

**WSR 26-05-006**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed February 5, 2026, 10:50 a.m., effective February 5, 2026, 10:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to adopt rules regarding how special education staff will apply to K-3 class size; physical, social, and emotional support (PSES); and the certified instructional staff ratio compliance calculations after changes were made to the special education allocation in E2SSB 5263 (2025).

The office of superintendent of public instruction (OSPI) will also conduct permanent rule making concerning these rules.

Citation of Rules Affected by this Order: Amending WAC 392-122-440, 392-122-510, and 392-127-045.

Statutory Authority for Adoption: E2SSB 5263 (chapter 368, Laws of 2025); RCW 28A.150.290 and 28A.300.072.

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: These emergency rules are necessary as the legislature changed the cost allocation statute for special education, which OSPI had relied upon in prior years for funding compliance purposes (K-3 compliance and PSES compliance) by reference. With that change, OSPI needs to amend pertinent rules to continue to use the prior methodology for these compliance measures effective in January 2026. Failure to update the rules would result in some districts receiving less state funding than appropriate for the provision of basic education. In some districts, the deficiency could amount to millions of dollars.

OSPI will also conduct permanent rule making concerning these rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.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: February 5, 2026.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

**RDS-6988.1**

AMENDATORY SECTION (Amending WSR 24-14-074, filed 6/28/24, effective 7/29/24)

**WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff.** (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01, 09, or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;
- Duty root 43 - All activities - Occupational therapist;
- Duty root 44 - All activities - Social worker;
- Duty root 45 - All activities - Speech, language pathology/ audio;
- Duty root 46 - All activities - Psychologists;
- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management (~~and safety~~);
- Duty roots 91 - 99 - Activity 26 - Health/related services;
- Duty roots 91 - 99 - Activity 35 - Pupil safety.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction (~~used in the determination of 3121 revenue for inclusion in the compliance calculation~~) not in the general education classroom as reported from the November special education federal child count.

AMENDATORY SECTION (Amending WSR 24-14-074, filed 6/28/24, effective 7/29/24)

**WAC 392-122-510 K-3 class size—Teachers.** (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and program 09 for transition to kindergarten (grade T), and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3, and grade T multiplied by the annual percentage of students re-

ceiving special education instruction (~~(used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included)~~) not in the general education classroom as reported from the November special education federal child count.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

## RDS-6990.1

AMENDATORY SECTION (Amending WSR 08-04-027, filed 1/29/08, effective 2/29/08)

**WAC 392-127-045 FTE basic education certificated instructional employee—Definition.** As used in this chapter, "full-time equivalent basic education certificated instructional employee" means the full-time equivalent calculated pursuant to WAC 392-121-215 for:

(1) A basic education certificated instructional employee as defined in WAC 392-121-210; and

(2) A special education certificated instructional employee, in program 21, as determined by the following:

(a) The total special education, program 21, certificated instructional staff assigned to grades kindergarten through ~~((twelve))~~ 12;

(b) ~~((Times))~~ Multiplied by the annual percentage (~~(used in determination of a district's 3121 revenue the special education cost accounting method required pursuant to section 507 (2)(b) of the 2007 supplemental operating budget)~~) of students receiving special education instruction not in the general education classroom as reported from the November special education federal child count.