

WSR 22-11-051
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 13, 2022, 2:21 p.m., effective May 13, 2022, 2:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align office of superintendent of public instruction (OSPI) rules under chapter 392-162 WAC regarding the learning assistance program with the statutory provisions under chapter 28A.165 RCW as amended with passage of SHB 1208, and to provide regulatory guidelines to districts who choose to use learning assistance program funds to implement the K-2 literacy screening and intervention requirements under RCW 28A.320.260.

Citation of Rules Affected by this Order: New WAC 392-162-016, 392-162-017 and 392-162-120; repealing WAC 392-162-020, 392-162-023, 392-162-025, 392-162-032, 392-162-033, 392-162-036, 392-162-041 and 392-162-080; and amending WAC 392-162-005, 392-162-010, 392-162-015, 392-162-054, 392-162-100, 392-162-110, 392-162-112, and 392-162-115.

Statutory Authority for Adoption: RCW 28A.165.075.

Other Authority: RCW 28A.300.730.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In accordance with section 17 of SHB 1208, the provisions of the legislative enactment are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions and takes effect immediately. OSPI began regular rule making for proposed changes to chapter 392-162 WAC by filing the CR-101 on August 13, 2021, WSR 21-17-099. Subsequently, OSPI filed the CR-102 on April 20, 2022, WSR 22-09-081. A public hearing concerning proposed changes will be held on May 25, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 8, Repealed 8.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 13, 2022.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3068.1

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 terms:

(1) "Basic skills" means English language arts or mathematics, as well as readiness associated with these skills.

(2) "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.

(3) "Literacy interventions" means interventions under RCW 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia.

(4) "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.

(5) "Statewide student assessments" means one or more of the assessments administered by school districts as required under RCW 28A.655.070.

(6) "Students who are not meeting academic standards" means students with the greatest academic needs in basic skills as identified by statewide, school, or district assessments or other performance measurement tools.

[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. (1) Immediately and 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

(b) September 1, 2025, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, to identify and address the academic and nonacademic needs of students who are not meeting academic standards resulting from and exacerbated by the COVID-19 pandemic.

(2) During the time period described in subsection (1) of this section, school districts are encouraged to budget and expend the ap-

propriations 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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NEW SECTION

WAC 392-162-017 Community partnerships. A district may use up to fifteen percent of the district's learning assistance program allocation to deliver academic, nonacademic, and social-emotional supports and services to students who are not meeting academic standards through partnerships with community-based or other out-of-school organizations in accordance with RCW 28A.300.139. Any agreement entered into by a school district and a community partner in accordance with RCW 28A.300.139 must:

- (1) Specify that learning assistance program funds may be used only to provide direct supports and services to students;
- (2) Clearly identify the academic, nonacademic, or social-emotional supports and services that will be made available to students by the community partner and how those supports and services align to the needs of the students as identified in the student-level needs assessment under RCW 28A.300.139; and
- (3) Identify the in-school supports that will be reinforced by the supports and services provided by the community partner to promote student progress towards meeting academic standards.

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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 392-162-100 Federal and state program coordination. (1)

School districts may coordinate federal, state, and local programs in order to serve the maximum number of students who are ~~((below grade level in basic skills))~~ not meeting academic standards.

~~(2) ((Subject to guidelines provided by the United States Department of Education, districts with schoolwide buildings may use Title I, Part A funds to meet the requirement to focus first on students in kindergarten through fourth grade who are deficient in reading or literacy skills. Districts opting to use Title I, Part A funds in combination with or in place of learning assistance program funds must meet the requirements of chapter 28A.165 RCW, including implementing best practice strategies according to RCW 28A.165.035 and completing all reporting requirements outlined in this chapter.~~

~~(3))~~ Students receiving assistance in another special needs program may also be served in the learning assistance program if they ~~((meet student eligibility and selection requirements as identified in WAC 392-162-032 and 392-162-080))~~ are identified as students who are not meeting academic standards as defined under this chapter.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-100, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-100, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-100, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-100, filed 6/28/84.]

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 percentage of learning assistance funding used to engage community partners, the number of students receiving direct supports and services from those community partners, and the types of supports and services; and

(e) 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~~) allowable learning assistance program costs.

(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~~) allowable learning assistance program costs 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.]

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

WAC 392-162-115 Monitoring of districts. ~~((In order to insure))~~
To ensure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor learning assistance programs using, at minimum, data reported as required under WAC 392-162-110, no less than once every four years by using the state program review process. The primary purpose of the monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and to monitor school district fidelity in their implementation of best practices using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-115, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-115, filed 3/31/14, effective 5/1/14. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-115, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-115, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-115, filed 6/28/84.]

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:

(a) The purchase of a literacy screening tool as defined under this chapter; and

(b) Literacy interventions 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.