) An accurate count of those students.

(3) In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(4) The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the school district has met its proportional share obligation under WAC 392-172A-04015.

(5) The child find process must be completed in a time period comparable to that for students attending public schools in the school district.

(6) Each school district in which private, including religious, elementary schools and secondary schools are located must include parentally placed private school students who reside in another state but attend the private school located within the school district boundaries.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04005, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04010 Provision of services for parentally placed private school students eligible for special education. (1) In addition to the provisions addressed in this section, parents who have placed their children in private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district in order to receive special education and/or related services are served through an IEP and are counted for federal and state special education reimbursement.

(2) To the extent consistent with the number and location of students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with subsection (2) of this section and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each private school student eligible for special education who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed private school students:

(a) The number of students evaluated;

(b) The number of students determined eligible for special education; and

(c) The number of students served through a services plan.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04010, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must make available the following amounts for providing special education and related services, including direct services to parentally placed private students eligible for special education.

(a) For students eligible for special education aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education aged three through twenty-one who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed private school students eligible for special education aged three through five who are enrolled by their parents in a private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school kindergarten level or above.

(c) If a school district has not expended all of the funds for equitable services described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the remaining funds must be obligated for special education and related services to parentally placed private school students eligible for special education during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed private school students eligible for special education, the school district, after timely and meaningful consultation with representatives of private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education attending private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed private school students eligible for special education, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education attending private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed private school students eligible for special education in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school students eligible for special education to the extent consistent with state law.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-04015, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04015, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04020 Consultation. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally placed private school students eligible for special education during the design and development of special education and related services for the students regarding the following:

(1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed private school students eligible for special education including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the school district, private school officials, and representatives of parents of parentally placed private school students eligible for special education, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education, including a discussion about:

(a) The types of services, including direct services and alternate service delivery mechanisms; and

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and

(c) How and when those decisions will be made.

(5) How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, the school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04020, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04025 Written affirmation. (1) When timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools after timely and meaningful consultation.

(2) If the representatives do not provide the affirmation within a reasonable period of time, the school district must

forward the documentation of the consultation process to the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04030 Compliance with procedures for consultation. (1) A private school official has the right to submit a complaint to the OSPI, special education section that the school district:

(a) Did not engage in consultation that was meaningful and timely; or

(b) Did not give due consideration to the views of the private school official.

(2)(a) If the private school official wishes to submit a complaint, the official must provide to the OSPI special education section, the basis of the noncompliance by the school district with the applicable private school provisions in this part; and

(b) The school district must forward the appropriate documentation to OSPI.

(3) If the private school official is dissatisfied with the decision of the OSPI, the official may submit a complaint to the Secretary of the Department of Education by providing the information on noncompliance described in subsections (1) and (2) of this section and the OSPI must forward the appropriate documentation to the secretary.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04030, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04035 Determination of equitable services. (1) A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school.

(2) Decisions about the services that will be provided to parentally placed private school students eligible for special education disabilities under WAC 392-172A-04010 through 392-172A-04070 must be made in accordance with subsection (4) of this section and the consultation process.

(3) The school district must make the final decisions with respect to the services to be provided to eligible parentally placed private school students eligible for special education.

(4) If a student eligible for special education is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and

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

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04040 Equitable services provided. (1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be secular, neutral, and nonideological.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-04040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04040, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed private school students eligible for special education may be provided on the premises of private schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private school student eligible for special education 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, depending on the timing of the services.

(3) School districts 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 has met its proportional share requirement.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-04045, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04045, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04050 Due process and state complaints regarding parentally placed students in a private school. (1) Due process procedures are not available for complaints that a school district has failed to meet the require-

ments regarding consultation, determination of need and provision of services, including the provision of services indicated on the student's services plan.

(2) Due process procedures may be used by a parent who is alleging that a school district has failed to meet child find requirements related to the parentally placed students in private schools.

(3) Any due process request regarding the child find requirements described in subsection (2) of this section must be filed with the school district in which the private school is located and a copy must be forwarded to the OSPI in accordance with the due process procedures in WAC 392-172A-05080 through 392-172A-05125.

(4) State complaints. Any complaint that OSPI or a school district has failed to meet the requirements in WAC 392-172A-04010 through 392-172A-04015 and 392-172A-04025 through 392-172A-04070 must be filed in accordance with the state complaint procedures described in WAC 392-172A-05025 through 392-172A-05040.

(5) A complaint filed by a private school official under WAC 392-172A-04030 must be filed with the OSPI in accordance with the procedures in that section.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-04050, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04050, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04055 Requirement that funds not benefit a private school. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district must use funds provided under the act to meet the special education and related services needs of 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04055, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04060 Use of personnel. (1) School district or other public agency personnel may be made available to private schools and agencies only to the extent necessary to provide services required by the 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 private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school 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 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-04060, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04065 Prohibition on the use of separate classes. A school district may not use federal funds available under section 611 or 619 of the act for classes that are organized separately on the basis of school enrollment or religion of the students if:

(1) The classes are at the same site; and

(2) The classes include students enrolled in public schools and students enrolled in private schools.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04070 Property, equipment and supplies. (1) A school district must control and administer the funds used to provide special education and related services for students eligible for those services in private schools, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the act.

(2) Equipment and supplies used with students in a private school or agency may be placed on private school premises for the period of time necessary for the program. Equipment and supplies placed on private school premises will be used only for Part B purposes.

(3) 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.

(4) 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 Part B purposes.

(5) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-04070, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04070, filed 6/29/07, effective 7/30/07.]

STUDENTS IN PRIVATE OR PUBLIC SCHOOLS PLACED OR REFERRED BY SCHOOL DISTRICTS

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply only to students eligible for special education who have been placed in or referred to a nonpublic agency or another public agency or school district by a resident school district as a means of providing special education and related services.

(2) School districts are authorized to:

(a) Enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC; or

(b) Contract with nonpublic agencies pursuant to this chapter and WAC 392-121-188 and public agencies to provide special education and related services to eligible students if the school district cannot provide an appropriate education for the student within the district.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04080, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04085 Responsibility of the school district. (1) A school district who places a student eligible for special education with another public agency or approved nonpublic agency for special education and related services shall develop a written contract, interdistrict or interagency agreement 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) Charges and reimbursement including billing and payment procedures;

(f) Total contract cost;

(g) Other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency, other public agency, or other school district is provided special education and related services:

(a) In conformance with an IEP that meets the requirements of this chapter;

(b) At no cost to the parents.

(3) The student shall be provided with a FAPE that meet all general and special education regulations that apply to the student, except that the certificated special education endorsed teachers providing special education services do not have to meet the highly qualified standards for core academic content areas as described in section 9101 of the ESEA.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency, or other public agency conduct evaluations or IEP meetings, the district will ensure that all applicable requirements of Part B of the act are met.

(5) The student has all of the rights of a student eligible for special education who is served within the school district.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04085, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04090 Approval of nonpublic agencies. (1) A school district shall not award a contract to a nonpublic agency to provide special education to a student until the OSPI approves the nonpublic agency.

(2) The school district shall notify the special education section of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(3) The OSPI shall provide the school district and the nonpublic agency with the procedures and application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(4) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and shall determine whether the application should be approved or disapproved.

(5) The OSPI shall make information regarding currently approved nonpublic agencies available to all school districts and to the public.

(6) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04080 through 392-172A-04095.

(7) Nonpublic agencies located in other states must first be approved by the state education agency of the state in which the educational institution is located. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the nonpublic agency shall meet the requirements for approval in this state under the provisions of this chapter.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-04090, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.-090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04090, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04095 Application requirements for nonpublic agency approval. The application for initial approval and three-year renewal will include the following:

(1) The nonpublic agency is approved by the state board as a private school, and has at least one certificated teacher with a special education endorsement, and other certificated staff who meet state standards for providing special education and related services. If the program is located in a hospital or the educational program is within a treatment facility, the nonpublic agency will assure that the educational component of the facility has education and related services staff who meet certification requirements developed by the professional educators standards board, and has at least one certificated teacher with a special education endorsement.

(2) The facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(3) The facility meets applicable health and safety standards.

(4) The facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(5) The facility has procedures in place that address staff hiring and evaluation including:

(a) Checking of personal and professional references for employees;

(b) Criminal background checks in accordance with state rules for public school employees;

(c) Regular schedule of staff evaluations of the competencies that enable the staff to work with students.

(6) The facility has a policy of nondiscrimination.

(7) The facility meets state education rules for hours and days of instruction.

(8) The facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education and their families.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04095, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04100 Notification of nonpublic agency program changes. (1) An approved nonpublic agency must notify any school districts with whom they contract and the OSPI of any major program changes that occur

during the approval period, including adding additional services or changing the type of programs available to students. OSPI will review these program changes with affected districts to determine whether the nonpublic agency remains able to provide contracted services to public school students eligible for special education.

(2) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education.

(3) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any complaints it receives regarding services to students.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04100, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04105 Suspension, revocation or refusal to renew approval. OSPI may suspend, revoke or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education if the nonpublic agency:

(1) Fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04105, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-04110 State responsibility for nonpublic agency placements. In implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, 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; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04110, filed 6/29/07, effective 7/30/07.]

STUDENTS ELIGIBLE FOR SPECIAL EDUCATION SERVICES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

WAC 392-172A-04115 Placement of students when FAPE is at issue. (1) If a student eligible for special education has a FAPE available and the parents choose to place the student in a private school or facility, the school district 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 school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through 392-172A-04070.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge 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.

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

(a)(i) 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 to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) 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 of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district 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

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

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-04115, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.-090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-04115, filed 6/29/07, effective 7/30/07.]

SAFEGUARDS

WAC 392-172A-05000 Opportunity to examine records—Parent participation in meetings. (1) The parents of a student eligible for special education must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

(2)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(4) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05000, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible 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 evaluation subject to subsections (2) through (7) of this section.

(b) Each school district 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 subsection (7) of this section.

(c) For the purposes of this section:

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

(ii) Public expense means that the school district 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.

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

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

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

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

(5) 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, 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.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) 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 uses when it initiates an evaluation,

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

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

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05005, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05005, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05010 Prior notice and contents. (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3)(a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05010, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05015 Procedural safeguards notice. (1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:

(i) The time period in which to file a state complaint and due process hearing request;

(ii) The opportunity for the school district to resolve the due process hearing request; and

(iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;

(f) The availability of mediation;

(g) The student's placement during the pendency of any due process hearing;

(h) Procedures for students who are subject to placement in an interim alternative educational setting;

(i) Requirements for unilateral placement by parents of students in private schools at public expense;

(j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;

(k) Civil actions, including the time period in which to file those actions; and

(l) Attorneys' fees.

(4)(a) The procedural safeguards notice must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05015, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05020 Electronic mail. A parent of a student eligible for special education may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05020, filed 6/29/07, effective 7/30/07.]

STATE CITIZEN COMPLAINT PROCEDURES

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI, including but not limited to an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

(2)(a) A written complaint filed with OSPI will include:

(i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

(B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

(ii) The facts on which the statement is based;

(iii) The signature and contact information, including an address of the complainant; and

(iv) The name and address of the school district, or other agency subject to the complaint.

(b) If the allegations are with respect to a specific student the information must also include:

(i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;

(ii) The name of the school the student attends and the name of the school district;

(iii) A description of the nature of the problem of the student, including the facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the director of special education, OSPI.

(d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05040.

(2) The school district or other agency shall respond in writing to the OSPI, and include documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(3) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(4) The OSPI shall provide the complainant a copy of the response to the complaint and provide the complainant an opportunity to reply to the response.

(5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days after receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a local school district or other public agency is not achieved pursuant to subsection (8) 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, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-05030, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.-090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05030, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05035 Citizen 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 OSPI 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 hearing 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 OSPI must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05040 Complaints against OSPI. (1) Upon receipt of a complaint against the OSPI alleging a violation under this section, the superintendent will designate an investigator within ten days to investigate the complaint.

(2) Investigation by the OSPI may include on-site investigations, interviews, and other documentation as appropriate.

(3) Upon completion of the investigation, the investigator shall provide the superintendent of public instruction with a written report on the results of the investigation and shall issue a written decision including findings of facts, conclusions and the reasons for the decision. The decision will be provided to the complainant as soon as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(4) If corrective actions are required, the decision will include the corrective measures deemed necessary to correct any violation. Any such corrective measures deemed necessary shall be instituted as soon as possible, but no later than the date for the corrective action, addressed in the decision.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05040, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05045 Informing citizens about complaint procedures. The OSPI 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) Posting information about the complaint procedures on the web site;

(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05045, filed 6/29/07, effective 7/30/07.]

MEDIATION

WAC 392-172A-05060 Mediation purpose—Availability. (1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05065 Qualifications and selection of mediators. (1) Mediation shall be conducted by qualified and impartial mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) An individual who serves as a mediator:

(a) May not be an employee of any school district or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest; and

(c) 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.

(3)(a) The OSPI, through its contracted administrative agents, 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.

(b) Mediators will be selected on a random, rotational or other impartial basis.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05070 Resolution of a dispute through mediation. (1) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(2) A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States.

(3) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05070, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05075 Meeting to encourage mediation. (1) A school district may establish procedures to offer 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 appropriate alternative dispute resolution entity or a parent training and information center; 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 shall submit its procedures for implementing this section to the OSPI for review and approval, including projected costs for carrying out the process.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05075, filed 6/29/07, effective 7/30/07.]

DUE PROCESS HEARING PROCEDURES

WAC 392-172A-05080 Right to a due process hearing. (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must be made within two years of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. §§ 300.507 and 300.511. 10-10-044, § 392-172A-05080, filed 4/28/10, effective 5/29/10. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05080, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05085 Due process hearing request filing and response. (1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must file the request, which must remain confidential, directly with the other party; and

(b) The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section 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, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party receiving the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due

process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05085, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the receipt of the due process hearing request, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-05090, the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting specified in subsection (1) of this section within fifteen days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05090, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05095 Administrative law judges. (1) A due process hearing is conducted for OSPI by the office of administrative hearings.

(2) Administrative law judges that conduct the hearings:

(a) Must not be:

(i) An employee of OSPI or the school district that is involved in the education or care of the student; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(b) Must possess knowledge of, and the ability to understand, the provisions of the act, federal and state regulations pertaining to the act, and legal interpretations of the act by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(3) An administrative law judge who otherwise qualifies to conduct a hearing under subsection (2) of this section is not an employee of the OSPI solely because he or she is paid using OSPI funds.

(4) OSPI maintains a list of the persons who serve as administrative law judges which includes a statement of the qualifications of each of those persons.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05095, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) 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 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05100, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05100, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05105 Hearing decisions. (1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:

(a) Impeded the student's right to a FAPE;

(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(c) Caused a deprivation of educational benefit.

(3) Nothing in subsections (1) and (2) of this section shall be construed to preclude an administrative law judge from ordering a school district to comply with the procedural requirements contained in this chapter.

(4) The state deletes personally identifiable information contained in due process hearing decisions, transmits those decisions to the state advisory panel and makes decisions available to the public.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05105, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05110 Timelines and convenience of hearings. (1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(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) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(3) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05110, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05115 Civil action. (1) Any party aggrieved by the findings and decision made under WAC 392-172A-05105 through 392-172A-05110 or 392-172A-05165 has the right to bring a civil action with respect to the due process hearing request. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) The party bringing the action shall have ninety days from the date of the decision of the administrative law judge to file a civil action in federal or state court.

(3) In any action brought under subsection (1) of this section, the court:

(a) Receives the records of the administrative proceedings;

(b) Hears additional evidence at the request of a party; and

(c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under section 615 of the act without regard to the amount in controversy.

(5) 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 students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the act, the due process procedures under WAC 392-172A-05085 and 392-172A-05165 must be exhausted to the same extent as would be required had the action been brought under section 615 of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05115, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2)(a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 C.F.R. Secs. 300.500 through 300.599.

(b) Subsection (2)(a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3)(a) Fees awarded under subsection (1) of this section 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.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after 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 law judge 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.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3)(b) of this section 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.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) 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;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05120, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05125 Student's status during proceedings. (1) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(2) If the hearing request 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 hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate through the final decision or during the pendency of the due process hearing, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05125, filed 6/29/07, effective 7/30/07.]

SURROGATE PARENTS

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

(a) No parent as defined in WAC 392-172A-01125 can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The student is a ward of the state;

(d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act; or

(e) An educational representative is appointed for a student pursuant to WAC 392-172A-05135(5).

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

(a) For determining whether a student needs a surrogate parent;

(b) For assigning a surrogate parent to the student; and

(c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

(a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;

(b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

(c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05130, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05130, filed 6/29/07, effective 7/30/07.]

TRANSFER OF RIGHTS AT AGE OF MAJORITY

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) Subject to subsections (4) and (5) of this section, when a student eligible for special education reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the 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 transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter 11.88 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of eighteen who have not been determined incapacitated under chapter 11.88 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed con-

sent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of the student, may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter 11.94 RCW.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05135, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05135, filed 6/29/07, effective 7/30/07.]

DISCIPLINE PROCEDURES

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05155 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. Each school district serving special education students shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05140, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for 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 392-172A-05155.

(b) After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under subsection (4) of this section.

(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (4) of this section.

(4) A student who is removed from the student's current placement pursuant to subsection (3) or (7) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable

the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.

(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.

(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the IEP team must either:

(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(9) Definitions. For purposes of this section, the following definitions apply:

(a) 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)).

(b) Illegal drug means a controlled substance; but does not include a controlled 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 that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-05145, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.-090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05145, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-05145 (3), (4)(e) and (7).

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05150, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05150, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05155 Change of placement because of disciplinary removals. For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

(1) The removal is for more than ten consecutive school days; or

(2) The student has been subjected to a series of removals that constitute a pattern:

(a) Because the series of removals total more than ten school days in a school year;

(b) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(c) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(3) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(4) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05155, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05160, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05165 Placement during an appeal through a due process hearing. When either the parent or the school district requests a due process hearing, the student must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in WAC 392-172A-05145 (3) or (7), whichever occurs first, unless the parent and the school district agree otherwise.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05165, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) 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 WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and

information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the provision of a free appropriate public education for students suspended or expelled from school.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05170, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05170, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. (1) Nothing in this chapter prohibits a school district or other agency from reporting a crime committed by a 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 student eligible for special education.

(2) An agency reporting a crime committed by a student eligible for special education must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05175, filed 6/29/07, effective 7/30/07.]

CONFIDENTIALITY OF STUDENT INFORMATION AND EDUCATIONAL RECORDS

WAC 392-172A-05180 Definitions—Destruction of records, educational records, participating agency. As used in WAC 392-172A-05180 through 392-172A-05245:

(1) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(3) "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 the OSPI, school districts and other public agencies.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-05180, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05180, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education are available in Spanish, Vietnamese, Russian, Cambodian, and Korean, and alternate formats on request.

(3) Personally identifiable information about students for use by the OSPI, special education section, may be contained in state complaints, due process hearing requests, monitoring hearing requests and decisions, safety net applications, 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 C.F.R. Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its web site.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05185, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district 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 school district to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district 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 participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05190, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05195 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, and authorized employees with a legitimate educational interest in the records.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05195, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05200 Records on more than one student. If any educational record includes information on more than one student, the parent of those students shall have the right to inspect and review only the information relating to their child or themselves, or to be informed of that specific information.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05200, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05205 List of records. 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05205, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05210 Fees. (1) A participating agency may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05210, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05215 Amendment of records and hearing rights. (1) A parent of a 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 which maintains the information amend the information.

(2) The school district 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 school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures.

(4) The school district, on request, shall provide the parent 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 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 in writing.

(6) If, as a result of the hearing, the school district 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 parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the school district 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) 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05215, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05220 Hearing on a request to amend records. A hearing initiated pursuant to WAC 392-172A-05215 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, and in conformance with the procedures in 34 C.F.R. 99.22 that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the school district has received the request;

(2) The parent 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 school district, who does not have a direct interest in the outcome of the hearing;

(4) The parent shall be afforded a full and fair opportunity to present evidence relevant to the amendment request and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The school district shall provide a written decision to the parent 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, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). 11-06-052, § 392-172A-05220, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.-090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05220, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05225 Consent for release of records. (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2)(a) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99.

(2)(a) Except as provided in this section, parental consent is not required before personally identifiable information

is released to officials of participating agencies for purposes of meeting a requirement of this part.

(b) Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

(3) If a student is enrolled, or is going to enroll, in a private school that is not located in the school district of the student's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the school district where the private school is located and officials in the school district of the student's residence, unless the parent is part-time enrolling the student in the resident district pursuant to chapter 392-134 WAC.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05225, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05230 Safeguards. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

(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 the procedures on protection of the confidentiality of personally identifiable information contained in this chapter, state education law, the regulations implementing the Family Educational Rights and Privacy Act (34 C.F.R. Part 99), and the school district'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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05230, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05235 Destruction of educational records. (1) Each school district shall inform parents 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, or is no longer required to be retained under state or federal law. State procedures for school district records retention are published by the secretary of state, division of archives and records management, and specify the length of time that education records must be retained.

(2) The information shall thereafter be destroyed at the request of the parent 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05235, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05240 Student rights to educational records. If the rights accorded to parents under this chapter are transferred to a student who reaches the age of eighteen, or is determined to be emancipated sooner, consistent with WAC 392-172A-05135, the rights regarding educational records are also transferred to the student. However, the school district must continue to provide any notice required under section 615 of the act to the student and the parents.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05240, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-05245 District procedures for confidential information. (1) School districts must ensure that their policies and procedures for protection of confidential information comply with WAC 392-172A-05180 through 392-172A-05240.

(2) OSPI reviews compliance through targeted monitoring activities, and state complaints.

(3) If school districts do not have procedures in place that comply with subsection (1) of this section, OSPI will require the school district to correct noncompliance through corrective actions that include but are not limited to:

(a) Review and revision of district procedures; and

(b) Technical assistance.

(4) To the extent that any violations that exist under this section are also violations under 34 C.F.R. Part 99, complaints regarding a participating agency's failure to comply may be addressed to the Department of Education, Family Policy Compliance Office.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05245, filed 6/29/07, effective 7/30/07.]

SCHOOL DISTRICT AND OTHER PUBLIC AGENCY REQUIREMENTS FOR PART B FUNDS

WAC 392-172A-06000 Condition of assistance. 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 requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 C.F.R. 300.201 through 300.213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students; including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Use of funds;

(k) Personnel preparation;

(l) Availability of documents relating to the eligibility of the school district;

(m) Provision to OSPI of all necessary information and data for the state's performance goals;

(n) Provision of instructional materials to blind persons or persons with print disabilities;

(o) Timely correction of noncompliance; and

(p) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the local district designee responsible for child identification activities and confidentiality of information.

(3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.

(4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(5) A description of the use of funds received under Part B of the act.

(6) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, citizen complaints, or determinations status.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-06000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06000, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-06005, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06005, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06010 School district use of funds. (1) Part B funds provided to school districts:

(a) Must be expended in accordance with the applicable provisions of this chapter;

(b) Must be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and

(c) Must be used to supplement state, local and other federal funds and not to supplant those funds.

(2) The excess cost requirement prevents a school district from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education.

(3)(a) A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education before funds under Part B of the act are used.

(b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06010, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06015 Maintenance of effort. (1) Except as provided under WAC 392-172A-06020 and 392-172A-06025, 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 students eligible for special education 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 OSPI 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 students eligible for special education in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in 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 later, if 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 OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI 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 OSPI in determining a district's compliance with the requirement in subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06015, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06020 Exception 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;

(2) A decrease in the enrollment of students eligible for special education;

(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 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) The reimbursement of the cost by the safety net fund operated by the state oversight committee.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06020, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years. (1) Notwithstanding WAC 392-172A-06015 (1)(a) and (2) and 392-172A-06020(1), and except as provided in subsection (4) of this section, for any fiscal year for which the allocation received by a school district exceeds the amount the school district received for the previous fiscal year, the school district may reduce the level of expenditures otherwise required by WAC 392-172A-06015(1) by not more than fifty percent of the amount of that excess.

(2) If a school district exercises the authority under subsection (1) of this section, the school district must use an amount of local funds equal to the reduction in expenditures under subsection (1) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the school district is using funds under the ESEA for those activities.

(3) Notwithstanding subsection (1) of this section, if OSPI determines that a school district is unable to establish and maintain programs of FAPE that meet the requirements of this chapter and Part B of the act, the OSPI must prohibit the school district from reducing the level of expenditures under subsection (1) of this section for that fiscal year.

(4) The amount of funds expended by a school district for early intervening services under WAC 392-172A-06085 shall count toward the maximum amount of expenditures that the school district may reduce under subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06030 School-wide programs under Title 1 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 students eligible for special education in the jurisdiction; multiplied by

(b) The number of students eligible for special education participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-05010 (1)(a).

(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 WAC 392-172A-05010 (1)(b) and (c).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education 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 students eligible for special education under the IDEA.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06030, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06035 Permissive use of funds. (1) Funds provided to a school district under Part B of the act may be used for the following activities:

(a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a special education student in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education, that are needed for the implementation of those case management activities.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06040 Purchase of instructional materials. OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, must acquire those instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work with the state instructional resources center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674 (e)(3)(B) of the act;

(d) Specialized formats has the meaning given the term in section 674 (e)(3)(D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) Rights of a school district. Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities by other means in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06040, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06045 School district information for OSPI. (1) The school district must provide OSPI with information that is necessary to enable OSPI to carry out its duties under Part B of the act and state law, including, but not limited to child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education participating in programs carried out under Part B of the act.

(2) The information will be provided OSPI in the form and by the timelines specified for a particular report.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06045, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education and to the general public all documents relating to the eligibility of the agency under Part B of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06050, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06055 Records regarding migratory students eligible for special education. The LEA must cooperate in the secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students eligible for special education for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06055, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06060 Exception for prior policies and procedures. (1) If a school district has on file with the OSPI policies and procedures that demonstrate that the school district meets the requirements under WAC 392-172A-05000, including any policies and procedures filed under Part B of the act as in effect before December 3, 2004, the OSPI must consider the school district to have met that requirement for purposes of receiving assistance under Part B of the act.

(2) Subject to subsection (3) of this section, policies and procedures submitted by a school district in accordance with this subpart remain in effect until the school district submits to the OSPI the modifications that the school district determines are necessary.

(3) The OSPI may require a school district to modify its policies and procedures, but only to the extent necessary to ensure the school district's compliance with Part B of the act or state law, if:

(a) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the act or federal or state regulations developed to carry out the act, are amended;

(b) There is a new interpretation of an applicable provision of the act 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the superintendent of public instruction or designee determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the superinten-

dent intends to withhold or recover funds in whole or in part, the school district or other public agency shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district'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 OSPI disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice 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 to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the superintendent erred in reaching its determination.

(c) The superintendent shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the superintendent's determination, it may appeal the agency's decision by filing an appeal with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a decision under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 10.08 WAC [10-08 WAC].

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06070 School district compliance. (1) If the OSPI, after reasonable notice and an opportunity for a hearing, finds that a school district determined to be eligible under this subpart is failing to comply with any requirement described in WAC 392-172A-06000 through 392-172A-06060, the OSPI must reduce or must not provide any further payments to the school district until the OSPI is satisfied that the school district is complying with that requirement.

(2) Any school district or other public agency in receipt of a notice of intent to withhold or recover funds of the school district shall, by means of a public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public, within its jurisdiction.

(3) In carrying out its responsibilities under this section, OSPI must consider any due process hearing decision resulting in a decision that is adverse to the school district involved in the decision.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06070, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06075 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) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06075, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06080 Requirements for establishing eligibility. School districts that establish joint eligibility under this section must:

(1) Adopt policies and procedures that are consistent with the state's policies and procedures consistent with WAC 392-172A-06005; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06080, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06085 Coordinated early intervening services. (1) A school district may not use more than fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated early intervening services, which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that develops and maintains coordinated early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received coordinated early intervening services; and

(b) The number of students served under this section who received coordinated early intervening services and later receive special education and related services within the following two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(6) Districts who have been determined to have significant disproportionality will be required to reserve the maximum amount of coordinated early intervening funds for students, in accordance with WAC 392-172A-07040.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-06085, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06085, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06090 Direct services by the OSPI. (1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education in the area served by that school district, if the OSPI determines that the school district:

(a) Has not provided the information needed to establish the eligibility of the school district, or elected not to apply for its Part B allotment, under Part B of the act;

(b) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(c) Is unable or unwilling to be consolidated with one or more school districts in order to establish and maintain the programs; or

(d) Has one or more students eligible for special education who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

(2)(a) In meeting the requirements in subsection (1) of this section, the OSPI may provide special education and related services directly, by contract, or through other arrangements.

(b) The excess cost requirements of WAC 392-172A-01075 do not apply to the OSPI.

(3) The OSPI may provide special education and related services in the manner and at the location as the OSPI considers appropriate. The education and services must be provided in accordance with this chapter.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06090, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-06095 State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year for Part B funding must demonstrate to the satisfaction of the OSPI that:

(1) All children with disabilities who are participating in programs and projects funded under Part B of the act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) The agency meets the other conditions of this subpart that apply to school districts.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-06095, filed 6/29/07, effective 7/30/07.]

STATE PROCEDURES—MONITORING—ENFORCEMENT AND STATE PROGRAM INFORMATION

WAC 392-172A-07000 Methods of ensuring services. (1) OSPI must 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 OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and 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 described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for medicaid reimbursement because that service is provided in a school context.

(c) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or

pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07000, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07005 Students eligible for special education who are covered by public benefits or insurance or private insurance. (1) A school district may use the medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(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 part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a child's benefits under a public benefits or 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 benefits or insurance program and that are required for the child outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Must obtain parental consent, each time that access to public benefits or insurance is sought for a new procedure; and must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) With regard to services required to provide FAPE to an eligible student under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(5) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 C.F.R. 80.25.

(6) If a public agency spends reimbursements from federal funds such as medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(7) Nothing in this part should be construed to alter the requirements imposed on a state medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07005, filed 6/29/07, effective 7/30/07.]

MONITORING

WAC 392-172A-07010 Monitoring. (1) OSPI's monitoring of school districts' special education program is to:

(a) Improve educational results and outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq.;

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure and report district performance on relative targets and priorities from federally approved state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection, review, and analysis of quantitative and qualitative data and other information;

(b) Conduct of on-site visits;

(c) Review and analysis of such quantifiable and qualitative data and indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, a notification of identified noncompliance shall be issued to the school district. This notification will initiate a process of corrections, verification, and validation to ensure that the noncompliance is corrected as soon as possible, but no later than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan is required.

(4) If the school district does not timely address compliance with corrective actions, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s); and/or

(ii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, to address noncompliance.

(c) Request assistance from the state auditors office.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-07010, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07010, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07012 Determinations. (1) OSPI annually reviews the data it obtains from school districts through monitoring, submission of other data required by the district, and other public information provided by the district. Based on the data and information provided, OSPI determines if the school district:

(a) Meets the requirements and purposes of Part B of the act;

(b) Needs assistance in implementing the requirements of Part B of the act;

(c) Needs intervention in implementing the requirements of Part B of the act; or

(d) Needs substantial intervention in implementing the requirements of Part B of the act.

(2) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, office of special education programs, other offices of the department of education, other federal agencies, technical assistance providers approved by the department of education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(3) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI may take actions described under subsection (2) of this section and will take one or more of the following actions:

(a) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(b) Withhold, in whole or in part, any further payments to the district under Part B of the act;

(4) Notwithstanding subsections (2) or (3) of this section, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under subsections (2) or (3) of this section.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-07012, filed 10/1/09, effective 11/1/09.]

PERFORMANCE GOALS AND INDICATORS—STATE PERFORMANCE PLANS AND ANNUAL PERFORMANCE REPORTS

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of special education students that promote the purposes of the Individuals with Disabilities Education Act, are consistent, to the maximum extent appropriate, with the state's four learning goals and essential academic learning requirements for all students, and are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students eligible for special education, under section 1111 (b)(2)(C) of the ESEA,20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's and school district's progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the department of education and to the public through its annual performance report on the progress of the state, and of students eligible for special education in the state, toward meeting the goals established under subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07015, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07020 State performance plans and data collection. (1) The OSPI has established a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the act, and describes how the state will improve such implementation. The plan is reviewed every six years, with any amendments provided to the department of education.

(2)(a) As part of the state performance plan, the OSPI has established measurable and rigorous targets for indicators established by the department of education under the priority areas of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services.

(b) The OSPI must collect valid and reliable information from the districts, monitoring, and state data, as needed to report annually to the department of education on their indicators.

(c) Data collected on specific indicators through state monitoring or sampling are collected on those indicators for each school district at least once during the six year period of the state performance plans.

(3) Nothing in Part B of the act shall be construed to authorize the development of a statewide or nationwide data base of personally identifiable information on individuals involved in studies or other collections of data under Part B of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07020, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07025 State use of targets and reporting. (1) The OSPI uses the targets established in the state's performance plan and the priority areas to analyze the performance of each school district.

(2)(a) The OSPI reports annually to the public on the performance of each school district located in the targets in the state's performance plan; and makes the state's performance plan available through public means, including posting on the web site of the OSPI, distribution to the media, and distribution through public agencies, subject to subsection (4) of this section.

(b) If the OSPI collects performance data through monitoring or sampling, the OSPI includes the most recently available performance data on each school district and the date the data were obtained.

(3) The OSPI must report annually to the department of education on the performance of the state under its performance plan.

(4) The OSPI does not report any information to the public or to the department of education on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07025, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07030 State enforcement. If the OSPI determines that a school district is not meeting the requirements of Part B of the act, including the targets in the state's performance plan, OSPI must prohibit the school district from reducing the school district's maintenance of effort under WAC 392-172A-06015 for any fiscal year, in addition to any other authority it has to monitor and enforce the requirements of Part B of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07030, filed 6/29/07, effective 7/30/07.]

CHILD COUNT, DISPROPORTIONALITY, SUSPENSION AND EXPULSION

WAC 392-172A-07035 Child count. The OSPI reports to the secretary of the department of education no later than February 1 of each year the number of students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' annual federal count of eligible students provided to OSPI on a date selected by OSPI between October 1 and December 1 of each year.

(1) Information required in the report includes:

(a) The number of students receiving special education and related services;

(b) The number of students aged three through five receiving special education and related services;

(c) The number of students aged six through seventeen, and eighteen through twenty-one within each disability category; and

(d) The number of 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.

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(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) School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-07035, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07035, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07040 Significant disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

(a) The identification of children as students eligible for special education;

(b) The identification of students with a particular disability;

(c) The placement of students in particular educational settings; or

(d) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2)(a) In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education including those with a particular disability, the placement in particular educational settings of these students, or discipline, the OSPI 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 the act;

(b) Require any school district identified under this section to reserve the maximum amount of federal funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-07040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07040, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education. (1) Annually, school districts shall report to the state on the rates of long-term suspensions and expulsions of students eligible for special education and nondisabled students for the preceding school year. The state shall examine this data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring:

(a) Among school districts or other public agencies; or

(b) Between nondisabled students and students eligible for special education 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 the act.

(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 positive behavioral interventions and supports; and

(c) Procedural safeguards.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07045, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07050 State use of funds. OSPI reserves funds for state-level activities, including state administration and other state-level activities, in accordance with the provisions of 34 C.F.R. Sec. 300.704. OSPI makes distributions of unreserved or unused grant funds, that it receives pursuant to section 611 of the act, to school districts allocated through subgrants in accordance with the provisions of 34 C.F.R. Sec. 300.705.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07050, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC 392-14-600 through 392-14-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need special education students whose cost is at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. 09-20-053, § 392-172A-07055, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07055, filed 6/29/07, effective 7/30/07.]

STATE ADVISORY COUNCIL

WAC 392-172A-07060 State 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 is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

(a) Parents of children, aged birth to twenty-six, with disabilities;

(b) Individuals with disabilities;

(c) Teachers;

(d) Institutions of higher education that prepare special education and related services personnel;

(e) Superintendents and principals, including officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

(f) Local administrators of special education programs;

(g) State agencies involved in the financing or delivery of related services to special education students;

(h) Private schools;

(i) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education;

(j) State agency employee responsible for services to children in foster care;

(k) State juvenile and adult corrections agencies;

(l) 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;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(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; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students.

(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 will be kept on all council meetings and shall be made available to the public on request to the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07060, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07065 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 OSPI for the purpose of compliance monitoring.

(3) Records shall be retained for six years after completion of the activities for which grant funds were used.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07065, filed 6/29/07, effective 7/30/07.]

WAC 392-172A-07070 Public participation. The state provides opportunities for public hearings, including adequate notice of the hearings and opportunity for written and oral comment prior to the adoption of any policies and procedures needed to comply with Part B of the act, or the submission of a state plan.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-07070, filed 6/29/07, effective 7/30/07.]