

WSR 22-09-081
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 20, 2022, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-099.

Title of Rule and Other Identifying Information: Chapter 392-162 WAC, Special service program—Learning assistance.

Hearing Location(s): On May 25, 2022, at 1:00 p.m., Webinar via Zoom. Due to ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit the office of superintendent of public instruction (OSPI)'s website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email Kristin.murphy@k12.wa.us.

Date of Intended Adoption: May 27, 2022.

Submit Written Comments to: Annie Pennell, OSPI, P.O. Box 47200, Olympia, WA 98504, email annie.pennell@k12.wa.us, by May 25, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by May 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing revisions to chapter 392-162 WAC concerning the learning assistance program (LAP) to (1) align the rules with the amended requirements under chapter 28A.165 RCW through the passage of HB [SHB] 1208; (2) clarify requirements in HB [SHB] 1208, including specific guidance on the timeline and use of the Washington integrated student supports protocol (WISSP) for determining LAP services; and (3) provide regulatory guidelines to districts who choose to use LAP funds to implement the K-2 literacy screening and intervention requirements under RCW 28A.320.260.

Reasons Supporting Proposal: The legislature passed HB [SHB] 1208, a bill that significantly modifies state laws pertaining to the LAP, in the 2021 legislative session. These modifications address the effects of the COVID-19 pandemic by granting greater local control over, accountability for, and flexibility with program funds, and to authorize continued flexible use of program funds through the framework of the Washington integrated student supports protocol. The proposed revisions to LAP rules reflect the legislative modifications and clarify specific requirements.

Statutory Authority for Adoption: RCW 28A.165.075.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: Annie Pennell, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6190; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business[es] and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

April 20, 2022
Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3068.2

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules (~~and regulations~~) for the administration of the learning assistance program.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-005, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-005, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-005, filed 3/31/14, effective 5/1/14; WSR 08-21-053, § 392-162-005, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-005, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-005, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-005, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-010 Purpose. The learning assistance program requirements in this chapter are designed to:

(1) (~~Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;~~

~~(2))~~ Promote the use of data when developing programs to assist students who are not meeting academic standards (~~and reduce disruptive behaviors in the classroom~~); and

~~((3))~~ (2) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist students who are not meeting academic standards (~~and reduce disruptive behaviors in the classroom; and~~

~~(4) Guide school districts in providing extended learning opportunities to assist K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades~~

~~eleven and twelve who are at risk of not meeting state and local graduation requirements)).~~

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-010, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-010, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-010, filed 3/31/14, effective 5/1/14; WSR 09-24-075, § 392-162-010, filed 11/30/09, effective 12/31/09; WSR 08-21-053, § 392-162-010, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-010, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-010, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-010, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-015 Definitions (~~Basic skills~~). As used in this chapter, the ~~((term "basic skills" means English language arts or mathematics, as well as readiness associated with these skills.))~~ terms:

(1) "District" means a school district, public charter school, or school authorized to operate as a state-tribal education compact school in accordance with chapter 28A.715 RCW.

(2) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of the superintendent of public instruction in accordance with RCW 28A.300.700.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-015, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-015, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-015, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-015, filed 6/28/84.]

NEW SECTION

WAC 392-162-016 Application. As described in RCW 28A.165.057, two application periods exist:

(1) The first timeline applies immediately and continues through the later of:

(a) The expiration or termination of Proclamation 20-05, and any subsequent orders extending or amending the proclamation, declaring a state of emergency on February 29, 2020, for all counties in Washington due to COVID-19; or September 1, 2025, whichever is later.

(b) During the first timeline described in subsection (1)(a) of this section, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, to identify students who are not meeting academic

standards and address their academic and nonacademic needs resulting from and exacerbated by the COVID-19 pandemic.

(c) During the first timeline described in subsection (1)(a) of this section, school districts are encouraged to budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

(2) The second timeline applies after the first timeline expires as described in subsection (1)(a) of this section. During the second timeline, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

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AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-054 Allocation, supplement not supplant, and use of funds. (1) The funds for the learning assistance program shall be allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be ~~((distributed to))~~ expended by the district for the schools ((building)) that generated the funding and may not supplant the learning assistance program base allocation expenditures for those schools.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-054, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-054, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-054, filed 3/31/14, effective 5/1/14; WSR 09-24-075, § 392-162-054, filed 11/30/09, effective 12/31/09; WSR 08-21-053, § 392-162-054, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-054, filed 12/21/06, effective 1/21/07.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-110 Program requirements—((District)) Reporting. ~~((1)) Individual student records shall be recorded, beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction's CEDARS manual.~~

~~(2) Districts shall submit to the superintendent of public instruction by the established due date an annual report in the electronic format provided by the superintendent of public instruction. The report must include the following:~~

~~(a) The amount of academic growth gained by students participating in the learning assistance program;~~

~~(b) The number of students who gain at least one year of academic growth;~~

~~(c) The specific practices, activities, and programs used by each school building that received learning assistance program funds; and~~

~~(d) The number of students served by the learning assistance program during the school year who were able to exit the program because student academic growth resulted in meeting the academic standard for grade level.~~

~~(3)) The superintendent of public instruction ((will)) may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or state-tribal education compact school ((operated pursuant to a state-tribe education compact)) if the school district, charter school, or state-tribal education compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.~~

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-110, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-110, filed 3/31/14, effective 5/1/14. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-110, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 95-19-031 (Order 95-08), § 392-162-110, filed 9/12/95, effective 10/13/95; WSR 87-22-001 (Order 87-14), § 392-162-110, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-110, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of the learning assistance program base allocation provided ((allocated)) under WAC 392-122-605 ((; however,)). Carry-over funds ((shall)) must be expended solely for the ((learning assistance program)) purposes of RCW 28A.165.005 through 28A.165.065.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carry-over funds must be expended solely for the ((learning assistance program)) purposes of RCW 28A.165.005 through 28A.165.065 and for the specific schools ((generating)) that generated the ((allocation)) funding.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-112, filed 1/2/18, effective 2/2/18. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-112, filed 12/21/06, effective 1/21/07.]

NEW SECTION

WAC 392-162-120 Implementation of K-2 literacy screening requirements—Use of funds. (1) A school district that chooses to expend learning assistance program funds to implement the screening and intervention requirements under RCW 28A.320.260 may use the district's learning assistance program base allocation under WAC 392-122-605 to fund the purchase of a literacy screening tool as defined under this chapter.

(2) A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100 and 28A.320.270.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-162-020	Definition—Learning assistance program (LAP).
WAC 392-162-023	Definition—District.
WAC 392-162-025	Definition—Statewide student assessments.
WAC 392-162-032	Definition—Participating student.
WAC 392-162-033	Definition—Students who are not meeting academic standards.
WAC 392-162-036	Definition—Extended learning opportunities.
WAC 392-162-041	Best practices.
WAC 392-162-080	Program requirement—Selection of students.