

WAC 392-140-605 Special education safety net—Application types, certification, worksheets. (~~Application~~) A request for safety net awards (~~shall~~) must be made on (~~Form SPI 1381—Certification~~) the application published by the office of the superintendent of public instruction. Applications will be considered and awards made according to the schedule published in the annual *Safety Net Bulletin*.

(1) Local education agencies may (~~make~~) submit an application for safety net awards in the following categories, except that the same students may not be submitted in more than one category:

(a) High need student(s); or

(b) High need student(s) served in residential schools, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails (~~;~~ ~~or~~

~~(c) Community impact factors~~).

(2) The applicant for any category of safety net awards (~~shall~~) must certify that:

(a) Differences in costs attributable to local education agency philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards;

(b) The application complies with the respective safety net application standards of WAC 392-140-616 (~~and 392-140-617~~);

(c) The application provides true, accurate, and complete information;

(d) The applicant acknowledges that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the conditional decision letter, and certifies that federal medicaid has been billed for all services to eligible students consistent with RCW 28A.150.392 (2)(i) or consents to receive a deduction calculated by the office of the superintendent of public instruction as a percentage of the billing rates published by the health care authority to compensate for the local education agency's decision not to pursue medicaid reimbursement, if applicable;

(e) The applicant is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding in an efficient manner;

(f) All available state and federal funding is insufficient to address the request for additional funds;

(g) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP; and

(h) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by an individualized education program.

(3) The applicant must provide clarifying information at the request of the state oversight committee. Any information specifically requested by the committee on a case-by-case basis during the initial review (and included with the office of the superintendent of public instruction conditional award letter) and provided by the applicant

within the requested timeline will be considered during final safety net application reviews. There is no obligation for the committee to request additional information and the presumption is on the applicant to submit a complete and accurate initial application.

(4) Worksheet A shall be included with the application and must demonstrate the applicant's capacity for safety net awards. Worksheet A is used to determine a maximum amount of safety net award eligibility. Award amounts may be less than the maximum potential amount of safety net award eligibility determined on worksheet A.

~~((4))~~ (5) All high need student applications shall include worksheets A and C, the Summary of Applications for High Need Individual Students form published in the safety net application, the individualized education programs applicable during the application period, and certification of standards and criteria pursuant to WAC 392-140-616.

~~((5) All community impact applications shall include worksheet A, the community impact application, all supporting documentation, and certification of standards and criteria pursuant to WAC 392-140-617.)~~

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

WAC 392-140-608 Special education safety net—Safety net application—Timing. Safety net applications shall be submitted and reviewed pursuant to the schedule of dates published by the office of the superintendent of public instruction in the annual safety net bulletin. ~~((Applications not received by the published dates and times in the bulletin will not be accepted.))~~

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-609 Special education safety net—Standards and criteria—IEPs. A sample of individualized education programs ~~((will))~~ may be reviewed for each applying local education agency (if the local education agency has not had individualized education programs reviewed through the Washington integrated system of monitoring (WISM) process within the last two years). Individualized education ~~((pre-grams will be reviewed in areas to))~~ program review areas will be determined by the office of the superintendent of public instruction and published in the annual *Safety Net Bulletin*. Areas to be reviewed will be the same for all applications for the school year. Sample sizes will be determined based on data collected by the office of the superintendent of public instruction demonstrating local education agency compliance history and statewide areas of needed improvement.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-140-616 Special education safety net—Standards—High need student applications. For applicants requesting safety net awards to meet the needs of an eligible high need student, the applicant shall convincingly demonstrate to a majority of the state oversight committee members at a minimum that:

(1) (a) The (~~reviewed~~) individualized education program demonstrates compliance with federal and state procedural requirements (~~(7 in the office of superintendent of public instruction selected applicable reviewed areas)~~); or

(b) The local education agency has corrected any noncompliance identified through general supervision processes, including monitoring or during a review of a sample of individualized education programs; and

(2) Costs eligible for safety net consideration are associated with providing direct special education and related services identified in implementation of an individualized education program and quantifiable by the committee on worksheet C; and

(3) In order to deliver appropriate special education and related services to the student, the applicant is providing services which incur costs exceeding:

(a) The annual threshold as established in WAC 392-140-60105 by the office of superintendent of public instruction for state safety net awards.

(b) Threshold amounts shall be adjusted pro rata for eligible students not served by the applicant on all nine enrollment count dates (October through June). For example, for a student served six of the nine count dates, the threshold amount shall be reduced to two-thirds of the full amount.

(4) The state safety net oversight committee shall adapt the worksheet A for the Washington state school for the blind, the Washington center for deaf and hard of hearing youth, educational service agencies, and tribal compact schools.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need. Applications for safety net funds shall demonstrate capacity for safety net awards as follows:

(1) Application worksheet A shall demonstrate a fiscal capacity in excess of all available revenue to the applicant for special education, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue.

(2) Awards shall not exceed the potential capacity for safety net funding on the worksheet A.

(3) Beginning with the 2007-08 school year, worksheets submitted with safety net applications must reflect the full cost method of accounting, pursuant to section 501 (1) (k), chapter 372, Laws of 2006.

(4) The safety net oversight committee may revise the applicant's worksheet A as submitted for errors or omissions or more current information.

~~(5) ((The applicant shall provide clarifying information at the request of the state oversight committee. Any information specifically requested by the committee on a case-by-case basis during the initial review (and included with the office of superintendent of public instruction conditional award letter) and provided by the applicant within the requested timeline will be considered during final safety net application reviews. There is no obligation for the committee to request additional information and the presumption is on the applicant to submit a complete and accurate initial application.~~

~~(6))~~ After the close of the school year, the applicant's worksheet A used to determine capacity for an award may be reviewed against the actual final school year enrollments, all available revenues, and legitimate expenditures reported by the applicant. Based upon the results of this review the safety net allocation for the school year may be adjusted or recovered if the awards or a portion of the safety net awards exceeded the demonstrated capacity for funding based upon consideration of all available revenues and legitimate expenditures.

~~((7))~~ (6) In accordance with the state of Washington *Accounting Manual for Public School Districts* and statutory federal language, potential capacity for safety net awards shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free appropriate public education.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures. (1) The state safety net oversight committee will review applications as deemed necessary by the office of the superintendent of public instruction pursuant to WAC 392-140-635.

(2) All applications received by the state safety net oversight committee no later than the dates published in the annual *Safety Net Bulletin* will be reviewed for completeness by the state safety net oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the annual bulletin published by the office of the superintendent of public instruction.

(3) The state safety net oversight committee manager or designee will forward to the committee members electronic copies of the applications for review in a timely manner, when applicable.

(4) State safety net oversight committee members shall review and discuss the applicant's request for safety net awards for completeness and accuracy during meetings as scheduled and published by the office of the superintendent of public instruction in the annual *Safety Net Bulletin*.

(5) The state safety net oversight committee may require that an applicant provide clarifying information before making a final recommendation. There is no requirement for the committee to request clari-

fying or missing information, in the event it is not provided by the applicant.

(6) State safety net oversight committee members will individually indicate their agreement, disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

(7) A majority vote by the state safety net oversight committee members in attendance shall be sufficient to determine the committee action.

(8) A ~~((decision))~~ summary ~~((for))~~ of each application will be provided to the applicant and shall include the amount of the initial request, funding adjustments applied by the committee, the amount of any award to be made, and the reasons for the action taken by the state safety net oversight committee.

(9) Voting members of the state safety net oversight committee in attendance ~~((shall each sign the decision summary))~~ must each certify their vote on committee actions.

(10) The state safety net oversight committee manager, on behalf of the state safety net oversight committee, will notify the applicant in writing of the determination of the committee. The applicant will be provided a copy of the ~~((decision))~~ application summary.

(11) All applications received by the state safety net oversight committee will be retained as per the Washington retention schedule by the office of the superintendent of public instruction for use in the evaluation of the safety net award process and to provide the office of the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-646 Special education safety net—State oversight committee actions. The state oversight committee shall review all safety net applications.

(1) An application reviewed during an application cycle may be:

(a) Approved;

(b) Adjusted for fiscal corrections and approved; or

(c) ~~((Adjusted for individualized education program noncompliance and approved, if evidence of noncompliance correction is provided;~~

~~(d) A combination of (b) and (c) of this subsection; or~~

~~(e))~~ Disapproved.

(2) The amount approved shall not exceed the amount authorized by the state oversight committee.

(3) The state oversight committee may not approve an application if there are unresolved audit issues related to special education that are material to the application. For purposes of this section, "audit" means an examination of a subrecipient to determine compliance with the state or federal laws and regulations governing the operation of a specific program and includes program audits, single audits, or any special purpose audit consistent with chapter 392-115 WAC and WAC 392-140-630. "Unresolved" means that the subrecipient has exhausted the audit resolution process described in chapter 392-115 WAC as amended.

(4) Awards approved by the state oversight committee are subject to recovery pursuant to WAC 392-140-675 through 392-140-685.

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-675 Special education safety net—Adjustments to special education safety net awards. Final safety net award shall be adjusted based on changes in factors for which additional or revised information becomes available after the awarding of the initial safety net award.

(1) ~~A high need award ((and/or community impact award))~~ will be reduced or nullified when the applicant's available revenues and legitimate expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(2) An applicant's safety net award may be recovered or adjusted based on the results of the review conducted by the state auditor's office pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-140-685 Special education safety net—Recovery of state and/or federal awards. High need student state and/or federal special education safety net award and state community impact safety net award shall be recovered or award reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The award is unexpended for the purpose allocated including, but not limited to, situations where the student leaves a school district, charter school, tribal compact school, Washington center for deaf and hard of hearing youth, and the Washington state school for the blind, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school or tribal compact school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district, charter school or tribal compact school transfers the equipment to the other school district, charter school or tribal compact school.

~~(3) ((The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.~~

~~(4))~~ The applicant's available revenues are significantly higher than estimated revenues on which the award was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the award was based.

~~((5))~~ (4) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-140-60110 Definition—Community impact.
- WAC 392-140-617 Special education safety net—Standards
 —Community impact applications.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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

(i) The office of the superintendent of public instruction (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, charter schools, educational service agencies, and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, the Washington state school for the blind and the Washington center for deaf and hard of hearing youth established and operated pursuant to chapter 72.40 RCW, and education programs for ~~((juvenile))~~ student inmates established and operated pursuant to chapters 28A.193 and 28A.194 RCW; and

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

(2) Each school district, charter school, and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education services who are 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.

(3) Each school district and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education services who are placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01031 Behavioral intervention plan. A behavioral intervention plan is a plan which incorporates the results of a function-based behavior review described in WAC 392-172A-01088 to determine the function of the student's interfering behavior. A behavioral intervention plan describes the prevention, teaching, reinforcement, and response strategies that school staff (and other service providers) will use to support a student with interfering behavior to learn prosocial and age-appropriate replacement behaviors. For a student eligible for special education and related services, if a behavioral intervention plan is determined necessary by the IEP team for the student to receive FAPE, it is incorporated into ((a)) the student's IEP ((if determined necessary by the IEP team for the student to receive FAPE)). The behavioral intervention plan, at a minimum, ((describes)) must include:

(1) ((The pattern of behavior(s) that impedes the student's learning or the learning of others)) A description of the specific, observable behavior that interferes with learning, using language that is measurable and objective;

(2) ((The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team)) A summary of the findings of the function-based behavior review, including patterns in the antecedent conditions that reliably precede the behavior, the consequence events that reliably follow the behavior, and the hypothesized function of the behavior;

(3) At least one replacement behavior, which is an age-appropriate social, emotional, academic, adaptive, or communication skill matching the same function of the interfering behavior identified in subsection (2) of this section, that school staff (and other service providers) will teach the student;

(4) The positive behavioral interventions and supports ((to)) that school staff (and other service providers) will implement to reduce the occurrence of the interfering behavior and increase the student's use of the replacement behavior, including:

(a) ((Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;

(b) Ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities;

(4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.) Preventative strategies addressing antecedent events and environmental factors that reliably precede the interfering behavior;

(b) Teaching strategies that assist the student in learning the replacement behavior and/or generalizing its use across settings;

(c) Reinforcement strategies to provide age-appropriate reinforcement (for example, but not limited to, positive feedback, classroom points, free time) for the student's use of the replacement behavior; and

(d) Response strategies to address the interfering behavior when it occurs.

(5) A data collection plan which describes how the student's progress will be measured;

(6) A plan to support the consistent use of the behavioral intervention plan across settings; and

(7) A start date by which the plan will be in effect.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 1/1/22)

WAC 392-172A-01035 Child with a disability or student eligible for special education services. (1) (a) Child with a disability or as used in this chapter, a student eligible for special education services means a ((student)) person between the ages of three and 22 who has been evaluated and determined to need special education services because of having a disability in one of the following eligibility categories: Intellectual disability, deafness (including hard of hear-

ing), 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, deafblindness, multiple disabilities, or for students, three through nine, 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) For purposes of providing a student with procedural safeguard protections identified in WAC 392-172A-05015, the term, "student eligible for special education services" also includes a student whose identification, evaluation or placement is at issue.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in (a) of this subsection, but only needs a related service and not special education services, the student is not a student eligible for special education services 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.

(d) 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.

(e) Special education services may not be solely based on the disability category for which the student is eligible.

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

(c) Deafness means a student who is deaf or hard of hearing which manifests in severe difficulty 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 nine 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 nine.

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

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

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age (~~ten~~) 10 and determined eligible for services under one of the other eligibility categories in order to continue receiving special education services.

(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 and other psychiatric conditions. (~~The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional/behavioral disability under (e)(i) of this subsection.~~)

(f) Hard of hearing means difficulty 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 deafblindness.

(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.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

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))~~ their 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.

NEW SECTION

WAC 392-172A-01088 Functional behavioral assessment. (1) A functional behavioral assessment, when conducted for a student eligible for special education, means a systematic process to understand the function and purpose of a student's specific interfering behavior and factors that contribute to the behavior's occurrence and nonoccurrence for the purpose of developing a behavioral intervention plan as defined under WAC 392-172A-01031.

(2) A functional behavioral assessment must include, at a minimum:

- (a) A description of the behavior that interferes with learning, using language that is measurable, observable, and objective;
- (b) Data collection activities that include the collection of:
 - (i) A baseline measure of the interfering behavior's frequency, duration, percent of occurrence across opportunities, or other quantitative measures that indicates or estimates the degree to which the behavior interferes with learning;
 - (ii) Information about the conditions under which the interfering behavior does and does not reliably occur, including the events which reliably precede and follow the interfering behavior; and
 - (iii) Whenever possible, any information from the parent about the student's pattern of interfering behavior.
- (c) A function-based behavior review that includes:
 - (i) An antecedent-behavior-consequence summary which, at a minimum, analyzes the information described in (b)(ii) of this subsection, and describes the antecedent events that reliably precede the interfering behavior, the interfering behavior's description, and the consequences that reliably follow the interfering behavior; and
 - (ii) An identification of the function of the interfering behavior based on the antecedent-behavior-consequences summary.
- (3) When a functional behavioral assessment is completed as part of an initial evaluation or reevaluation under this chapter, all requirements for evaluations and reevaluations must be met, including parental consent as described in WAC 392-172A-03000.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-01092 Imminent. ~~Imminent ((as defined in RCW 71.05.020 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote))~~ has the same meaning as in RCW 28A.600.485.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01107 Isolation. ~~Isolation ((as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan))~~ has the same meaning as in RCW 28A.600.485.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-01109 Likelihood of serious harm. Likelihood of serious harm ((as defined in RCW 71.05.020 means:

(1) A substantial risk that:

(a) ~~Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to die by suicide, or inflict physical harm on oneself;~~

(b) ~~Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or~~

(c) ~~Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or~~

(2) ~~The person has threatened the physical safety of another and has a history of one or more violent acts)) has the same meaning as in RCW 28A.600.485.~~

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01142 Positive behavioral interventions. Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage ((his or her)) their own behavior.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services to benefit from special education services, 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, behavioral 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, school 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 service 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 provided 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 services 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 services;

(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))~~ their 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 services.

(q) Behavioral services means any services described in an IEP that specifically supports a student's behavioral needs.

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01162 Restraint. Restraint ~~((as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely))~~ has the same meaning as in RCW 28A.600.485.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education services 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~~) their 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 services may be special education services, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education services to benefit from special education services.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE). (1) Each school district and residential or day schools operated under chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education services between the age of three and (~~twenty-one~~) 22 years, a free appropriate public education program (FAPE). The right to a FAPE includes special education services for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education services 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 services 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 services; 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))~~ 22. The student whose ~~((twenty-first))~~ 22nd birthday occurs on or before August 31st would no longer be eligible for special education services. The student whose ~~((twenty-first))~~ 22nd birthday occurs after August 31st, 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).

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education services residing in ~~((a state adult))~~ any correctional facility located in Washington state 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 under chapter 28A.194 RCW.

(b) Subsection (2) (a) of this section does not apply to students aged ~~((eighteen to twenty-one))~~ 18 to 22 if they:

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

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

(A) Had been identified as a student eligible for special education services 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))~~ their last education setting, but who had actually been identified as a student eligible for special education services.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 eligible for special education services between the ages of three and (~~twenty-one~~) 22 years old.

(2) The continuum required in this section for eligible students kindergarten (including five year olds in kindergarten) through age (~~twenty-one~~) 22 must:

(a) Include the placements listed in the definition of special education services 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.

(3) The continuum of alternative placements a public agency providing special education and related services to a preschool child with a disability may include, but is not limited to, the following:

(a) Providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than school districts (such as head start or community-based child care);

(b) Enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children;

(c) Locating classes for preschool children with disabilities in regular public elementary schools; and

(d) Providing services and instruction in the home.

(4) If a public agency determines that placement in a private preschool program is necessary for a child with a disability to receive FAPE, the public agency must make that program available at no cost to the parent.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education services 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~~) their 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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 1/1/22)

WAC 392-172A-02076 Prohibited practices. (1) School district personnel are prohibited from using aversive interventions with a student eligible for special education services, and are prohibited from physically restraining or isolating any student, except when the student's behavior poses an imminent likelihood of serious harm as defined in (~~WAC 392-172A-01092 and 392-172A-01109~~) and subject to the conditions and limitations described in RCW 28A.600.485.

(2) There are certain practices that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their illegality. The purpose of this section is to prohibit the use of certain practices with students eligible for special education services as follows:

(a) Deprivation of communication. A student must not be deprived of the ability to communicate physical distress to a staff member or other contracted personnel during the use of restraint or isolation. A student who uses a method of communication other than verbal speech (e.g., sign language, picture symbol communication) must have an effective means of communicating physical distress during the use of restraint or isolation.

(b) Electric current. No student may be stimulated by contact with electric current including, but not limited to, tasers.

~~((b))~~ (c) Food services. A student who is willing to consume subsistence food or liquid when the food or liquid is customarily served must not be denied or subjected to an unreasonable delay in the provision of the food or liquid.

~~((e))~~ (d)(i) Force and restraint in general. A district must not use force or restraint that is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law. See RCW 9A.16.100, which prohibits the following uses of force or restraint including:

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

(B) Striking a student with a closed fist.

(C) Shaking a student under age three.

(D) Interfering with a student's breathing.

(E) Threatening a student with a deadly weapon.

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

(ii) 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.

~~((d))~~ (e) Hygiene care. A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care.

~~((e))~~ (f) Isolation. A student must not be excluded from ~~((his or her))~~ their 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-02110.

~~((f))~~ (g) Medication. A student must not be denied or subjected to an unreasonable delay in the provision of medication.

~~((g))~~ (h) Noise. A student must not be forced to listen to noise or sound that the student finds painful.

~~((h))~~ (i) Noxious sprays. A student must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

~~((i))~~ (j) Physical restraints. A student must not 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 or against a wall or the floor, except under the conditions set forth in WAC 392-172A-02110.

~~((j))~~ (k) Prone, supine, and wall restraints. A student must not be subjected to the use of prone (lying face-down) and supine (lying face-up) restraint, wall restraint, or any restraint that interferes with the student's breathing.

~~((k))~~ (l) Taste treatment. A student must not 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.

~~((l))~~ (m) Water treatment. A student's head must not be partially or wholly submerged in water or any other liquid.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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)(a) 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))~~ 90 days prior to the student's third birthday.

(b) Within ~~((twenty-five))~~ 20 school days following the transition planning conference, a determination whether or not to evaluate the student for Part B will be made. The district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(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).

WAC 392-172A-02090 Personnel qualifications. (1) All school district personnel providing special education services and/or related services shall meet the following qualifications:

(a) All employees shall hold such credentials, licenses, 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 in (a) of this subsection, all special education personnel providing, designing, supervising, monitoring or evaluating the provision of special education services shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement (or early childhood special education endorsement, deaf education endorsement, deaf education with American sign language proficiency endorsement, teacher of the visually impaired endorsement) on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) A teacher will be considered to meet the applicable requirements in (a) and (b) of this subsection if that teacher is participating in an alternative route to a 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 educator standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(d) Other certificated related services school 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.

(e) 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, but may be assigned to an individual with a special education endorsement.

(f) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency by successful completion of a test ap-

proved by the professional educator standards board pursuant to WAC 181-82-130.

(g) Certified and/or classified staff assigned as educational interpreters, must meet the performance standards outlined in RCW 28A.410.271 by passing an educational interpreter assessment approved by the professional educator standards board.

(h) Paraeducator staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education services, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or a licensed staff, as provided in (i) of this subsection. Paraeducator staff assigned to Title 1 schoolwide programs shall also meet ESEA standards for paraeducators.

(i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators 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 early childhood special education certificated staff, deaf education certificated staff, deaf education with American sign language proficiency certificated staff, teacher of the visually impaired certificated staff, adapted physical education specialty endorsement 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 personnel, who meet the applicable requirements described in subsection (1)(a) of this section, to provide special education and related services to students eligible for special education services. There may be occasions when, despite efforts to hire or retain teachers who meet the applicable requirements, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet professional educator standards board criteria pursuant to WAC 181-82-110(~~(3)~~) as now or hereafter amended, are eligible for a preendorsement (~~(waiver)~~) authorization. Application for the special education preendorsement (~~(waiver)~~) authorization shall be made to the special education division 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 school district is responsible for determining that the assigned teacher must have completed ~~((ninety))~~ 90 continued education credit hours of course work applicable to an endorsement in special education.

(iii) Pursuant to WAC 181-82-110, if teachers are so assigned, 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; and

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

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

(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 to meet the applicable requirements described in subsection (1)(a) of this section, 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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 1/1/22)

WAC 392-172A-02105 ~~((Emergency response protocols))~~ **Crisis de-escalation and safety plan.** (1) If the parent and the school district determine that a student requires advanced educational planning under RCW 28A-600-485, the parent and the district may develop ~~((emergency response protocols))~~ a crisis de-escalation and safety plan to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this ~~((section. Emergency response protocols))~~ chapter. The crisis de-escalation and safety plan, if developed, must be incorporated into a student's IEP. ~~((Emergency response protocols))~~ Crisis de-escalation and safety plan shall not be ~~((used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols))~~ developed without an accompanying behavioral intervention plan as defined under WAC 392-172A-01031 and a

documented parent request for a plan. Crisis de-escalation and safety plans are subject to the conditions and limitations as follows:

(a) The student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the ~~((emergency response protocols))~~ crisis de-escalation and safety plans to be adopted;

(b) A licensed health care provider documents in writing that the intervention is medically necessary; and

(c) The ~~((emergency response protocols))~~ crisis de-escalation and safety plan must specify:

(i) The ~~((emergency conditions under which isolation, restraint, or restraint devices, if any, may be used))~~ preventative crisis de-escalation strategies, not including restraint, that will be used to support the student's de-escalation;

(ii) The type(s) of ~~((isolation,))~~ restraint, ~~((and/or restraint device,))~~ if any, that may be used;

(iii) The staff members or contracted positions permitted to use ~~((isolation,))~~ restraint ~~((, or restraint devices))~~ with the student, updated annually, and identify any required training associated with the use of ~~((isolation,))~~ restraint ~~((, or restraint device))~~ for each staff member or contracted position;

(iv) Any other special precautions that must be taken ~~((, or (e)))~~;

(d) Any use of ~~((isolation,))~~ restraint ~~((, and/or restraint device))~~ must be discontinued as soon as the likelihood of serious harm has dissipated ~~((, or (d)))~~;

and

(e) Any staff member or ~~((other adults))~~ contracted personnel using ~~((isolation,))~~ restraint ~~((, or a restraint device))~~ must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and the safe use of ~~((isolation,))~~ restraint ~~((, or a restraint device))~~.

(2) School districts must follow the documentation and reporting requirements for any use of ~~((isolation,))~~ restraint ~~((, or restraint device))~~ consistent with RCW 28A.600.485, regardless of whether the use of ~~((isolation,))~~ restraint ~~((, or restraint device))~~ is included in the student's ~~((emergency response protocols))~~ crisis de-escalation and safety plan.

(3) Nothing in this section is intended to limit the application of a school district's policy developed under RCW 28A.600.485 to protect the general safety of students and staff from an imminent likelihood of serious harm.

(4) Nothing in this section is intended to limit the provision of ~~((a))~~ free and appropriate public education under Part B of the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 1/1/22)

WAC 392-172A-02110 Isolation or restraint—Conditions. Any use of isolation ~~((,))~~ or restraint ~~((, and/or a restraint device))~~ shall be used only when a student's behavior poses an imminent likelihood of

serious harm. The limited use of isolation(~~(r)~~) or restraint(~~(r or re-~~
~~straint device)~~) not prohibited (~~(in)~~) under WAC 392-172A-02076 or RCW
28A.600.485 is conditioned upon compliance with the following proced-
dural and substantive safeguards:

(1) Isolation. The use of isolation as defined by RCW 28A.600.485
is subject to each of the following conditions:

(a) The isolation must be discontinued as soon as the likelihood
of serious harm has dissipated.

(b) The isolation enclosure (~~(shall)~~) must be ventilated, ligh-
ted, and temperature controlled from inside or outside for purposes of
human occupancy.

(c) The isolation enclosure (~~(shall)~~) must permit continuous vis-
ual monitoring of the student from outside the enclosure.

(d) (~~An adult responsible for supervising the student shall re-~~
~~main in~~) A staff member or contracted personnel must supervise the
student in isolation and maintain line-of-sight visual (~~(range)~~) moni-
toring of the student at all times.

(e) Either the student (~~(shall)~~) must be capable of releasing
(~~(himself or herself)~~) themselves from the enclosure, or the student
(~~(shall)~~) must continuously remain within view of (~~(an adult)~~) a staff
member or contracted personnel responsible for supervising the stu-
dent.

(f) Any staff member or (~~(other adults)~~) contracted personnel us-
ing isolation must be trained and currently certified by a qualified
provider in the use of trauma-informed crisis intervention (including
de-escalation techniques), and also trained by the district in isola-
tion requirements, or otherwise available in the case of an emergency
when trained personnel are not immediately available due to the un-
foreseeable nature of the emergency.

(g) Isolation must not be used to address a student's self-harm
behavior.

(2) Restraint. The use of restraint as defined by RCW 28A.600.485
is subject to each of the following conditions:

(a) The restraint must be discontinued as soon as the likelihood
of serious harm has dissipated.

(b) The restraint (~~(shall)~~) must not interfere with the student's
breathing.

(c) Any staff member or (~~(other adults)~~) contracted personnel us-
ing a restraint must be trained and currently certified by a qualified
provider in the use of trauma-informed crisis intervention (including
de-escalation techniques) and such restraints, or otherwise available
in the case of an emergency when trained personnel are not immediately
available due to the unforeseeable nature of the emergency.

(3) (~~Restraint device. The use of a restraint device as defined~~
~~by RCW 28A.600.485 is subject to each of the following conditions:~~

~~(a) The restraint device must be discontinued as soon as the~~
~~likelihood of serious harm has dissipated.~~

~~(b) The restraint device shall not interfere with the student's~~
~~breathing.~~

~~(c) Either the student shall be capable of releasing himself or~~
~~herself from the restraint device or the student shall continuously~~
~~remain within view of an adult responsible for supervising the stu-~~
~~dent.~~

~~(d) Any staff member or other adults using a restraint device~~
~~must be trained and currently certified by a qualified provider in the~~
~~use of such restraint devices, or otherwise available in the case of~~

~~an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.~~

~~(4)) School districts must follow the documentation and reporting requirements for any use of isolation((7)) or restraint((7, ~~or restraint device~~)) consistent with RCW 28A.600.485.~~

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1)(a) A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services.

(b) The request must be in writing, unless the person is unable to write and/or communicate orally.

(c) Each school district must have an optional referral form for requesting an initial evaluation available to the general public and provide it upon receipt of any referral request in the requestor's native language or with the support of a qualified interpreter when needed.

(2) The school district must document the request for an initial evaluation, including the date the request is received, 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))~~ 20 school days after receipt of the request for an initial evaluation, 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.

(d) Exception: Referral requests received through IDEA Part C notification of toddlers potentially eligible for Part B special education preschool services are subject to the timelines described under WAC 392-172A-02080 and not the timeline described in (c) of this subsection.

(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))~~ must provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student, make a completed draft copy of the evaluation report under WAC 392-172A-03035 available within 35 school days to the parent, and convene a meeting to arrive at a decision regarding eligibility within:

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

(b) ~~((Thirty-five))~~ Forty school days after the date the consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing; 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~~) 40 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 district 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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education services 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~~) If additional assessments are conducted as part of a reevaluation, the school district must make a completed draft copy of the evaluation report under WAC 392-172A-03035 available to the parent within 35 school days and convene a meeting to arrive at a decision regarding a student's continuing eligibility for special education services within:

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

(b) (~~Thirty-five~~) Forty 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, including specifying the reasons for extending the timeline.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope for the IEP team 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 services, and any related services the evaluation group determines the student needs in order to benefit from special education services;

(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))~~ their conclusion. If the evaluation report does not reflect ~~((his or her))~~ their conclusion, the professional member of the group must include a separate statement representing ~~((his or her))~~ their conclusions.

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

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district ~~((shall))~~ must 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)) utilizing 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)).~~

AMENDATORY SECTION (Amending WSR 07-14-078, 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)) that age; or
- (3) For a student of less than school age, an individual qualified to teach a student of ((his or her)) that 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.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

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.

AMENDATORY SECTION (Amending WSR 07-14-078, 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))~~) district procedures describing 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))~~) must include 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 that 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))~~) occurring 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, availa-

ble 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 with the opportunity to increase (~~her or his~~) their rate of learning;

(b) Two or more intensive scientific research-based interventions, identified to allow the student to progress toward (~~his or her~~) their 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.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

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(~~r~~) 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~~) and

(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~~) The student's participation in a process that assesses the student's response to scientific, research-based intervention, including:

(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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education services 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 for the areas in which the alternate assessment will be administered; and

(iii) Documentation that the parent(s) were informed, as part of the IEP process, that their student's academic achievement will be measured on alternate standards and how participation in an alternate

assessment may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(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, evaluation data, and input from IEP team members, 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 district-wide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide 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) Behavioral intervention plan, if determined necessary by the IEP team for the student to receive FAPE.

(i) (~~Emergency response protocols~~) Crisis de-escalation and safety plan, if determined necessary by the IEP team for the student to receive FAPE, and the parent provides consent, as defined in WAC 392-172A-01040.

(j) 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.

(k) Beginning not later than the first IEP to be in effect when the student turns (~~sixteen~~) 16, 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;

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

(iii) A description of how the postsecondary goals and transition services align with the high school and beyond plan.

(l) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of (~~eighteen~~) 18,

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.

(m) The school district's procedures for notifying a parent regarding the use of isolation(~~(r)~~) or restraint(~~(r or a restraint device)~~) as required by RCW 28A.155.210.

(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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services 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;

(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; and

(c) Include whatever action is necessary to ensure that the parent understands the notification being provided including, but not limited to, providing the notification in writing in a parent's native language when necessary for the parent's understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.

(4) Beginning not later than the first IEP to be in effect when the student turns (~~(sixteen)~~) 16, 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 may be responsible for providing or paying for transition services and request consent as defined in WAC 392-172A-01040 from the parent/adult student to invite a representative from the outside agency to the IEP meeting.

(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, but not limited to:

(a) Notifying parents in advance in the parent's native language of the availability of interpretation and translation services at no cost to the parents;

(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and

(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided in accordance with RCW (~~(28A.155.230)~~) 28A.183.010.

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

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services that it is serving through enrollment in the district.

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

(a) The school district holds a meeting to develop the student's IEP within (~~(thirty)~~) 30 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 in a timely manner of:

(i) (~~(His or her)~~) Their 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 services transfers from one school district to another school district within Washington state and had an IEP that was in effect in 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 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 services transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in 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 Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and

(b) Develops 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.225.330 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 nonprofit private school students eligible for special education services.

(a) For students eligible for special education services aged three through (~~twenty-one~~) 22, 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 services aged three through (~~twenty-one~~) 22 who are enrolled by their parents in approved, nonprofit private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education services in its jurisdiction aged three through (~~twenty-one~~) 22.

(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 nonprofit private school students eligible for special education services aged three through five who are enrolled by their parents in approved, nonprofit private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education services 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 an approved, nonprofit private school at the 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 nonprofit private school students eligible for special education services during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed nonprofit private school students eligible for special education services, the school district, after timely and meaningful consultation with representatives of approved, nonprofit 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 services attending nonprofit private schools located in the school district.

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

(i) Determine the number of parentally placed private school students eligible for special education services attending approved, nonprofit 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 nonprofit private school students eligible for special education services 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 nonprofit private school students eligible for special education services to the extent consistent with state law.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through ~~((392-172A-04095))~~ 392-172A-04105 apply to students eligible for special education services who have been placed in or referred to ~~((an))~~ :

(a) An authorized in-state private elementary or secondary school or facility, or placed in or referred to a public or private out-of-

state elementary or secondary school or facility meeting designated nonpublic agency (NPA) ((approval by the student's school district)) status requirements pursuant to RCW 28A.300.690 as a means of providing special education and related services when the school district cannot provide ~~((a))~~ free appropriate public education (FAPE) for the student within the district.

(b) An authorized single case contracted placement with other public and private agencies under WAC 392-121-188 to provide special education and related services to eligible students when the private or public agency does not meet the criteria for nonpublic agency status under RCW 28A.300.690 but the school district determines that the private or public agency can provide the student with FAPE.

(c) An authorized contracted educational service district (ESD) program placement pursuant to RCW 28A.310.200 as a means of providing special education and related services when the school district cannot provide FAPE for the student within the district.

~~(2) (a) ((School districts are also authorized to contract with other public and private agencies under WAC 392-121-188 to provide special education or related services, or both to eligible students when the private or public agency does not meet the criteria for nonpublic agencies under WAC 392-172A-04090 and 392-172A-04095, but the school district determines that the private or public agency can provide the student with a free appropriate public education (FAPE)).~~

~~(b) When a district contracts with other public or private agencies to provide special education or related services or both, under subsection (2) (a) of this section, the school district shall notify in writing the OSPI special education division of its intent to serve a student under this section and ensure that it follows the requirements under WAC 392-172A-04085.~~

~~(3)) When a school district seeks authorization from OSPI for a single case contract with other public or private agencies for placement to provide special education services under subsection (1) (b) of this section, the school district will provide a written letter of justification to the OSPI special education division of its intent to serve a student under this section for the provision of FAPE and ensure that it follows the contracting and reporting requirements under WAC 392-172A-04085.~~

(b) School districts must provide the OSPI special education division with the opportunity to review, upon request, the single case contract for placement and any related documentation provided in accordance with WAC 392-172A-04095 supporting placement.

(c) School districts must adhere to any conditions and/or limitations set by the OSPI special education division on single case contracted placements authorized under this section.

(d) School districts must annually renew authorized single case contracted placements under this section with the OSPI special education division.

(3) (a) Educational service districts seeking authorization to provide placement under subsection (1) (c) of this section must provide the OSPI special education division with written notification of its intent to serve students under this section and ensure that the program follows the applicable contracting and reporting requirements under WAC 392-172A-04085.

(b) The OSPI special education division may provide initial authorization for contracted ESD program placements under this section, which meet the requirements of WAC 392-172A-04095, to provide special education and related services for a period of up to three years.

(c) Following initial authorization, authorized contracted ESD program placements under this section are subject to review and reauthorization by the OSPI special education division at least every three years for the ongoing and continued provision of special education services.

(4) The provisions of this section do not apply to the authority of school districts to enter into interdistrict agreements with other Washington state school districts pursuant to chapter 392-135 WAC.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04085 Responsibility of the school district. (1) A school district that places a student eligible for special education services with ~~((a)) an authorized nonpublic agency ((or with another private or public agency under WAC 392-172A-04080(2)))~~ pursuant to RCW 28A.300.690 for special education and related services ~~((shall))~~ will develop a written contract which meets the minimum contracting and reporting requirements of RCW 28A.155.060.

(2) A school district that places a student eligible for special education services with a single case contracted placement or educational service district (ESD) program placement under WAC 392-172A-04080 for special education and related services will develop a written contract which must include, but not be limited to, the following elements:

(a) The names of the parties involved;
(b) The name(s) of the student(s);
(c) The location(s) and setting(s) of the services to be provided;

(d) A description of services provided, program administration and supervision, including ~~((access to state learning standards))~~ the opportunities for the student to meet a program of basic education that meets the goals of RCW 28A.150.210 and, when applicable, a description of the opportunities for the student to either meet high school graduation requirements under RCW 28A.230.090 or to earn a high school equivalency certificate under RCW 28B.50.536 or laws of the state in which the authorized entity is located;

(e) The total contract cost and applicable charges and reimbursement systems, including billing and payment procedures;

(f) ~~((The total contract cost))~~ An acknowledgment that the single case contracted placement or ESD program is responsible for full reimbursement to the school district of any overpayments determined to have been made by the school district;

(g) ~~((description of the district responsibility and process of))~~ schedule, of at least once per academic term, for the single case contracted placement or ESD program to provide to the school district with student progress reports;

(h) Clearly established responsibilities for student data collection and reporting ((for the student(s), including the data)) required under IDEA including, but not limited to, the use of restraint or isolation ((RCW 28A.600.485) reports to parents and the OSPI)) pursuant to RCW 28A.600.485, regular attendance, and school discipline;

~~((h))~~ (i) An assurance that the requirements of WAC 392-172A-02105 through 392-172A-02110 are met (including requirements for parental consent, notification, and reporting);

~~((i))~~ (j) An assurance that the ~~((agency))~~ single case contracted placement or ESD program will notify the school district and OSPI of program changes ~~((within the agency))~~ that may affect ~~((the agency's))~~ its ability to fulfill the contract ~~((or))~~ and of any complaints ~~((against the agency))~~ received regarding services provided to students eligible for special education services; and

~~((j))~~ (k) Any other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

~~((2))~~ (3) Each school district must ensure that a student eligible for special education services placed in or referred to ~~((a non-public agency))~~ any authorized contracted placement for the provision of special education services under WAC 392-172A-04080 ~~((1) or with another private or public agency under WAC 392-172A-04080(2))~~ is provided special education and related services:

(a) In conformance with an ~~((IEP))~~ individualized education program (IEP) developed by the school district that meets the requirements of this chapter; and

(b) At no cost to the parents.

~~((3))~~ (4) Each school district remains responsible for ensuring that the student is provided ~~((FAPE))~~ free appropriate public education (FAPE).

~~((4))~~ (5) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that ~~((the nonpublic agency))~~ any authorized contracted placement conduct evaluations or IEP meetings, the school district will ensure that all applicable requirements of Part B of the act are met.

~~((5))~~ (6) The student retains all of the rights of a student eligible for special education services who is served within the school district.

~~((6))~~ (7) The student must be provided with an opportunity to participate in state and district assessments.

~~((7))~~ (8) The student must be provided with an opportunity to fulfill the requirements to receive a Washington state diploma.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04090 Approval of nonpublic agencies. (1) ~~((The school district shall notify the special education division of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.~~

~~((2) The school district and the nonpublic agency will review the requirements for approval and complete the application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.~~

~~((3) 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 will determine whether the application will be approved or disapproved.~~

~~(4) The OSPI makes information regarding currently approved non-public agencies available on its website.~~

~~(5) 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.~~

~~(6) Private schools or facilities located in other states must first be approved by the state education agency of the state in which the educational institution is located to provide FAPE to students referred by school districts. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the private school or facility shall meet the requirements for approval in this state under the provisions of this chapter.) Authorized entities meeting the requirements of RCW 28A.155.060 will be designated annually as a nonpublic agency (NPA) by the special education division of OSPI for the purpose of providing placement for an eligible student to receive special education and related services when the school district cannot provide an appropriate education for the student within the district.~~

(2) Initial approval. The school district will notify the special education division of the OSPI, in writing, of their intent to serve a student through a contract with an authorized entity under RCW 28A.155.060 and sponsor the entity's application for nonpublic agency status.

(a) The sponsoring school district and the identified contracted placement will review the requirements for authorized entities under RCW 28A.155.060 and complete the application for initial nonpublic agency status approval.

(b) The sponsoring school district will conduct an on-site visit and review of the identified contracted placement as part of the initial application for nonpublic agency status.

(c) The sponsoring school district will ensure that the identified contracted placement is able to provide special education and related services in a manner that meets the unique needs of eligible students to receive free appropriate public education (FAPE).

(d) Upon receiving a completed application, including the results of an on-site visit and recommendation for approval from a sponsoring school district, OSPI will review the application and grant preliminary nonpublic agency status approval to contracted placements that satisfy the requirements for authorized entities under RCW 28A.300.690.

(e) Within 12 months of granting preliminary approval, OSPI will conduct an independent on-site visit and review of the authorized entity and, as appropriate, grant full nonpublic agency status in accordance with RCW 28A.300.690.

(3) Annual review and reauthorization. Nonpublic agencies will submit an application annually to OSPI for continuing nonpublic agency status.

(a) The sponsoring school district for each nonpublic agency will work with OSPI to ensure that at least one contracting school district has conducted an annual on-site visit and submitted a written report in accordance with RCW 28A.155.060(3).

(b) OSPI will designate a sponsoring school district for each nonpublic agency if the original sponsor no longer has a contracted placement with the nonpublic agency.

(c) OSPI will annually review school district on-site visit reports and applications for continuing nonpublic agency status to en-

sure nonpublic agencies remain in good standing with the requirements of RCW 28A.300.690.

(d) OSPI will conduct a full reauthorization of nonpublic agencies every three to five years in accordance with RCW 28A.300.690.

(4) The OSPI special education division will make information regarding currently approved nonpublic agencies available annually on its website.

(5) School districts are permitted to contract with approved nonpublic agencies in accordance with RCW 28A.155.060 at any time without prior notification to OSPI.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04095 ((Application)) Authorization requirements for ((nonpublic agency approval)) contracted placements and education service district programs.

(1) A ((nonpublic agency)) single case contracted placement under WAC 392-172A-04080 (1)(b) must meet the following requirements to be approved:

(a) ((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, other certificated teachers who meet state standards, and related services staff meeting state licensure requirements for their profession. If the education program is associated with a facility, such as a hospital mental health, or treatment facility, and the program is not an approved private school, the program must comply with the licensing requirements for the facility, such as the department of health, and the facility will assure that it has teachers who meet certification requirements developed by the professional educators standards board, related services staff meeting state licensure requirements for their profession as applicable, and at least one certificated teacher with a special education endorsement.

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

(c) The private school or facility meets applicable health and safety standards.

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

(e) The private school or facility has procedures in place that address staff hiring and evaluation including:

(i) Checking personal and professional references for employees;

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

(iii) Regular scheduling of staff evaluations of the competencies that enable the staff to work with students.

(f) The private school or facility has a policy of nondiscrimination.

(g) The private school or facility meets state education rules for hours and days of instruction.

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

~~(2) After approval as a nonpublic agency, the private school or facility must provide annual review information to the OSPI and school districts with whom they contract the following two years. The nonpublic agency must complete a renewal application, including scheduling a site visit by a contracting school district every third year following approval.~~

~~(3) OSPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval under this section, and provide an indication of a change to the approval requirements for any nonpublic agency on the list of currently approved nonpublic agencies available to the public maintained on the OSPI website.) Maintain applicable facility licenses and applicable agency approvals of the state in which the placement is located.~~

(b) Employ or contract with appropriately qualified staff who meet the licensing requirements of the state in which the placement is located.

(c) Demonstrate that the placement has procedures in place that address staff employment and contracting, including checking personal and professional references, conducting state and federal criminal background checks, and conducting regular staff trainings and evaluations that address staff competencies.

(d) Demonstrate that the placement is financially stable and has accounting systems that include financial safeguards in place to track revenues and expenditures associated with the contracted placement.

(e) Demonstrate that the placement understands and has procedures in place to protect the procedural safeguards of the students eligible for special education services and their families.

(f) Agree to adhere to the minimum contracting and reporting requirements for school districts under WAC 392-172A-04085(2).

(g) Agree to on-site visits by contracting school districts and/or OSPI in order to confirm that the health and safety of the facilities, the staffing qualifications and levels, and the procedural safeguards are sufficient to provide a safe and appropriate learning environment for students.

(2) A contracted program placement with an educational service district (ESD) under WAC 392-172A-04080 (1)(c) must meet the following requirements to be approved:

(a) Employ or contract with at least one certificated teacher with a special education endorsement, other certificated teachers who meet state standards, and related services staff meeting state licensure requirements for their profession.

(b) Adopt and maintain procedures that address staff employment and contracting, including checking personal and professional references, conducting state and federal criminal background checks, and conducting regular staff trainings and evaluations that address staff competencies.

(c) Adopt and maintain procedures to protect the procedural safeguards of the students eligible for special education services and their families.

(d) Demonstrate that the program meets state education rules for hours and days of instruction, including opportunities for students to participate in a program of basic education that meets the goals of RCW 28A.150.210 and, when applicable, opportunities for students to either meet high school graduation requirements under RCW 28A.230.090 or to earn a high school equivalency certificate under RCW 28B.50.536.

(e) Demonstrate that the physical facilities of the school are adequate to meet the program offered, and that all school facilities

and practices are in compliance with applicable health and safety requirements contained in chapter 246-366 WAC and fire safety requirements pursuant to chapter 43.44 RCW of the jurisdiction where the program is located.

(f) Demonstrate that the program will adhere to the minimum contracting and reporting requirements for school districts under WAC 392-172A-04085(2).

(g) Agree to regular on-site visits by contracting school districts and/or OSPI in order to confirm that the health and safety of the facilities, the staffing qualifications and levels, and the procedural safeguards are sufficient to provide a safe and appropriate learning environment for students.

(3) OSPI may modify, substitute, or add as necessary any requirements for authorizing any contracted placements under this section in furtherance of its duties and authority under RCW 28A.155.090 and 28A.310.470 to provide special education and related services to students with disabilities.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04100 Notification of ~~((nonpublic agency))~~ program changes and complaints.

(1) ~~((An approved nonpublic agency))~~ Any authorized contracted placement for the provision of special education services under WAC 392-172A-04080 must notify any school districts with whom they contract and the OSPI special education division 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))~~ authorized contracted placement remains able to provide contracted services to public school students eligible for special education services.

(2) ~~((An approved nonpublic agency))~~ Any authorized contracted placement for the provision of special education services under WAC 392-172A-04080 must promptly notify any school districts with whom they contract and the OSPI special education division of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education services.

(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.))~~ Complaints that any authorized contracted placement for the provision of special education services under WAC 392-172A-04080 have failed to maintain applicable authorization standards must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(4) Any authorized contracted placement for the provision of special education services under WAC 392-172A-04080 named in or investigated pursuant to a state complaint under WAC 392-172A-05025 will be reviewed by the OSPI special education division for continued authorization in accordance with monitoring procedures developed by the OSPI special education division under RCW 28A.155.240.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04105 Suspension, revocation or refusal to renew approval. OSPI may suspend, revoke (~~(or)~~), refuse to renew, or place conditions upon its approval of ((a nonpublic agency)) any authorized placement for the provision of special education services under WAC 392-172A-04080 to contract with school districts for the provision of special education services if the ((nonpublic agency)) authorized placement:

(1) Fails to maintain the applicable approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education services; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-04110 State responsibility for ((nonpublic agency)) authorized contracted placements. In implementing the ((nonpublic agency)) provisions of WAC 392-172A-04080 through 392-172A-04105 for authorized contracted placements, the state ((shall)) will:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires consistent with the OSPI duties and authority under RCW 28A.155.090;

(2) Disseminate copies of applicable standards to ((each private school and facility)) authorized contracted placements to which a public agency has referred or placed a student eligible for special education services; and

(3) Provide an opportunity for ((those private schools and facilities)) authorized contracted placements to participate in the development and revision of state standards that apply to them.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-05001 Parent participation in meetings. (1) (a) The parents of a student eligible for special education services 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 services 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.

(2) (a) Each school district must ensure that a parent of each student eligible for special education services 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.

(e) A parent of a student eligible for special education services may request permission to observe their student's current educational placement, and to observe any educational placement proposed or under consideration either by a parent or a group that makes decisions on the educational placement of the parent's child, in accordance with applicable school district policy and state law.

(3) 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.

(4) For any meeting under this section, including meetings related to a student's IEP, school discipline, and truancy, in accordance with RCW ((~~28A.155.230~~) 28A.183.010), each school district must take whatever action is necessary to ensure that the parent understands the proceedings of the meeting including, but not limited to:

(a) Notifying parents in advance in the parent's native language of the availability of interpretation and translation services at no cost to the parents;

(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and

(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided.

(5) A parent may request consent to record meetings under this section, in accordance with applicable school district policies and state law. Any recording that is maintained by the school district is an "education record" within the meaning under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services, or referred for special education services 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 services 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~~) their 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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services 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))~~ 10 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 website if a website 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))~~ their 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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 division, a written, signed complaint that the OSPI, or a subgrantee of the OSPI including, but not limited to, an ESD, school district, the Washington state school for the blind (WSSB), the Washington school for the deaf (WSD), 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 assistant superintendent 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.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 OSPI will 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, either notify the district of the additional issues or inform the parent of the option to open a new complaint.

(3) The school district or other agency shall respond in writing to the OSPI and the complainant with documentation of the investigation, no later than (~~seventeen~~) 15 calendar days after the date of receipt of the complaint.

(4) 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.

(5) The (~~OSPI~~) school district or other agency will provide the complainant a copy of the school district's or other agency's response to the complaint, and OSPI will provide the complainant with an opportunity to reply. If the complainant is not authorized to review personally identifiable information, that information will not be provided to the complainant.

(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 school district or other 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~~) 60 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 the 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 or other public agency 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 services.

(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 school district or other public agency is not achieved pursuant to subsection (8) of this section, the OSPI will initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

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:

- (i) Serve the request, which must remain confidential, directly with the other party; and
- (ii) File a copy of the request via mail, fax, or electronically directly with the OSPI's designee, the office of administrative hearings, at the following:

Mail:

Office of Administrative Hearings
(~~600 University Street, Suite 1500~~
~~Seattle, WA 98101-3126~~)
16201 E. Indiana Avenue, Suite 3000
Spokane Valley, WA 99216
Fax: 206-587-5135

Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.

(b) Due process hearing timelines will begin upon receipt of the request by both the other party and the office of administrative hearings, whichever date is later.

(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 served with the due process hearing request notifies the administrative law judge and the other party in writing, within

((fifteen)) 15 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)) 10 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)) 10 days of receiving the due process hearing request.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-05125 Student's status during proceedings. (1)(a) 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))

their current educational placement, unless the school district and the parents of the child agree otherwise.

(b) The student's status during the pendency of any proceedings does not preclude the IEP team from meeting, as needed or as required under this chapter, and updating and implementing the student's IEP, unless those changes are in dispute.

(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, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 25-01-132, filed 12/17/24, effective 1/17/25)

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 services reaches the age of 18 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 11.130 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of 18 who have not been determined incapacitated under chapter 11.130 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 consent 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 11.125 RCW.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

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 services who violates a code of student conduct from (~~his or her~~) their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than (~~ten~~) 10 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~~) 10 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) A school district is only required to provide services during periods of removal to a student eligible for special education services who has been removed from ~~((his or her))~~ their current placement for ~~((ten))~~ 10 school days or less in that school year, if it provides services to a student without disabilities who is similarly removed. The services may be provided in an interim alternative educational setting.

(3) After a student eligible for special education services has been removed from ~~((his or her))~~ their current placement for ~~((ten))~~ 10 school days in the same school year, and the removal is a change of placement under WAC 392-172A-05155, during any subsequent days of removal the student must 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. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting.

(4) After a student eligible for special education services has been removed from ~~((his or her))~~ their current placement for ~~((ten))~~ 10 school days in the same school year, if the current removal is for not more than ~~((ten))~~ 10 consecutive school days and is not a change of placement under WAC 392-172A-05155, during any subsequent days of removals, 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. The services may be provided in an interim alternative educational setting.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education services 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))~~ 45 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~~) their 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.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

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~~) their choice at (~~his or her~~) their 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.

AMENDATORY SECTION (Amending WSR 07-14-078, 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~~) their grades,

attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-07035 Child count. The OSPI reports to the Secretary of the United States Department of Education annually as required by the office of special education programs the number of students aged three through (~~twenty-one~~) 22 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 1st and December 1st 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 in an early childhood setting within each disability category;

(c) The number of students aged five (and are also in kindergarten) through (~~twenty-one~~) 22 within each disability category; and

(d) The number of students aged three through (~~twenty-one~~) 22 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 student eligible for special education services has more than one disability, the student is reported as follows:

(a) A student with deafblindness and not reported as having a developmental delay must be reported under the category "deafblindness."

(b) A student who has more than one disability (other than deafblindness 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 students receiving special education and related services on the dates in question.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-172A-01163 Restraint device.

WAC 392-172A-03065 Use of discrepancy tables for determining severe discrepancy.

WAC 392-172A-03070 Method for documenting severe discrepancy.